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## Vietnam: Provisions on Foreigners Working in Vietnam Tightened

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After many months of drafting, Decree 152/2020/ND-CP was issued on 30 December 2020 (“**Decree 152**”) detailing certain regulations of the Labor Code 2019 on foreigners working in Vietnam and the recruitment and management of Vietnamese employees working for foreign organizations and individuals.

Decree 152 took effect from 15 February 2021, replacing Decree 11/2016/ND-CP dated 3 February 2016 (“**Decree 11**”) and Decree 75/2014/ND-CP dated 28 July 2014. It appears that, under Decree 152, the government has created tougher provisions on foreign employees in Vietnam. Below are some notable points relating to foreign employees under Decree 152.

### 1. Tightened criteria for foreigners working in Vietnam

The conditions on qualifications of foreigners to work in Vietnam have been tightened under Decree 152. In particular, a foreign employee must have a “***practicing certificate***” and at least five years working experience suitable for the job expected to be undertaken in Vietnam in order to be considered as an expert. This criteria replaces the previous criteria, which simply required a document issued by an overseas agency, organization or enterprise certifying that a foreigner was an expert. Thus, a self-certification of qualifications is no longer acceptable as valid evidence to prove the foreign employee is an expert. In addition, since there is no definition of “***practicing certificate***” under Decree 152, unless new guidance on this definition is issued or clarified, what kind of certificate will be acceptable as a “***practicing certificate***” in practice will largely depend on the view of the local Department of Labor, Invalids and Social Affairs on a case-by-case basis.

Decree 152 also provides alternative conditions that must be satisfied to be considered as an expert, namely (1) at least three years working experience and a bachelor or higher degree, ***in each case, suitable for the job expected to be undertaken in Vietnam*** or (2) other special conditions upon the consideration and decision of the Prime Minister. However, (1) is not always available due to the requirement of conformity to the expected job/position and (2) is applicable only in limited circumstances.

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## **2. Overhauled work permit exemption requirements and processes**

### *(i) Tightened requirements for work permit exemption*

To be in line with the Labor Code 2019, Decree 152 details criteria for work permit exemptions applicable to (i) foreign members of limited liability companies and (ii) members of the board of management of joint stock companies. Only those enterprises that have received contributed capital of at least VND 3 billion are eligible for work permit exemptions. Those companies having capital contributions totaling less than VND 3 billion will no longer be entitled to the work permit exemption and must obtain the appropriate work permits, which will entail complicated and time-consuming procedures.

### *(ii) Overhauled process for work permit exemption*

With only limited exceptions, Decree 11 required a confirmation process for cases where work permits were exempted and did not provide any process for exceptional cases. Although Decree 152 substantially maintains the confirmation process, it expands the exceptions for such confirmation process to (1) foreigners married to Vietnamese and living in the territory of Vietnam, (2) foreign individual members of a limited liability company, (3) foreign lawyers working in Vietnam under a practicing license issued by the Ministry of Justice, among other cases, and newly requires a notification process for those who do not require either a work permit or a confirmation of work permit exemption (in such cases, only notification to the authority at least three days before the date the foreign employee is expected to work in Vietnam is required).

## **3. Work permit extensions**

Under Decree 11, a work permit could only be reissued upon its expiry. However, in accordance with the Labor Code 2019, a work permit can now be extended once for an additional two years. However, since Decree 152 fails to address how to deal with a work permit issued prior to its effective date, the various labor authorities appear to now have different views on whether work permits issued under the old regulations are eligible for extension under Decree 152. It is reported that the work permit extension mechanism has yet to be implemented in practice.

## **4. Work permit revocations**

Decree 152 added a new circumstance under which a work permit may be revoked if a foreign employee does not comply with Vietnamese law during the employment period in Vietnam. The new clause appears to be somewhat vague and thus what will trigger a work permit revocation in practice will likely be subject to the sole discretion of the authority.

In addition, while Decree 11 set forth only the cases of work permit revocation, Decree 152 introduces the procedures for work permit revocation. Employers, unfortunately, will be under an obligation to physically return a revoked work permit within 15 days from the date of revocation to the competent labor authority together with a document explaining the reason for such revocation. The competent labor authority will then issue an acknowledgment of revocation within five working days from the receipt of the revoked work permit from the employer.

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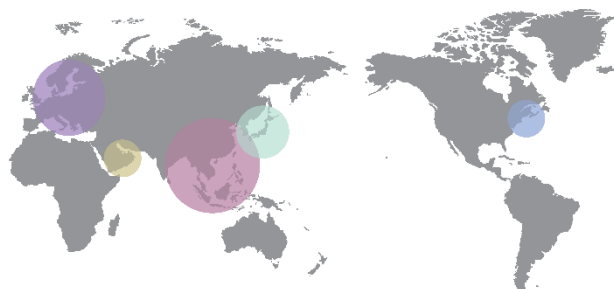
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