**COMPLIANCE CHECKLIST**

**FOR A NEWLY ESTABLISHED REPRESENTATIVE OFFICE**

**Introduction**

Congratulations on the establishment of your business presence in Vietnam. The Representative Office license is a very important milestone for your operation in the Vietnamese market. However, as you may be well aware, this is only the first step in navigating the post-licensing requirements and legal responsibilities of operating a representative office for a foreign company and will play an important role in determining the success of your business in Vietnam.

The Vietnamese legal system is rapidly changing and foreign investors have to comply with a set of rules and provisions governing their conduct in Vietnam. With the purpose of assisting your company in conducting business activities in strict compliance with Vietnamese law, ADK Vietnam Lawyers has designed this Compliance Checklist which may help you perform a simple assessment of your representative office’s operations.

**Instructions on filling**

The Compliance Checklist is designed to be a simple checklist covering the most important compliance obligations for your representative office under Vietnamese law.

While answering the questions below, you will have the chance to check the “legal health” of your business activities in Vietnam and be more informed about the operations of a representative office of a foreign company in Vietnam.

In case you have any queries or concerns, please do not hesitate to contact us for assistance and advice. We can then help you design a corporate business strategy that will ensure your business is in line with the current provisions of Vietnamese law.

**ADK VIETNAM LAWYERS**

**List of Abbreviations**

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|  | “RO” | Representative Office. |
|  | “DOIT” | Department of Industry and Trade. |
|  | “CR” | Chief Representative.  |
|  | “PIT” | Personal Income Tax. |
|  | “VND” | Vietnam Dong. |
|  | “DOLISA” | Department of Labour, War Invalids and Social Affairs. |
|  | “SI” | Social Insurance. |
|  | “HI” | Health Insurance. |
|  | “UI” | Unemployment Insurance. |

**Regulation**

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| **Compliance obligations** |
| *Lease contract*Has the RO signed the valid lease contract on-premises where its office is located? |
| *Appointment of Chief Representative*Has the overseas parent company appointed the Chief Representative and issued the Letter of Appointment or entered into a Labour Contract for this appointment?[[1]](#footnote-1) |
| *Tax Code of the RO*Has the RO submitted an application for the tax code registration certificate to the local Tax Department?[[2]](#footnote-2) |
| *Registration of the RO’s seal*Has the RO registered its seal with the police authority after the receipt of the Establishment License?[[3]](#footnote-3) |
| *Annual report*Has the RO submitted the annual report on its operation to the DOIT by the end of January of the following year?[[4]](#footnote-4) |
| *Change of the parent company’s name or address*If the parent overseas company changes its name or address (within the territory of the country where the parent company was established or changed to another country), has the parent overseas company of RO applied for an amendment to its Establishment License at the DOIT? |
| *Change of the RO’s Chief Representative*If the RO changes its chief, has the parent overseas company of RO applied for an amendment to its Establishment License at the DOIT? |
| *Change of the RO’s name*If the RO changes its name, has the parent overseas company of RO applied for amendment to its Establishment License at the DOIT?  |
| *Change of scope of operation*If the RO changes its scope of operation, has the parent overseas company of RO applied for amendment to its Establishment License at the DOIT? |
| *Change of the RO’s address*If the RO changes its office address within a province or city under (the jurisdiction of) central government[[5]](#footnote-5), has the parent overseas company of RO applied for amendment to its Establishment License at the DOIT? |
| *Change of the RO’s office address to another province*If the RO changes its office address to another province or city under the central government, has the parent overseas company of RO applied for a new Establishment License from the DOIT of that province or city?*Note: The parent overseas company must carry out this procedure within 30 days from the date on which the notification of termination of the RO at the former address is submitted[[6]](#footnote-6).* |
| *The RO’s establishment license is lost, destroyed, damaged or destroyed in any way*If the RO’s establishment license is lost, destroyed, damaged or destroyed in any way, has the RO applied for a new Establishment License at the DOIT? |
| Upon expiry of the Establishment License, has the parent overseas company of RO also applied for an extension of the same at least 30 days prior to the expiry of the Establishment License?[[7]](#footnote-7) |
| *Registration of the new CR*If the RO changes the CR, has the parent overseas company of RO registered with the DOIT for amendment of its Establishment License?[[8]](#footnote-8) |
| *PIT finalization for the former CR*If the RO changes the CR, has the RO completed the PIT finalization for the former CR with his/her last working day in the RO with the certification from the tax authority?[[9]](#footnote-9) |
| *PIT payment for the former CR*If the RO changes the CR, has the outstanding PIT of the former CR paid in accordance with the tax finalization notice issued by the tax authorities? |
| *Appointment of the new CR*If the RO changes the CR, has the parent overseas company appointed the new CR by signing the Letter of Appointment or entered into the Labour Contract for/with the new CR? |
| *PIT declaration for the new CR*If the RO changes the CR, has the RO firstly completed the PIT registration and declaration for the new CR?[[10]](#footnote-10) |
| *Opening Bank accounts[[11]](#footnote-11)* Has the RO opened bank accounts in VND and/or foreign currency for the RO operation purposes? |
| *Pluralism of CR*Does CR concurrently hold the title of Chief of (i) the Branch of the parent overseas company or other overseas company; or (ii) legal representative of an enterprise established in accordance with laws of Vietnam; or (iii) legal representative of the foreign business entity who in order to sign contracts without the written power of attorney of such foreign entity?[[12]](#footnote-12) |
| *Commercial contract*If the CR signs commercial contracts with Vietnamese businesses partners, has he/she received valid authorization from the parent company for each contract?[[13]](#footnote-13) |
| *PIT tax code*Have all employees of the RO obtained their personal tax code?For those who did not possess a personal tax code before working for the RO, have they registered their tax code within 10 working days from the date of receiving the salaries?[[14]](#footnote-14) |
| *PIT declaration of employee*Have all employees of the RO declared their PIT to the tax authorities within 20 days of the following month (for monthly declaration) or within 30 days of the following quarter (for quarterly declaration) after the taxable income arises?[[15]](#footnote-15) |
| *Deduction for family circumstances*Has the RO’s employee properly declared his/her legitimate dependants for the deduction?[[16]](#footnote-16) |
| *Tax status*Has the RO’s foreign employee determined his/her tax status in Vietnam – a tax resident[[17]](#footnote-17) or a tax non-resident?[[18]](#footnote-18) |
| *Income acquired outside Vietnam*Have the RO’s foreign employee, who is tax resident of Vietnam, declared and paid PIT on income acquired outside of Vietnam?[[19]](#footnote-19) |
| *Taxable income*Does the taxable income of the employee include salary, bonuses and other allowances provided by the RO?[[20]](#footnote-20) |
| *Net salary*If the RO’s employee receives a net salary, have the salary paperwork been properly grossed up for the PIT purpose in accordance with the official formula? |
| *Rental* If the RO pays for the employee’s rental, does the RO ensure that the rental prudently paid in kind and calculated into the total taxable income for the PIT purposes is not more than 15% of the employee’s total taxable income (excluding rental amount)?[[21]](#footnote-21) |
| *Irregular income*Has the RO’s employee paid PIT on his/her regular and irregular income (such as income from doing business of real estate, industrial property transfer, transfer of technological secrets or lottery prize winnings)?[[22]](#footnote-22) |
| *One-off relocation*Has the RO’s employee excluded his/her one-off relocation allowance to Vietnam or from Vietnam to abroad from the labour contract or collective labour agreement from his/her total taxable income?[[23]](#footnote-23) |
| *Two-way airfare ticket*Has the RO’s foreign employees or Vietnamese working abroad employees excluded his/her two-way airfare ticket for home leave (as stated in the labour contract) been excluded from his/her total taxable income?[[24]](#footnote-24) |
| *Meal allowances*Has the RO’s employee excluded his/her lunch or mid-shift meal allowance from his/her total taxable income? In the case where the meal allowance has exceeded the rate stipulated by the Ministry of Labour, War Invalids and Social Affairs, the amount in excess shall be subject to PIT.[[25]](#footnote-25) |
| *Travelling expenses*Has the RO’s employee properly excluded the travelling expenses paid by the RO to provide collective transport for employees to and from his/her personal residences to the workplace from his/her total taxable income? Should the transport services be rendered only for individuals, the travelling expenses shall be subject to the PIT.[[26]](#footnote-26) |
| *Overtime payment*Has the RO’s employee excluded overtime payments from his/her total taxable income?[[27]](#footnote-27) |
| *Social and health insurance payment*Has the RO’s local employee excluded from his/her total taxable income the payment of social and health insurance paid from his/her salary?[[28]](#footnote-28) |
| *Unemployment insurance payment*Has the RO’s local employee excluded from his/her total taxable income the payment of unemployment insurance paid from his/her salary?[[29]](#footnote-29) |
| *Training expenses*Has the RO’s employee excluded the training expenses paid by the RO from his/her total taxable income?[[30]](#footnote-30) |
| *Educational expenses*Has the RO’s expatriate employee excluded from his/her total taxable income the expenses for his/her children studying in Vietnam or expenses for children of the Vietnamese employee working abroad from kindergarten to high school?[[31]](#footnote-31) |
| *Currency of the income*Has the RO’s employee converted all of his/her tax payable incomes into VND for the purpose of PIT calculation?[[32]](#footnote-32) |
| *20% PIT rate*Has the RO’s foreign employee, who is for tax non-residents purposes of Vietnam, paid PIT of 20% from his/her total Vietnamese sourced income from wages and salary?[[33]](#footnote-33) |
| *Progressive tax tariff*Has the RO’s expatriate employee, who is a taxable resident of Vietnam, calculated and paid PIT based on the progressive tax tariff?[[34]](#footnote-34) |
| *PIT of local employee*Have the RO’s local employees calculated and paid their PIT based on the progressive tax tariff for Vietnamese citizens?[[35]](#footnote-35) |
| *PIT finalization deadline*Has RO’s employee submitted the annual PIT finalization dossier at the latest by the last day of the 3rd month (or 4th month in case of individuals directly finalizing tax) from the end of a calendar year or fiscal year for the PIT arising in the previous year?[[36]](#footnote-36) |
| *Official forms*Has the RO’s employee prepared his/her PIT finalization based on the current official state forms? |
| *Resident check*Has the RO’s expatriate employee prepared the Resident check showing the number of days they have resided in Vietnam for determining his/her tax status and the form of PIT calculation? |
| *Lease contract*Has the RO’s expatriate employee submitted a valid lease contract for his/her place of residence in Vietnam? |
| *Confirmation of income*Has the parent company issued the Letters of Confirmation of Income for the RO’s expatriate employee in accordance with the official forms? |
| *Tax notice*Has the RO’s employee received a final tax notice from the tax authorities stating the final PIT amount to be paid for the previous year? |
| *PIT payment*Has the RO’s employee paid his/her PIT by bank transfer or in cash at the Department of Taxation of HCMC? |
| *Probation* Has the RO established (i) a 60-day probationary period for professional employees, (ii) a 30-day probationary period for skilled employees; and (iii) a 6 day probationary period for other kinds of work?[[37]](#footnote-37) Are the wages of the employees during the probationary period at least 85% of the scale wage rate for the relevant working position?[[38]](#footnote-38) |
| *Labour contracts* Have all local employees signed two copies of an official labour contract?[[39]](#footnote-39) |
| *HI Registration* Have all employees working under labour contracts of more than 3 months term or of an indefinite term been registered for HI?[[40]](#footnote-40) Have HI registered local employees obtained cards and nominated a medical services provider? |
| *HI Payment* Have all employees registered for HI, and have health insurance premiums been paid? |
| *SI Registration* Have the local employees who work under labor contracts of more than a 3 months term or of an indefinite term been registered with the SI? [[41]](#footnote-41)Have the foreign employees who have work permit/practice certificates and work under labor contracts of more than 1 year term or of an indefinite term been registered with the SI?[[42]](#footnote-42)Have all employees been issued SI books? |
| *SI Payment*Have the RO and the employees made compulsory SI payments? |
| *Wages of the RO’s employees* Has the RO paid wages to the RO’s employees higher than the minimum wage stipulated by the State?[[43]](#footnote-43) |
| *Overtime payment*Has the RO requested the employees to work overtime? If yes, has the RO paid overtime salary for the employees at the rates provided by law? *[[44]](#footnote-44)* |
| *Biannual and annual reports*Has the RO submitted biannual reports (before June 05) and annual reports (before December 05) on the change in employees to the DOLISA and the district social insurance agency?[[45]](#footnote-45) |
| *Plan for using foreign employees*Has the RO prepared a plan for using foreign employees to be submitted to the Peoples’ Committee of Ho Chi Minh City through DOLISA for their official approval at least 30 days before the expected day of the new recruitment?[[46]](#footnote-46) |
| *Change to the plan for using foreign employees*If the RO has been approved for employment of foreign employees but wishes to make changes, has the RO submitted a report on the adjustment or supplementation to the DOLISA at least 30 days before the expected day of the new recruitment, additional recruitment or recruitment for substitution of foreign employees?[[47]](#footnote-47) |
| *Visa application*Have the RO’s foreign guests or expatriate employees applied for an entry visa at the Vietnamese representative organization overseas in accordance with the Notice of invitation issued by the Vietnamese immigration office?[[48]](#footnote-48) |
| *Obtaining a work permit* Has the RO applied for the work permits for its foreign employees at the local authorities for a term of a maximum of 02 years?[[49]](#footnote-49) |
| *Extension of work permit*At least 05 days but not more than 45 days before the expiry of the work permit’s term, has the RO applied for the extension of the work permit?[[50]](#footnote-50) |
| *Notice on signing of labor contract*Has the RO sent the signed labor contract with the foreign employee to the competent authority issued the work permit?[[51]](#footnote-51) |
| *Report on using foreign employees*Has the RO reported the situation of using foreign workers before July 5 and January 5 of the following year?[[52]](#footnote-52) |
| *Temporary resident card*Have the CR and all the RO’s foreign employees obtained temporary resident cards for ease of travelling and residing in Vietnam? [[53]](#footnote-53) |
| *Type of temporary resident card* Have the CR or the RO’s foreign employees obtained temporary resident cards in the correctly prescribed type?[[54]](#footnote-54) |
| *Registration of new local employees*Has the RO registered in the recruitment of the local employee(s) through organizations that are authorized to recruit and manage Vietnamese employees working for foreign employers?[[55]](#footnote-55) |
| *Notice on signing of labor contract*Has the RO notified in writing of the signing of labor contracts to organizations that are authorized to recruit and manage Vietnamese employees?[[56]](#footnote-56) |
| *Annual report on using local employees*Before December 15 of each year or unexpectedly upon request, has RO reported the situation on recruitment and employment of local employees to organizations that are authorized to recruit and manage Vietnamese employees?[[57]](#footnote-57) |
| *Unemployment Insurance Payment*Has the RO paid UI for all local employees who are working under the labour contracts?[[58]](#footnote-58) |

1. Article 27.1 of Decree 07/2016/ND-CP [↑](#footnote-ref-1)
2. Article 4.2.g and 5.3.b of Circular 105/2020/TT-BTC. The RO must register a tax code for the purpose of withholding and paying personal income tax of the RO’s employees to the State budget as prescribed by tax laws. [↑](#footnote-ref-2)
3. Article 17.5 of Commercial Law 2005 and Article 5, Article 12.2 of Decree 99/2016/ND-CP. Please note that a seal is not required for RO under Vietnamese law. However, it shall be more convenient for RO's activities in Vietnam. [↑](#footnote-ref-3)
4. Article 32 of Decree 07/2016/ND-CP

***Note:*** *In case of failure to make annual reports or dishonestly report on the operation of the representative office to the competent state agency, the RO will be fined from VND 20,000,000 to VND 40,000,000 (Article 4.4 and Article 67.2 of Decree 98/2020/ND-CP)* [↑](#footnote-ref-4)
5. Ho Chi Minh City is one of five cities under the central government of Vietnam. If the RO changes its office address within Ho Chi Minh City, it is necessary to apply for an amendment to Establishment License at the DOIT. [↑](#footnote-ref-5)
6. Article 20.1 of Decree 07/2016/ND-CP [↑](#footnote-ref-6)
7. Article 21 and 23.1 of Decree 07/2016/ND-CP [↑](#footnote-ref-7)
8. Article 15 of Decree 07/2016/ND-CP [↑](#footnote-ref-8)
9. Article 24.1 of Law on personal income tax [↑](#footnote-ref-9)
10. Article 4 of Circular 80/2012, Article 16 of Circular 156/2013 and Article 21.1 of Circular 92/2015. [↑](#footnote-ref-10)
11. Article 17.4 of Commercial Law 2005 and Circular 23/2014/TT-NHNN, Article 11 of Circular 23/2014/TT-NHNN, amended by Article 1.6 of Circular 02/2019/TT-NHNN [↑](#footnote-ref-11)
12. Article 33.6 of Decree 07/2016/ND-CP

***Note****: In case of marked “yes”, the RO be fined from VND 40,000,000 to VND 60,000,000 (Article 4.4 and Article 67.3 of Decree 98/2020/ND-CP).* [↑](#footnote-ref-12)
13. Article 33.7 of Decree 07/2016/ND-CP [↑](#footnote-ref-13)
14. Article 33 of Law on Tax Administration 2019 [↑](#footnote-ref-14)
15. Article 44.1 of Law on Tax Administration 2019 [↑](#footnote-ref-15)
16. Article 12 of Decree 65/2013/ND-CP [↑](#footnote-ref-16)
17. Article 1.1 of Circular 111/2013/TT-BTC [↑](#footnote-ref-17)
18. Article 1.2 of Circular 111/2013/TT-BTC. Of note, a foreigner is considered as Vietnamese tax non-resident in case he/she does not satisfy the condition to be a tax resident [↑](#footnote-ref-18)
19. Article 18.2 of Circular 111/2013/TT-BTC [↑](#footnote-ref-19)
20. Article 3.2 of Decree 65/2013, Article 2.2, 2.3 of Decree 12/2015 and Article 11 of Circular 92/2015/TT-BTC [↑](#footnote-ref-20)
21. Article 2.2(dd) of Circular 111/2013/TT-BTC, and Article 11.2 of Circular 92/2015/TT-BTC [↑](#footnote-ref-21)
22. Article 2 of Circular No. 111/2013 and Article 12.3 of Circular 92/2015/TT-BTC [↑](#footnote-ref-22)
23. Article 2.2(dd) of Circular 111/2013 and Article 11.2, 11.3, 11.4 of Circular 92/2015/TT-BTC [↑](#footnote-ref-23)
24. Article 2.2(g) of Circular 111/2013/TT-BTC [↑](#footnote-ref-24)
25. Article 2.2(g) of Circular 111/2013/TT-BTC [↑](#footnote-ref-25)
26. Article 11.4 of Circular 92/2015/TT-BTC [↑](#footnote-ref-26)
27. Article 3.1(i) of Circular 111/2013/TT-BTC [↑](#footnote-ref-27)
28. Article 11.3 of Circular 92/2015/TT-BTC [↑](#footnote-ref-28)
29. Article 43 of Law on Employment, of note the RO’s employees are obliged to participate in unemployment insurance when working under labor contracts or working contracts as follow: (a) Labor contracts or working contracts of indefinite time; (b) Labor contracts or working contracts of definite time; (c) Seasonal or job-based working contracts with a term of between full 3 months and under 12 months. [↑](#footnote-ref-29)
30. Article 2.2(dd.6) of Circular 111/2013/TT-BTC. [↑](#footnote-ref-30)
31. Article 2.2(g.7) of Circular 111/2013/TT-BTC. [↑](#footnote-ref-31)
32. Article 6 of Law on PIT. [↑](#footnote-ref-32)
33. Article 26 of the Law on PIT and Article 18.1 of Circular 111/2013/TT-BTC [↑](#footnote-ref-33)
34. Article 22 of the Law on PIT and Article 7.2 of Circular 111/2013/TT-BTC [↑](#footnote-ref-34)
35. Article 22 of the Law on PIT and Article 7.2 of Circular 111/2013/TT-BTC [↑](#footnote-ref-35)
36. Article 44.2 of Law on Tax Administration 2019 [↑](#footnote-ref-36)
37. Article 25 of Labor Code 2019 [↑](#footnote-ref-37)
38. Article 26 of Labor Code 2019 [↑](#footnote-ref-38)
39. Article 14 of Labor Code 2019 [↑](#footnote-ref-39)
40. Article 168 of Labor Code 2019 and Article 12 of Law on Health Insurance amended by Article 1.6 of Law on Health Insurance 2014 [↑](#footnote-ref-40)
41. Article 168 of Labor Code 2019 and Article 2.1 of Law on Social Insurance [↑](#footnote-ref-41)
42. Article 2.1 of Decree 143/2018/ND-CP [↑](#footnote-ref-42)
43. Article 90 of Labor Code 2019 [↑](#footnote-ref-43)
44. Article 98 of Labor Code 2019 [↑](#footnote-ref-44)
45. Article 4.2 of Decree 145/2020/ND-CP [↑](#footnote-ref-45)
46. Paragraph 1 of Article 4.1(a) of Decree 152/2020/ND-CP [↑](#footnote-ref-46)
47. Paragraph 2 of Article 4.1(a) of Decree 152/2020/ND-CP [↑](#footnote-ref-47)
48. Article 16 of Law on Entry, Exit, Transit, and Residence of foreigners 2014 and Article 3 of Circular 31/2015/TT-BCA [↑](#footnote-ref-48)
49. Article 155 of Labor Code 2019 and Article 10 of Decree 152/2020/ND-CP [↑](#footnote-ref-49)
50. Article 16 of Decree 152/2020/ND-CP [↑](#footnote-ref-50)
51. Article 18.3 of Decree 152/2020/ND-CP

***Note:*** *In case of failure to send a copy of the signed labor contract to the competent authority issued the work permit, the employer as an organization will be fined from VND 2,000,000 to VND 6,000,000 (Article 5.1 and Article 31.1 of Decree 28/2020/ND-CP)* [↑](#footnote-ref-51)
52. Article 6.1 of Decree 152/2020/ND-CP

***Note:*** *In case of failure to report or report incorrect content and time limit on the situation of using foreign employees, the employer as an organization will be fined from VND 2,000,000 to VND 6,000,000 (Article 5.1 and Article 31.1 of Decree 28/2020/ND-CP)* [↑](#footnote-ref-52)
53. Article 4 of Circular 31/2015/TT-BCA [↑](#footnote-ref-53)
54. Articles 36.2 of Law on Entry, Exit, Transit, and Residence of foreigners amended by Article 1.14 Law on Entry, Exit, Transit, and Residence of foreigners 2019 [↑](#footnote-ref-54)
55. Article 22 and Article 24.1 of Decree 152/2020/ND-CP [↑](#footnote-ref-55)
56. Article 24.3 of Decree 152/2020/ND-CP

***Note:*** *In case of using Vietnamese workers without written notice, the employer as an organization will be fined from VND 10,000,000 to VND 20,000,000 (Article 5.1 and Article 32.2 of Decree 28/2020/ND-CP)* [↑](#footnote-ref-56)
57. Article 26.3 of Decree 152/2020/ND-CP

***Note:*** *In case of failure to report on recruitment and employment of Vietnamese employees, the employer as an organization will be fined from VND 2,000,000 to VND 6,000,000 (Article 5.1 and Article 32.1 of Decree 28/2020/ND-CP)* [↑](#footnote-ref-57)
58. Article 43 and 44.1 of Law on Employment 2013 [↑](#footnote-ref-58)