

Vietnam's Stamp of Approval

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In Vietnam, the importance of the organizational seal cannot be over emphasized; indeed, the relevant law contains detailed provisions governing various aspects of the organizational seal, including its formation, use and misuse.

Although the official organizational seal is widely used in Vietnam, its significance is still not fully understood by foreign businesses. The organizational seal is essential to ensure the authenticity of a document. Even the signature of the general director, when used alone, is insufficient in cases where an official act of the organization is required.

Right to a Seal

The most important laws which deal with the seal and its use are Government Decree No. 58/2001/ND-CP dated 24 August 2001 ("Decree 58"), which replaces Decree 62/CP issued on 22 September 1993, and the Inter-Circular between the Ministry of Police and the Government's Bureau on Personnel Organization No. 07/1002/TT-LT dated 6 May 2002 providing guidance on the implementation of Decree 58 ("Inter-Circular 07"). As set forth in article 3 of Decree 58, only the seal of the Government, National Assembly, ministries, courts, people's committees, people's councils and other governmental bodies can be engraved with the national emblem. Local or foreign organizations that wish to use a special design or foreign characters must comply with regulations of the Ministry of Public Security.

An organization's seal is authorized by that organization's higher supervisory authority, usually a government organization. The provincial People's Committee authorizes the seal in the case of a resident representative office. In the case of a foreign-invested company, the Ministry of Planning and Investment ("MPI") or other licensing authority authorize the seal under the Foreign Investment Law. The head of an organization (a foreign-invested enterprise, a local company, etc.) is responsible to take back the seal and hand it over to the seal-issuing body in case the organization is merged or dissolved (article 7 of Decree 58).

Not all organizations are entitled to have a seal. The law lists the organizations which can have their own seal (articles 3 and 4 of Decree 58). They include a private or publicly created legal entity vested with juridical status, a foreign-invested company and a locally-owned company.

Use of the Seal

Under Decree 58, an organization is authorized to have only one seal. In case an organization needs a duplicate which bears the same characters or design as the first seal, permission of the competent authority must be obtained. In this case, the duplicate seal must bear a special signal that is distinctive from the first seal (article 6.1 of Decree 58). A seal exists in one of three forms: an seal, raised seal or one imprinted on sealing wax (article 2 of Decree 58). Decree 58 also specifies that the ink used for an ink seal must be in red color (article 6.5). However, the purposes for which a seal may be used are not defined. An ink seal is used under most circumstances, while a raised seal or sealing wax is used for specific purposes. For example, schools or universities affix raised seals on certificates, diplomas and degrees. Sealing wax is sometimes used by a notary public.

The seal of a government office certifies the validity and authenticity of a government document and of the act to which it refers (article 1 of Decree 58). The same is true with respect to a commercial enterprise. For example, if a general director acts on behalf of a private or government enterprise, his/her signature on a document must be accompanied by the seal. Indeed, the signature must be affixed in a particular way (the seal is required to cover one-third of the signature). If the general director engages in his/her own business—even though the business purports to be conducted in the name of the company—use of the seal of the company has no validity vis-à-vis the organization; however, as will be discussed later, such use will have consequences for the signatory. Moreover, the person who misuses the seal is criminally responsible.

Contracts, deeds and official letters must bear a seal along with the authorized signature, which is why, in contractual matters, telephone conversations should be confirmed by a letter bearing the signature and the seal. A facsimile message can convey a signature and a seal and is preferable to verbal communications.

Certain internal memoranda and notices are exempt from the sealing requirement; for example, people in an HR department might be expected to be familiar with the signature of someone conducting the internal matters of the department.

As a matter of practice, the seal of a government organization is usually held by the administrative division or the secretariat, and is normally placed in the custody and control of a person who, under the law, is responsible for holding and using the seal (article 6, paragraph 4 of Decree 58).

The office, through which passes all incoming and outgoing mail, can be expected to have clear instructions on the application of the seal, and that office is likely to be in charge of affixing the seal to documents already signed by an authorized person.

Under the law, when the person authorized to sign a document on behalf of an organization and to affix the seal of the organization, has been dismissed, or when the organization has been dissolved, the seal must be passed on to his/her successor or to a senior administrative body, as the case may be.

Official Authority to Use the Seal

Item III.2.2 of Circular 07 states that the seal may only be affixed to a paper when that paper has been signed by a person at the head of, or who is at the deputy level of an organization, or by a direct subordinate of those people who is so authorized by the organization.

In case the organization is a Vietnamese company, the person that has the right to use the seal, as a matter of course, will be the person who is delegated the right to act on behalf of the organization. Normally, and unless otherwise stipulated in the company's charter, the general director is the legal representative of the company and has the right to use the company's seal. Even a main shareholder or a member of the board of management cannot use the seal because he/she is not authorized to represent the company.

The question of who, other than the company's legal representative, can bind the company to a contract, deed or official letter, as the case may be, by signing his/her name and affixing the seal, parallels closely the assignment of authority to officers of the company. For example, someone with authority in personnel matters could be given authority to sign and affix the company seal on personnel documents. The seal is one factor to consider in determining whether a document is properly executed. The more fundamental point—normally an internal matter—is to know what authority each signatory has been given. In some special cases, even the general director's authority to affix the seal and sign on behalf of the company, even when acting as legal representative, is not unlimited. The company's charter can set limits on that authority. The extent of a person's authority is often recorded in the charter or the internal regulations of the company, in a company resolution or in a power of attorney. Beyond that, except for the company's legal representative, no other person has power to act on behalf of the organization.

The company can require dual signatures together with the seal in certain circumstances. It is common in financial matters that the general director and the chief accountant both sign—and, of course, affix the seal.

Does a foreigner have the right to bind the company and affix the seal? It depends on the position of the foreigner (eg, whether he/she is a general director or just a foreign employee) and the authorization that he/she may be given. Under the law, a foreigner has such a right if he/she is a general director of a foreign-invested enterprise. Depending on the scope of work engaged in by a foreigner who is not a general director, such foreigner may be authorized to sign a document and affix the seal. For example, a foreign chief accountant of a foreign-invested enterprise may sign alone and affix the seal on a document relating to his scope of work, or he may be required to sign along with the general director who may also sign and affix the seal. The marketing manager of a foreign-invested enterprise may be authorized to sign and seal certain types of documents. The chief of a representative office or a branch of a foreign company in Vietnam has the right to use the seal in connection with the authorized activities of that office or branch. The representative office of a foreign company is not allowed to engage in commercial activities. Hence, the chief of the representative office may not sign a commercial contract on behalf of that office. However, if so authorized, he can sign on behalf of the foreign company.

A similar question arises in the case of a foreigner working for a Vietnamese company formed under Vietnam's Enterprise Law. If a foreigner is employed by the company to carry out particular tasks, power can be given to allow the seal to be used in connection with the performance of those tasks. A foreigner may be authorized to sign as a dual signatory. Certainly, for example, that applies with respect to bank checks, if the foreigner is assigned financial responsibilities. To be effective, a power of attorney from a local company officer conferring authority on a foreigner must be signed before a notary. However, if the power of attorney were to grant sweeping authority in favor of a foreigner, it is less likely that a notary would approve that power.

Misuse of the Seal

The law prohibits an official from holding the seal personally. The seal must remain in the organization's office (article 6, paragraph 4 of Decree 58). The history of this regulation can be traced to unfair practices in the past, whereby a government official, who carried the seal in a pouch attached to his belt, would take the seal with him when he left his office. In his absence, the business of the office ceased.

Today, it is common for a government or company official who signs an important document (eg, a contract) outside his office not to carry the seal with him. Instead, the documents are brought back to the office in order to have the seal affixed. In exceptional cases, the head of a company or an organization may carry the seal with him outside of the office, in which case he is responsible for its care (article 6, paragraph 4 of Decree 58 and item III.2.3 of Inter-Circular 07).

Affixing a seal on a blank form—that is before the signature is placed—is expressly prohibited. Item III.2.2 of Inter-Circular 07 states that a seal can only be affixed on a document or paper after the signature of the competent person has been affixed.

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