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VIETNAM'S STAMP OF APPROVAL

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In Vietnam, the importance of the organizational seal cannot be over-emphasized; indeed, the 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 businessmen. 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.

Key regulations

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"), the Inter-Circular between the Ministry of Public Security and the Government's Bureau of Personnel Organization No. 07/1002/TT-LT dated 6 May 2002 providing guidance on the implementation of Decree 58 ("Inter-Circular 07"), Government Decree 110/2004/ND-CP dated 8 April 2004 on the correspondence and documents ("Decree 110"), and Government Decree No. 31/2009/ND-CP dated 1 April 2009 on amendment of and supplement to a number of articles of Decree 58 ("Decree 31").

Right to a Seal

Article 3 of Decree 58 makes it clear that 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.

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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. The representative offices or branches of a foreign organization established in Vietnam are also entitled to have their own seal.

A foreign organization that has been formed abroad and that has the right to operate in Vietnam is entitled to use its organizational seal in Vietnam. Upon application, the Ministry of Public Security will issue a Certificate by which it is permitted to bring its seal into Vietnam. The foreign organization must then register the seal with the Public Security Authority in the province where its head office is situated.

An organization's seal is authorized generally by the Public Security Authority. Economic entities, including foreign owned companies and locally owned companies, need to register their seal with the appropriate public security authority before they can use it.

Use of the Seal

An organization is permitted to have only one seal. In case an organization requires a duplicate, it must have the same content, but it must have a mark that is distinctive from the original seal. A seal exists in one of three forms: an ink 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 red (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; specifically, the seal is required to cover one-third on the left of the signature (Article 26 of Decree 110). 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, a person who misuses a seal may be 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 all incoming and outgoing mail passes 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 head of an organization leaves the organization, or when the organization has been dissolved, the seal must be passed on to his/her successor or, in the latter case, returned to the body that issued the seal.

Taking into account the development of electronic transactions, Vietnam issued regulations to adapt the requirement of the seal to the nature of electronic documents. Decree No 26/2007/ND-CP dated 15 February, 2007 implements the Law on Electronic Transactions relating to digital signatures. When an organization issues an electronic data message affixed by a qualified digital signature, which meets security requirements, the legal value of the electronic message is equivalent to that of a signed and sealed document.

Official Authority to Use the Seal

Article III 2.2 of Circular 07 states that the seal may only be affixed to a document when that document has been signed by the head of an organization, or by a deputy, or by a direct subordinate of either person who has been so authorized by the organization.

In case the organization is a Vietnamese company, the person who has the right to use the seal, is 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 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 has been 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, and 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 other officer or just a foreign employee) and the authorization that he/she has been 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 that a foreigner who is not a general director is assigned, he/she 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/her scope of work, or he/she may be required to sign along with the general director who may also sign and affix the seal. 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.

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, authority can be given to affix the seal in connection with the performance of those tasks. A foreigner may be authorized to sign as a dual signatory.

In short, the general rule is that when a person in a company is authorized to act on behalf of the company, he/she has the right to use the seal in matters that relate to his/her authority. The authorization may be found in the company charter or in the power of attorney given by the company's legal representative to such a person. Affixing a seal on a signed document, together with the fact that the seal is properly used, means that he/she does not act in his/her own name but on behalf of the company and the signed document will legally bind the company.

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/her belt, would take the seal with him/her when he/she left his/her office. In his/her 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/her office not to carry the seal with him/her. 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 outside of the office, in which case he/she is

responsible for its care (article 6, paragraph 4 of Decree 58 and article III.2.3 of Inter-Circular 07).

Affixing a seal on a blank form--that is, before the signature is placed--is expressly prohibited. Article 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.

Misuse and mismanagement of an organization's seal is punishable by law (article 13 of Decree 58). Articles 267 and 268 of the Criminal Code passed on 21 December 1999 impose penalties for the falsification, usurpation, sale and purchase, or destruction of the seal and documents of government authorities and social organizations. The penalties, including fine and imprisonment, vary from case to case, depending on the gravity of the offense in question. The accused may be sentenced to a fine ranging from VND 1 million to VND 50 million and receive "reeducation" or imprisonment for up to five years.

Withdrawal of the seal

The head of an organization (a foreign-invested enterprise, a Vietnamese company, etc.) is responsible to take back the seal and the seal form registration certificate and hand them over to the body that issued the seal in the following cases: (i) when the organization is separated, merged, consolidated, dissolved, or its ownership form is changed, (ii) when the Business Registration Certificate is withdrawn, or (iii) when the company finds a seal that was lost after having published a notice of loss. (article 7 of Decree 31).

Conclusion

The seal gives legitimacy to a signature: moreover, it has symbolic importance. The seal and the organization are often thought of as one, and the seal signifies continuity of the organization. Heads of organizations come and go. The seal, on the other hand, exists as long as the organization exists.