



LEGAL NEWS

Enterprise

Should a foreign company open branch or representative office?

In accordance with Clause 6, Clause 7, Article 3 of the [2005 Commercial Law](#), the representative offices and branches are defined as follows:

6. Vietnam-based representative office of a foreign trader means a dependent unit of the foreign trader, which is established under the provisions of Vietnamese law



to conduct a market survey and a number of commercial promotion activities permitted by Vietnamese law.

7. Vietnam-based branch of a foreign trader means a dependent unit of the foreign trader, which is established and conducts commercial activities in Vietnam under the provisions of Vietnamese law or treaties to which the Socialist Republic of Vietnam is a contracting party.

Referring to the rights and obligations of representative offices and branches to get more understanding on the problem mentioned in this article. It can be seen that foreign companies can choose representative offices of branches depending on demands, purposes as well as operation orientations.

Note: It is impossible to establish branches and representative offices with the same name in the same provinces and cities. [More](#)

Insurance

Social insurance premium is lower than the actual wage: Is it illegal for enterprises?



Social insurance premium for an employee is a great expenditure for every enterprise. Many enterprises contribute lower social insurance premiums than the actual wage. Is it illegal for enterprises?

1. What is the level of social insurance payment?

Pursuant to Decision No. 595/QĐ-BHXH in 2017, the Decree No. 58/2020ND-CP, enterprises and employees shall extract part of the salary fund to pay social insurance, health insurance, and unemployment insurance with the percentage as follows:

- Enterprises: Pay 21.5% or 21.3% to the monthly salaries on which social insurance health insurance and unemployment insurance premiums are based.
- Employees: Pay 10.5% to the monthly salaries on which social insurance premiums are based.

Accordingly, the monthly social insurance is prescribed in Clause 26, Article 1, Circular No. 06/2021/TT-BLĐTBXH as follows:

2. From January 1, 2018, to December 31, 2020, the monthly salaries on which social insurance premiums are based are the salaries and salary allowances prescribed in Clause 1 of this Article and other additional amounts as prescribed at Point a, Clause 3, Article 4 of the Circular No. 47/2015/TT-BLĐTBXH.

From January 1, 2021 onwards, the monthly salaries on which social insurance premiums are based are the salaries, salary allowances and other additional amounts prescribed at Point a, Item b1 of Point b, and Item c1 of Point c, Clause 5, Article 3 of the Circular No. 10/2020/TT-BLĐTBXH dated November 12, 2020 of the Ministry of Labor, Invalids and Social Affairs detailing and guiding the implementation of a number of articles of the Labor Code regarding labor contracts, councils for collective bargaining, occupations and jobs adversely affecting reproductive and child-rearing functions (hereinafter referred to as Circular No. 10/2020/TT-BLĐTBXH).

In accordance with this law's provisions, the monthly salaries on which social insurance premiums are based are as follows:

- Salaries



- Salary allowances

- Other additional amounts are defined with the specific amounts and salaries prescribed in the contract and regularly paid in the salary period.

This amount is agreed upon and recorded in the labor contract on which social insurance premiums are based for employees.

However, a number of payments which is excluded from social insurance premium include:

- Bonuses for business results and level of working completion of employees.
- Bonuses for incentives
- Mid-shift meals
- Support for gasoline, phone, transportation, accommodation, fee for child care, and raising
- Other support for relatives' death, marriage, birthday, and grants for difficult living conditions.

2. Social insurance premium is lower than the wage: is it illegal?

Employee's monthly wages which are based for social insurance premiums shall be defined on a fixed amount and directly recorded in the labor contract.

In accordance with Clause 3, Article 89, Law on Social Insurance 2014, in case the monthly salary exceeds 20 times the basic salary, the monthly salary on which social insurance premiums are based must equal 20 times the basic salary, equivalent to VND 28.9 million/month.

In reality, there are some arising payments for employees besides monthly wages. These payments are not fixed and are calculated in social insurance premiums.

Therefore, it is not illegal when the social insurance premium is lower than the wage. However, enterprises must ensure that social insurance must comply with the law provisions prescribed in Section 1.

Currently, although the salary is high under the agreement between the employers and the employees, the employer often records the lower wage level due to titles than the wage level in the labor contract, the remained payment will be included in allowances excluding social insurance contributions.

[More](#)



LEGAL UPDATES

Bidding - Competition

Guiding the dossier for bidding packages to provide consultancy services under CPTPP Agreement

On September 30, 2022, the Ministry of Planning and Investment issues Circular No. [20/2022/TT-BKHDT](#) providing in detail the making of bidding dossiers for bidding packages to provide consultancy services.

This Circular provides in detail the making of bidding dossiers for bidding packages to provide consultancy services:

- The Comprehensive and Progressive Agreement for Trans-Pacific Partnership (below referred to as the CPTPP Agreement);
- The Free Trade Agreement between the Socialist Republic of Vietnam and the United Kingdom of Great Britain and Northern Ireland (below referred to as the UKVFTA);
- The Free Trade Agreement between the Socialist Republic of Vietnam and the European Union (below referred to as the EVFTA).

Within that, making, appraisal, and approval of bidding dossiers:

- Depending on the scale and nature of each bidding package, the bid solicitor may set appropriate requirements, ensuring the principles of competition, equality, transparency, and economic efficiency. The bidding dossier must fully comprise necessary information as a basis for contractors to prepare bid dossiers;
- The bid solicitor may not set conditions to limit the participation of contractors or to create advantages for one or several contractor(s), thus causing unfair competition;
- May not set a requirement that contractors must be those having previously concluded and performed one or several contract(s) with the procurement authority of a particular country or territory, or that contractors must have experience in providing services in the domain of such country or territory as a criterion for eliminating contractors;
- In case of modifying the form of the bidding dossier, an organization or individual that makes, appraises, or approves the bidding dossier shall ensure that the modified contents are more stringent than those stated in the form of the bidding dossier and not contrary to the Agreement.



Export - Import

Enterprise can print the certificates of origin from October 15, 2022

On October 10, 2022, the Ministry of Industry and Trade issues Notice No. 257/TB-BCT on printing certificates of origin in A4 paper format.

In the implementation of the Government's Resolution No. 76/NQ-CP dated July 15, 2021, promulgating the Overall Program on state administrative reform for the 2021-2030 period; in order to facilitate, and reduce costs for enterprises, thus promoting export, the Ministry of Industry and Trade hereby notifies:

From October 15, 2022, traders requesting the grant of the following certificates of origin (hereinafter referred to as C/Os) may download C/O forms and print such forms from the Ministry of Industry and Trade's Electronic Certificate of Origin Issuance System at the address <https://ecosys.gov.vn>, by themselves.

Such C/O forms must be printed on A4 white papers meeting ISO standards.

Types of C/Os: Forms D, AANZ, AK, AI, AJ, E, AHK, RCEP, CPTPP, VK, VJ, VC, VN-CU and S.

Above-mentioned types of C/Os which are issued to the traders by the Ministry of Industry and Trade shall continue to be used until the end of April 15, 2023.

The Ministry of Industry and Trade has notified such to competent authorities of counterparty countries. Any difficulties arising in the course of implementation should be reported to the Agency of Foreign Trade for timely settlement:

Contact information: Tel: 024 2220 2468, 2220 5444 or 2220 5361;

Email: xnk-xxhh@moit.gov.vn



Organizational structure

New organizational structure of the Ministry of Foreign Affairs

On October 14, 2022, the Government issues Decree No. 81/2022/ND-CP on defining the functions, tasks, powers, and organizational structure of the Ministry of Foreign Affairs.

The Ministry of Foreign Affairs is a governmental agency, performing the function of state management of external affairs, including:

- Diplomatic work, national border, and territory, overseas Vietnamese affairs, conclusion and implementation of treaties and international agreements, management of overseas representative missions of the Socialist Republic of Vietnam...

Decree 81/2022 has decreased the number of affiliated units from 30 units to 28 units.

Within that, the Department for Information Security merges with the Information Center to be the Department for Information Security - Technology, at the same time, The Department of Emulation and Commendation and Diplomacy Tradition no more exists.

The Diplomatic Academy of Vietnam, The Word & Vietnam Report, and representative agencies of Vietnam are public units directly under the Ministry of Foreign Affairs. Other units shall help the Minister of Foreign Affairs to perform the function of state management.

The Europe Department includes 5 departments. The International Law and Treaty Department, the personnel organization department includes 04 departments. The Department for the Americas, Southeast Asia, South Asia, and South Pacific Department, the Northeast Asia Department, and the Department for the Middle East and Africa include 03 departments.

This Circular takes effect on December 01, 2022.

LIST OF UPDATED LEGAL NORMATIVE DOCUMENTS

Information - Communications		
1	Decree No. 72/2022/ND-CP dated October 04 2022 of the Government amending and supplementing a number of articles of the Government's Decree No. 60/2014/ND-CP dated June 19, 2014, prescribing printing activities and the Government's Decree No. 25/2018/ND-CP dated February 28, 2018, amending and supplementing a number of articles of the Government's Decree No. 60/2014/ND-CP of June 19, 2014, prescribing printing activities	<p>Issuing date: 04/10/2022</p> <p>Effective date: 01/01/2023</p> <p>Effect status: Not yet applied</p>
Finance - Banking		
2	Circular No. 12/2022/TT-NHNN dated September 30, 2022 of the State Bank of Vietnam guiding the foreign exchange management regarding enterprises' borrowing of foreign loans and payment of foreign debts	<p>Issuing date 30/09/2022</p> <p>Effective date: 15/11/2022</p> <p>Effect status: Not yet applied</p>
3	Circular No. 11/2022/TT-NHNN dated September 30, 2022 of the State Bank of Vietnam on bank guarantee	Issuing date 30/09/2022
		Effective date: 01/04/2023
		Effect status: Not yet applied
Education – Training – Vocational Training		
4	Directive No. 14/CT-TTg dated August 31, 2022 of the Prime Minister on strengthening conditions to ensure the effective and quality implementation of early childhood education and general education	<p>Issuing date 31/08/2022</p> <p>Effective date: 31/08/2022</p> <p>Effect status: In force</p>
Export - Import		
5	Notice No. 257/TB-BCT dated October 10, 2022 of the Ministry of Industry and Trade on printing certificates of origin on A4 paper format	<p>Issuing date 10/10/2022</p> <p>Effective date: 10/10/2022</p> <p>Effect status: In force</p>

6	Official Dispatch No. 54/TCHQ-GSQL dated January 07, 2021 of the General Department of Vietnam Customs regarding the declaration of units of calculation	Issuing date: 07/01/2021 Effective date: 07/01/2021 Effect status: In force
Commerce – Advertising		
7	Circular No. 20/2022/TT-BKHDT dated September 30, 2022 of the Ministry of Planning and Investment providing in detail the making of bidding dossiers for bidding packages to provide consultancy services regulated by the Comprehensive and Progressive Agreement for Trans-Pacific Partnership, the Free Trade Agreement between the Socialist Republic of Vietnam and the European Union and the Free Trade Agreement between the Socialist Republic of Vietnam and the United Kingdom of Great Britain and Northern Ireland	Issuing date: 30/09/2022 Effective date: 20/11/2022 Effect status: Not yet applied

Thank you for your reading!

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Notice:

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