

Work Permit to Foreigners Working in Vietnam

Vietnam is considered as a foreign investment attractive destination in Asia region, especially in Southeast Asian countries on the ground of its important geographical location, an acceptable business environment and legislation, and stable annual economy growth despite of the world financial crisis and economic downturn. Since the birth of the *Law on Foreign Investment* in 1986 up to now, foreign investment capital flew to Vietnam is impressively recorded. Many foreign investors came to do business since Vietnam through way of establishment of their own companies and investment projects in the country and/or acquisition of shares of Vietnamese enterprises. To operate, manage and multiply their investment capital, foreign investors certainly dispatch their experts and managers to work in such companies and projects. However, a fact shows that many of them may not be well aware of the laws of Vietnam in terms of conditions and procedure need to be complied for their experts and managers to work in Vietnam. The purpose of this article is therefore help foreign investors to identify main issues in such respect that need to comply with to avoid the violation of laws and administrative sanctions.

Legislation

Foreigners working for enterprises and organizations in Vietnam are generally governed by the Labor Code which are specifically guided in numerous Decrees and Circulars promulgated by the Government and Ministry of Labors, War Invalids and Social Affairs ("MOLISA") respectively on labor contracts, wages and allowances, and social and medical insurances, unemployed insurance, labor disciplines, conditions and procedures of termination, and settlement of disputes.

As per procedure, foreigners wishing to work in Vietnam are required to comply with *Decree 34/2008/ND-CP* issued by the Government on 25 March 2008 and *Circular 08/2008/TT-BLDTBXH* issued by MOLISA for obtaining *Work Permit*, except some exceptional cases which are mentioned in this article.

Who are exempted from obtaining Work Permit?

The following foreigners are exempted to obtain Work Permit for working in Vietnam:

- Foreigners working in Vietnam with a duration of less than three (3) months;

- A foreigner who is member of a limited liability companies with two or more members in Vietnam;
- A foreigner who is owner of a single-member limited liability company in Vietnam;
- A foreigner who is a member of the board of management of a joint stock company in Vietnam;
- A foreigner who enters into Vietnam for offering and sale of services;
- A foreigner who enters into Vietnam for resolving an emergency situation, such as a complicated breakdown or situation of technique or technology happened which would causes adverse affection to or is likely to adversely affect to the production/business which are unable to be resolved by Vietnamese experts and foreign experts in Vietnam. The maximum duration for such foreigner to stay in Vietnam to resolve such breakdown or situation is three (3) months;
- A foreign lawyer who is licensed by the Ministry of Justice to practice in Vietnam.

What cases of working in Vietnam foreigners are required to obtain Work Permit?

Foreigners working in Vietnam in any of the following ways shall be required to obtain Work Permit for working in Vietnam:

- Implementation of labor contracts;
- "Internal moving" in enterprise having commercial presence in Vietnam. A terms of "internal moving" as explained by Decree 34 would be understood including a foreign manager, managing/executive director and/or expert of an foreign enterprise which has established its commercial presence (such as company, representative office) in Vietnam, who temporarily is moved or dispatched from such foreign enterprise to work at its commercial presence in Vietnam and who was employed by such foreign enterprise at least 12 months before his/her "internal moving";
- Implementation of contracts of all types;
- Work for foreign service providers under contracts. Foreigner works for foreign service providers as explained by Decree 34 would be understood a foreigner working at least two years for a foreign service provider having no commercial presence in Vietnam, and must satisfy conditions to be qualified as an "specialist" in Decree 34;
- Offer for sale of services. This terms as explained by Decree 34 would be understood include foreigners who are not living in Vietnam and do not receive any remunerations from Vietnam, but who acts as representative for a foreign service provider for negotiation for sale of services of such foreign service provider in Vietnam, provided that such foreigner is not permitted to directly sell and provide such services to buyers in Vietnam;
- Work in Vietnam as representative of foreign non-governmental organizations in Vietnam.

In consideration of the list of foreigners who are exempted from obtaining and who are required to obtain Work Permit, it would become aware that the following foreigners would still be required to obtain Work Permit for working in Vietnam:

- Chief of Representative Offices of foreign companies in Vietnam;
- Director of foreign companies' branches in Vietnam;
- General Director, Director of foreign-invested companies in Vietnam, regardless whether such companies are limited liability companies or joint stock companies.

As mentioned in the "Who are exempted from obtaining Work Permit", foreigner who is member of a company in Vietnam is exempted from Work Permit. However, under the *Enterprise Law* of Vietnam, a member of a company can be either individual or corporate. As such, Decree 34 is unclear as to whether a foreigner who is appointed by a foreign corporate member of a limited liability company in Vietnam in order to manage and operate capital invested by such foreign corporate member in such company in Vietnam will be exempted from obtaining Work Permit or not. An answer from practice is that Work Permit was still required to such foreigner, on the ground as cited by DoLISA in Hanoi and Ho Chi Minh City, is that Work Permit is applicable to individual, not to corporate.

It is also unreasonable to require the foreign Chief of the representative office/foreign companies' branches or especially the foreign General Director of foreign-invested companies in Vietnam to obtain Work Permit for their working in Vietnam as they are approved by authorities of Vietnam for such positions based on the application dossiers submitted for granting license or certificate of investment for setting up representative office or companies in Vietnam.

What is the scope of use of a Work Permit?

The duration of a Work Permit to be granted shall be equivalent to the duration of a labor contract to be executed or to the duration of foreigner's work decided by foreign company to work in Vietnam. If foreigner working in Vietnam not under a labor contract, the term of a Work Permit shall be based on the contract signed between foreign company and Vietnamese partner. The duration of a Work Permit granted to representative of a non-governmental organization shall be based on the duration of the license of such non-governmental organization. In all cases, a Work Permit shall have a maximum 36 months from the issuance, which can be extended, each extension maximum 36 months.

A Work Permit is effective with one specific employing company/organization. This means that a foreigner holding a valid Work Permit for a specific employing company/organization is not permitted to work for others for works in Vietnam. He/she is required to obtain additional Work Permits to work for other employers. Of course in such case, burden on documents to be submitted is lesser than those required for obtaining the first Work Permit. If a Work Permit expires and foreigner wishing to obtain a fresh one for the same or different employer, he/she is required to submit the same documents as required for the first Work Permit.

A Work Permit shall expire upon expiration or termination of labor contracts or contracts signed between foreign service providers and Vietnamese partners or expiration/termination

of representative office licenses or certificates of investment for incorporation and operation of foreign-invested enterprises or license of operation of non-governmental organizations in Vietnam.

What conditions a foreigner is required to satisfy for obtaining Work Permit?

- At least eighteen (18) years of age;
- Good health;
- Being a manager, managing/executive director or a specialist;
- No criminal records in his/her country; not being object to be investigated for criminal responsibility or implementing criminal punishment under the laws of Vietnam and foreign countries;
- Has Work Permit to work in Vietnam, except cases of exemption as mentioned in this article.

The terms "specialist" as explained in Decree 34 includes managers, managing /executive directors and experts. A *manager, managing/executive director* would be understood including a foreigner who directly manages a foreign enterprise which established its commercial presence in Vietnam, who is only under general supervision or general instruction from the board of management or shareholders or other equivalent body of such enterprise. An *expert* is a person of high seniority and qualification in his/her profession. In addition to those explanations, Decree 34 provides other criteria of manager, managing/executive director and expert.

What are procedure and documents required for obtaining Work Permit?

Decree 34 and Circular 08 provide clear documents required and procedure for granting Work Permit to foreigners working in Vietnam. Due to the limitation of words, this article does not go to detail of what documents are required.

Who are required to obtain Work Permit?

Both employer and foreigner are required to prepare documents for obtaining Work Permit in Vietnam. In case employer is operating in Vietnam, employer is responsible for submit application dossier to DoLISA for obtaining Work Permit for foreigners working at employer's premises in Vietnam.

What would be potential risks to foreigners who work in Vietnam without Work Permit?

Foreigners working in Vietnam without Work Permit must proceed procedures for obtaining Work Permit. If they have been working in Vietnam for six months without Work Permit, they would be subject to a risk the DoLISA may propose the Ministry of Public Security to deport them from Vietnam. Corporate or organizational employer of foreigners working in Vietnam without Work Permit would be subject to administrative sanctions from 5,000,000

VND to 10,000,000 VND (exchange: 19,000 VND = 1 USD) for each violation. In serious violation, corporate or organizational employer may be withdrawn its license of operation, certificate of investment.

About the Authors



Nguyen Anh Tuan, Managing Partner

Tuan Nguyen is the managing partner at bizconsult law LLC. He has been practicing business law since 1988, focusing on Foreign Investment, Corporate & Commerce, M&A, Real Estate, Banking & Finance, Contracts, Employment, Construction, Intellectual Property & Franchise. He has long-standing experience and skills in advising, drafting documents and representing both foreign and Vietnamese investors to obtain necessary approvals and permits required under the laws of Vietnam for incorporation and operation of their companies, business transactions and investment projects in Vietnam and other regional countries. He presented foreign and Vietnamese corporate clients in the contractual negotiation with their partners in business cooperation, joint venture transaction as well as business deals.

Tuan Nguyen is admitted to Hanoi Bar Association, Vietnam Bar Federation. He is also admitted to New York State Bar Association (NYSBA) and member to International Bar Association (IBA), Anti-Counterfeiting Committee of International Trademark Association (INTA) and Anti-Counterfeiting Committee of Asian Patent Attorneys Associations (APAA). To see more information on Tuan Nguyen, please visit the firm's website at www.bizconsult-vietnam.com.

Contact the author:

tuan.na@bizconsult-vietnam.com

Contact us:

bizconsult law LLC

Office in Hanoi:

a 3rd Floor, VNA Building, 20 Tran Hung Dao, Hoan Kiem, Hanoi |
t +84 4 3933 2129 | **f** +84 4 3933 2130 | **e** info-hn@bizconsult-vietnam.com

Branch in HCMC:

a 17th Floor, Saigon Riverside Office Building, 2A-4A Ton Duc Thang, Dist. 1, Ho Chi Minh |
t +84 8 3910 6559 | **f** +84 8 3910 6560 | **e** info-hcm@bizconsult-vietnam.com

www.bizconsult-vietnam.com

© bizconsult Law LLC

Disclaimer: This material is for general information only and is not intended to provide legal advice. Please contact us for specific advices.