

Brief Overview of Foreign Employees Work Permit Applicability in Singaporean and Vietnamese Laws

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1. Introduction

This overview provides a brief examination of work permit regulations applicable to foreign employees in Singapore and Vietnam. Both nations, situated in Southeast Asia, have distinct legal frameworks governing employment of foreign workers. By comparing these regulations, we aim to shed light on the contrasting approaches, eligibility criteria, and procedures involved in obtaining work permits in these two dynamic economies. Understanding these legal distinctions is crucial for businesses and individuals seeking opportunities and employment within the diverse landscapes of Singapore and Vietnam. This exploration promises insights into the complexities and nuances of foreign labor integration in these nations.

2. Current Regulations

Singapore

Work Passes Requirement

All foreign persons who intend to work in Singapore must have a valid work pass before they are allowed to actually commence working in Singapore. There several types of such work passes, each with their own requirements. The most common ones are:

- Employment Pass (“**EP**”): this is usually applicable to foreign professionals, managers and executives. Applicants are required to show that they will be drawing a fixed monthly salary comparable to the top one-third of local PMET salaries, starting from SGD5,000 and increasing progressively with age, up to SGD10,500 for those in the mid-40s. However, the Ministry of Manpower (“**MOM**”) requires higher salaries for candidates in the financial services sector to qualify for an EP.
- S Pass (“**S Pass**”): this is usually applicable to skilled workers. Applicants are required to show that they will be earning at least SGD3,150 a month.
- Work Permit (“**Work Permit**”): this is usually applicable to skilled and semi-skilled migrant workers in the construction, manufacturing, marine shipyard, process or services sector.

Certain activities are exempt from the work pass requirement if certain criteria are met (e.g. amongst others, that the activity is only performed for an aggregate of 90 days per calendar year – please note that even if the relevant activity qualifies, the MOM must still be informed (this can be done on MOM's e-notification portal accessible at <https://www.mom.gov.sg/eservices/services/e-notification-to-perform-work-pass-exempt-activities>). These activities include but are not limited to arbitration/mediation services, journalism, junket activities, sports, performances (see <https://www.mom.gov.sg/passes-and-permits/work-pass-exempt-activities/eligible-activities> for the full list).

Relevant Authority

The MOM is the Singapore government ministry responsible for the processing of applications for work passes in Singapore and is the entity that sets out the requirements and quotas for work passes.

Responsible Parties

Employer or appointed employment agents are to apply online for the relevant foreign worker. Overseas offices without a Singapore-registered office will need to apply through a local sponsor.

Application Process

- EP: (1) candidate to provide written consent to the EP application (the MOM has confirmed that there is no specified form through which such consent can be obtained (i.e., a written confirmation that the candidate has consented to the application being made in his/her name will generally suffice at this stage), and such written consent need not be submitted to the MOM when the application is made; however, MOM may require this document to be produced (if there are any disputes over the application process) and the relevant forms completed, (2) make the application online at the EP / S Pass portal (<https://www.mom.gov.sg/eservices/services/employment-pass-eservice>) and pay SGD105 per application, (3) once in-principle approval is given, provide the in-principle approval letter to the candidate for entry into Singapore, (4) once the candidate is in Singapore, provide the information and documents requested by the MOM and make payment of SGD225 for EP issuance. (See <https://www.mom.gov.sg/passes-and-permits/employment-pass/apply-for-a-pass> for more details on the EP application process.)
- S Pass: (1) candidate to provide written consent to the S Pass application (same as the written consent to the EP application) and complete the relevant forms, (2) make the application online at the EP / S Pass portal (same as above) and pay SGD105 per application, (3) once in-principle approval is given, provide the in-principle approval letter to the candidate for entry into Singapore, (4) once the candidate is in Singapore, provide the information and documents requested by the MOM and make payment of SGD100 for S Pass issuance. (See <https://www.mom.gov.sg/passes-and-permits/s-pass/apply-for-a-pass> for more details on the S Pass application process.)

- Work Permit: (1) candidate to provide written consent to the Work Permit application (same as the written consent to the EP / S Pass application), (2) make the application online at the Work Permit portal (<https://www.mom.gov.sg/eservices/services/wp-online-for-businesses-and-employment-agencies>) and pay SGD35 per application, (3) once in-principle approval is given, provide the in-principle approval letter to the candidate for entry into Singapore, (4) once the candidate is in Singapore, register the candidate's residential address and mobile number with the Online Foreign Worker Address Service (<https://www.mom.gov.sg/eservices/services/ofwas>), and (5) apply on the Work Permit portal for the Work Permit to be issued and pay SGD35 per for Work Permit issuance. (See <https://www.mom.gov.sg/passses-and-permits/work-permit-for-foreign-worker/apply-for-work-permit> for more details on the Work Permit application process.)

Timeline

- EP: ten (10) days to six (6) months, depending on how long the applicant takes to provide the required information.
- S Pass: ten (10) days to seventy (70) days, depending on how long the applicant takes to provide the required information.
- Work Permit: one (1) week to three (3) weeks generally.

Validity Period of Work Pass:

- EP: up to two (2) years for first application, and up to three (3) years for renewal generally. There is currently a new five (5) year pass for experienced technology professionals whose skills are in high demand in Singapore.
- S Pass: up to two (2) years.
- Work Permit: up to two (2) years, but subject to the validity of the worker's passport, security bond and employment period.

Vietnam

Work Permits Requirement

Similar to Singaporean laws, a foreigner who wishes to work in Vietnam is required under Vietnamese law to obtain a work permit (“**WP**”), except for certain exempted cases. The exempted cases are listed in the Labor Code and its guiding legislation, among which, most common cases from our observation are overseas intra-corporate transfers in enterprises that carry out services in the schedule on commitments in services of Vietnam to the World Trade Organization, including trading, information, construction, distribution, education, environment, finance, health, tourism, entertainment and transport, or persons who enter Vietnam to work as managers, executives, experts or technical workers with working time of less than 30 days, and no more than three (3) times in one (1) year. For such exempted cases, a confirmation on work permit exemption is to be issued from the labor authority (“**WPE**”), or a report containing basic information on the foreign worker to the labor authority, will be required.

Relevant Authority

Generally, the licensing procedures for obtaining a work permit will include two steps, in particular: Step 1 - obtaining an approval for the demand to employ foreign workers for the position which Vietnamese workers are incapable; and Step 2 - obtaining a WP or a WPE. Commonly, the responsible authorities are, for Step 1, the People's Committee of the province where the foreign worker is expected to work, and for Step 2, the Department of Labor, Invalids and Social Affairs where the foreign worker is expected to work ("**DOLISA**"). In certain special cases, such as a foreign worker working in multiple provinces, the Ministry of Labor, Invalids and Social Affairs ("**MOLISA**") is the licensing authority in both Step 1 and Step 2.

Responsible Parties

Normally, an employer that is planning to employ foreign workers must complete the licensing procedures before the foreign worker commences his/her work in Vietnam. If the foreign worker enters Vietnam to offer his/her service or to establish commercial presence in Vietnam, he or she will be the person responsible for obtaining the work permit.

Foreign workers must provide information and necessary supporting documents such as criminal record, educational qualifications, proof of qualifications and experience related to the job, other documents evidencing his/her eligibility to obtain the work permit or confirmation of exemption from work permit requirements.

Application Process and Timeline

- Step 1: The employer must apply for the approval of the demand to employ foreign workers at least fifteen (15) days prior to the expected date of foreign worker work commencement. This Step 1 will be completed within ten (10) working days from the date on which the authority receives a full and valid dossier, with the result being a written approval or rejection of the demand to employ foreign workers.
- Step 2: If an approval is obtained in Step 1, the responsible parties must apply for a work permit exemption at least ten (10) days, or for the work permit at least fifteen (15) days, prior to the date on which the foreign workers commence working. This Step 2 will be completed within five (5) working days from the date on which the authority receives a full and valid dossier.

Validity Period of Work Permit

A WP or a WPE has a valid term of no more than twenty four (24) months.

3. Recent Developments

Singapore

In respect of new Employment Pass ("**EP**") applications made from 1 September 2023, and renewals of existing EPs expiring from 1 September 2024, a candidate for an EP must, apart from meeting the EP qualifying salary as stated above, pass the Complementarity Assessment Framework ("**COMPASS**"), unless he or she is exempted from COMPASS.

To pass COMPASS, the candidate's application must obtain an aggregate of at least forty (40) points under any of the following six (6) criteria:

- **C1 (Salary):** The candidate's fixed monthly salary (comprising the basic monthly salary and fixed monthly allowances) will be benchmarked against the salaries of professionals, managers, executive and technicians (collectively, the "PMETs") in the employer's sector in Singapore ("Local PMET Salaries"). Ten (10) points will be earned if the candidate's fixed monthly salary is within the 65th to 90th percentile of the Local PMET Salaries, and twenty (20) points will be earned if the candidate's fixed monthly salary is above the 90th percentile of the Local PMET Salaries.
- **C2 (Qualifications):** The candidate may declare his / her qualifications and provide verification proof in respect thereof to earn points under this criterion. Ten (10) points will be earned if the candidate has degree-equivalent qualifications which generally refer to (a) foreign qualifications that are assessed to be comparable to a bachelor's degree in the UK system (please note that the MOM assesses this by reference to international recognition bodies, such as the UK National Information Centre for recognition and evaluation of international qualifications and skills (UK ENIC)), and (b) professional qualifications that are well-recognised by the industry and endorsed by a relevant sector agency (please note that MOM has issued a list of such professional qualifications at <https://www.mom.gov.sg/-/media/mom/documents/work-passes-and-permits/compass/compass-c2-list-of-degree-equivalent-qualifications.pdf>). Twenty (20) points will be earned if the candidate has qualifications from top-tier institutions, such as (i) top 100 universities based on QS World University Rankings, and other highly-reputed universities in Asia, (ii) Singapore's Autonomous Universities, and (iii) institutions that are highly-recognised in a particular field and endorsed by a relevant agency. Please note that MOM has issued a list of such top-tier institutions at <https://www.mom.gov.sg/-/media/mom/documents/work-passes-and-permits/compass/compass-c2-list-of-top-tier-institutions.pdf>. Please note that the verification proof (i.e. authentication of the qualification and (if the qualification is not found on the EP application form drop down list) the accreditation of the awarding institution) of the candidate's qualifications must come from background screening companies, the government / awarding institution's verification portal or OpenCerts portal (as the case may be). A list of such sources of verification proof is provided under the category "Verification proof requirements" at <https://www.mom.gov.sg/passes-and-permits/employment-pass/documents-required#changes-to-verification-requirement>.
- **C3 (Diversity):** Under this criterion, more points will be awarded if the candidate's nationality forms a small share of the employer's PMET employees. This is to ensure that there is a diverse mix of nationalities to promote sharing of new ideas and networks, and a more inclusive and resilient workforce. If the employer employs less than twenty five (25) PMETs, then ten (10) points will be awarded by default. If the employer employs at least twenty five (25) PMETs, and if the share of the candidate's nationality among the employer's PMETs is: (a) at least five percent (5%) but less than twenty five percent (25%), then ten (10) points will be awarded; or (b) less than five percent (5%), then twenty (20) points will be awarded. Please note that the share of the candidate's nationality among the employer's PMETs is calculated by taking the number of PMET employees from the specific nationality of the candidate and dividing it by the total number of PMET employees. Please note that the nationality is as stated in the passport in the Singapore Government's records. Furthermore, foreign employees are considered as PMETs if they earn at least

SGD3,000 in fixed monthly salary as declared in their work pass application and employees who are Singapore Citizens or Permanent Residents are considered as PMETs if they earn at least SGD3,000 per month, based on their wages declared for contributions to the Central Provident Fund.

- C4 (Support for Local Employment): This criterion awards more points if the employer has a larger share of local PMETs relative to its sector. The employer's local PMETs share will be ranked against other organisations in the same sector to obtain a percentile. This criterion serves to recognise organisations that create opportunities for the local workforce and complement the contributions of local and foreign PMETs. If the employer employs less than twenty five (25) PMETs, ten (10) points will be awarded by default. If the employer employs at least twenty five (25) PMETs, and if the share of the employer's local PMETs relative to its sector is: (a) at least 20th but less than 50th percentile, then ten (10) points will be awarded; or (b) at least 50th percentile, then twenty (20) points will be awarded. Please note that the employer's local PMET share is calculated by taking the number of local PMET employees and dividing it by the total number of PMET employees, and employees who are Singapore Citizens or Permanent Residents are considered as PMETs if they earn at least SGD3,000 per month, based on their wages declared for contributions to the Central Provident Fund.
- C5 (Skills Bonus): This criterion recognises jobs that require highly specialised skills which are in shortage in the local workforce. If the candidate's job is on the Shortage Occupation List ("**SOL**"), ten (10) points will be awarded if the share of the candidate's nationality among the employer's PMETs is one third (1/3) or more, and twenty (20) points will be awarded if the candidate's nationality among the employer's PMETs is less than one third (1/3). Please note that the candidate must perform the job duties for the specific shortage occupation listed on the SOL, select one (1) of the eligible job titles under that specific shortage occupation, and meet checks on additional job requirements if the candidate needs the SOL bonus points to pass COMPASS or is applying for a five (5) year duration EP for a specific tech occupation on the SOL. Experienced tech professionals with skills in shortage may apply for a five (5) year duration EP if they (a) fill specific tech occupations on the SOL, (b) earn a fixed monthly salary of at least SGD10,500 (please note that for candidates aged 36 and above, the salary required increases with age, up to a maximum of SGD13,500 at age 45 and beyond), and (c) pass COMPASS and score at least ten (10) points on C3 (Diversity)). For more details on the SOL, please see <https://www.mom.gov.sg/-/media/mom/documents/work-passes-and-permits/compass/sol-guidebook.pdf>.
- C6 (Strategic Economic Priorities Bonus): Under this criterion, organisations are recognised for either undertaking ambitious investment, innovation and internationalisation activities in partnership with economic agencies or being endorsed by the National Trades Union Congress (NTUC) as strong partners on company and workforce transformation activities. Ten (10) points may be awarded if the employer participates in at least one (1) of the eligible programmes subject to the discretion of the supporting agencies running the relevant programme. The points awarded will apply for up to three (3) years, or for the duration of the employer's participation in the eligible programme, whichever is shorter. However, the supporting agency may decide whether to renew the validity period subject to the employer's continued participation in the eligible programme, earning at least ten (10) points for both C3 (Diversity) and C4 (Support for Local Employment) for each of the three (3) months before renewal. A list of the eligible programmes and supporting agencies is set out at <https://www.mom.gov.sg/-/media/mom/documents/press-releases/2023/annex-c---eligible-programmes-for-sep-bonus.pdf>.

A candidate will be exempted from COMPASS if he or she (a) has a fixed monthly salary of at least SGD22,500, (b) is applying as an overseas intra-corporate transferee (as defined under the World Trade Organisation's General Agreement on Trade in Services (GTA) or any applicable Free Trade Agreement (FTA) which Singapore is a part of, and which the candidate is applying under), or is filling the role for one (1) month or less.

Vietnam

On 18 September 2023, Decree No. 70/2023/ND-CP was promulgated and took effect, which contains some drastic changes in terms of work permit regulations, notably:

- Vacancy announcement: Starting from 1 January 2024, employers are required to announce job vacancies for Vietnamese workers in the roles intended for foreigners via the MOLISA (Department of Employment) portal or Provincial Employment Service Centers. This announcement must be made at least fifteen (15) days before the expected submission of Step 1 and is a mandatory requirement. If no Vietnamese candidate is selected after this 15-day period, then Step 1 can be submitted. Currently, there are no specific requirements for providing evidence of the job announcement and the inability to hire Vietnamese candidates, but practical requirements from DOLISA may emerge.
- More relaxed criteria on qualification: The new regulation changes the requirements imposed on foreign experts and technicians whereby these foreign workers are no longer required to have both educational or training background and working experience in the same as the field of working positions they are expected to hold in Vietnam; instead, only working experience is required to be in the same as the field of such working positions.

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