

Who has power to bind a company in Vietnam?



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Asked by many foreign investors when doing business in Vietnam for the first time, the answer to this simple but interesting question is more complicated than one might expect. In other countries, such power may rest with any director of the board of directors, the chairman, or the authorised signatory of the company. In Vietnam, this power may rest with all of them, or indeed none of them, subject to the company's charter. This article aims to explore some aspects of this particular position that foreign investors should be well aware of, to avoid facing the risk of invalidity of a contract wrongfully or mistakenly signed by a person who is not powered to do so.

Legal Representative

Pursuant to the laws of Vietnam, a legal representative of a company is the person who heads, and generally has power to bind, the company. In most cases, the identity and signature of this person appears in the company's certificate of incorporation or the like. Any transaction involving binding of the company is supposed to be executed by this person, or another person so authorised by this person. In some instances, the approval of a higher corporate body of the company is further required to give effect to the transaction. Often, however, this additional action will not be necessary if the transaction falls under the authority of the legal representative pursuant to the company's charter.

Other important roles

The director of a company (general director) is also a special person under the company laws of Vietnam - this is a statutory position with certain rights and obligations set forth by law. The role is akin to that of chief executive officer (CEO) of a company in other countries. Generally, the general director can decide all the matters that do not fall under the authority of the shareholders and board of directors. However, it should be noted that he/

she may not necessarily be the person who has the power to sign a contract binding the company.

The role of chairman is another important position – he/she heads the shareholders or board of directors of the company. Like the general director, the chairman has certain statutory rights and obligations and can normally sign resolutions on behalf of the shareholders or board of directors. We take the view that the chairman cannot sign a contract binding the company without being so delegated by the company's legal representative, despite being so resolved by the shareholders or board of directors.

Whilst the legal representative is usually the general director of a company, in some cases he/she may instead hold the position of chairman, or even both roles. Obviously, he/she would be the most powerful person in the company when concurrently holding the roles of general director and chairman.

Sometimes, contracts may be executed by a person known as the authorised representative (or authorised signatory) of the company. Such delegation should only come from the company's legal representative, and only where effected by an authorisation letter or a special provision in the company's charter.

In short, it is not a matter of the title of the person who is about to sign a contract. Investors should conduct due diligence on the legal representative, and make sure that the signer has the power to sign the contract. Investors should also verify the transaction to see if it requires any further corporate approval, though this is not always an easy task. These steps are critical when doing business with Vietnamese-based companies, regardless of whether they are local, state-owned or foreign invested companies.

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