

# Report on Vietnam's Rules Regulating Foreign Workers

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I. Overview of Vietnam's policy and legal system  
II. Current issue  
III. Conclusion and suggestions

The issue of regulating foreign workers in Vietnam is not a new topic, but always topical. To evaluate the effectiveness of the Vietnam's policies and the legal system, the author initiates the overview of policy and legal rules, and then analyzes some current issues. Finally, the author would like to set out some recommendations and suggestions.

## I. Overview of Vietnam's policy and legal system

After nearly 30 years of renovation, Vietnam has achieved a variety of socioeconomic achievements, which created relative political stability, becoming an attractive destination for foreign investors. To achieve our target, Vietnam continues to implement reform policies which aim at integrating into the world economy, regulating the market economy under socialist orientation.

However, from the starting point of a poor economic base and low qualified workforce, Vietnam's economy needs skilled workers to apply high technology into production and exportation to international markets. This leads to the demands of hiring foreigners to carry out the work which Vietnamese workers are not able to perform. Therefore, the State issued Law on Investment 1987 which allowed FDI enterprises to hire foreigners for jobs requiring high technology. Article 16 of this Law is considered as the first legal rule in this field. After that, Vietnam has passed some acts, by-law documents regulating the use of foreign human resource.

This legislation can be classified into two categories: the first is situated in the Labor Code and its guiding documents; the second is situated in other laws such as Law on Investment, Law on Social Insurance, Law of Occupation, Law on entry, exit, transit and residence of foreigners, Law on tax. The Labor Code regulates the matters of labor conditions of foreign citizens working in Vietnam; conditions of employing foreign citizens; work permits; duration of the work permit; renewal and re-issuance of work permit. The remaining Codes regulate some rights as social insurance or obligations as individual tax or management of foreigners as visa granting or temporary residence.

Since 1987, the policy on the use of foreign workers has not changed. This policy only applies for highly technical or managerial jobs, in which Vietnamese workers cannot meet the demands of production and trade. The enterprises may hire foreigners in the limited quota, for short-term period, but must build plans of training Vietnamese staff to replace foreign workers.<sup>1</sup> The State has gradually expanded the range of employers who shall be entitled to employ foreign citizens. Labor Code 1994 and its guiding documents entitle for both of FDI enterprises and Vietnam companies.<sup>2</sup> Labor Code 2012 and its guiding documents

1 Clause1, Article 132 Labor Code 1994.

2 Decree No. 34/2008/ND-CP dated 25th of March, 2008 regulations on recruitment and management of foreign labor in Vietnam. Decree No. 46/2011/ND-CP dated 17th of June, 2011 amending and supplementing a number of articles of regulations on Decree No. 34/2008/ND-CP of 25th of March, 2008 regulations on recruitment and management of foreign labor in Vietnam.

supplement three categories of employers with the right of recruiting foreigners, which are State agencies, family households, individuals permitted by law to conduct business.

Overall, legislation regulating foreigners working in Vietnam has made a fundamental legal basis to implement State management of this type of employees, as well as ensured the rights and the obligations of foreigners when performing their job in Vietnam. Foreigners working in Vietnam enjoy to the rights and fulfill their obligations under the law of Vietnam, except where international agreements which the socialist Republic of Vietnam has signed or acceded to contain different provisions.

The basic rules regulating the activities of hiring foreigners shall comply with the following process:

Step 1: Determine the demand for foreign employees

Step 2: Send the application for a work permit

Step 3: Sign the labor contract

The first step is determining the demand for foreign employees. Every year, the employer has the responsibility to build demand for foreign employees under the guidance of the Ministry of Labor, Invalids and Social Affairs, which defines each job that Vietnamese workers did not meet the demand of production and trade, the need to recruit foreigners, the written explanatory report to the State authorities.<sup>3</sup> Department of Labor, Invalids and Social Affairs approved the demand for foreign employees for each kind of job, according to the Decision of the Chairman of the Provincial People's Committee of provinces and central cities. If the demand changed, the employers must provide additional written explanation to the Department of Labor, Invalids and Social Affairs, where the employers' headquarter is located.

Department of Labor, Invalids and Social Affairs is responsible for the local demand and report to the President of the People's Committees of the provinces or central cities which decide which job is permitted to hire foreigners. Ministry of Labor, Invalids and Social Affairs is responsible for confirming the explanatory demand report of some types of employers, such as State agencies, the central offices of political organizations, political organizations-social, non-governmental organization of foreign countries, international organizations in Vietnam; occupational organizations as defined in point a, b, c, Clause 1, Article 2 of Decree No. 55/2012/ND-CP on June 28, 2012 of the government; project of foreign or international organizations in Vietnam; business association.<sup>4</sup>

The second step is applying for a work permit. At least 15 days before the date the foreigner is projected to begin working in enterprises, agencies and organizations in Vietnam, the employers shall apply directly or send by mail dossiers for granting work permits. Within seven business days, from the date of receipt of a complete application, the department of Labor, Invalids and Social Affairs shall issue work permits to foreign employees in the form prescribed by the Ministry of Labor, Invalids and Social Affairs. In the case of refusal, the Department shall provide a written response specifying its reasons.

The final step is signing the labor contract. After the work permit is issued to the foreigners, the employer and the employees must, prior to the proposed date when the foreigner is projected to work in Vietnam, sign a labor contract. The employers must, within five business days after signing the labor contract, send a copy of it to the Department of Labor which issued the work permit.<sup>5</sup>

Basically, labor contracts signed with foreign employees are similar to the labor contracts signed with Vietnamese employees. However, while the form of the contracts with Vietnamese employees can be the oral contract, the form of the contracts with foreigners must be the written ones.<sup>6</sup> With Vietnamese workers, employers pay wages, bonuses and other cash allowances in Vietnamese currency; also for foreign workers working in Vietnam, the employer can pay the amount in foreign currency.<sup>7</sup> Regarding the amount of

3 Article 170 Labor Code 2012.

4 Article 3 Circular No 40/2016/TT-BL?TBXH dated 25th of October, 2016 guiding the implementation of some articles of Decree No11/2016/N?-CP dated 3rd of February, 2016.

5 Article 12 Decree No11/2016/N?-CP dated 3rd of February, 2016 implementing the Labor Code on foreigners woking in Vietnam.

6 Article 12 Decree No11/2016/N?-CP dated 3rd of February, 2016 implementing the Labor Code on foreigners woking in Vietnam.

public holidays, foreign employees are entitled to one traditional public holiday and one National Day of their country, in addition to the public holidays in Vietnamese law.<sup>8</sup>

For the purpose of the administrative management of foreigners working in Vietnam under the contract labor, Law on entry, exit, transit and residence of foreigners 2015 shall provide a procedure applied to foreigners by the Public Security department as follows: granting visas, temporary or permanent residence after being granted a work permit. One more notable provision which has been newly complemented to the Law on entry, exit, transit and residence of foreigners 2015 is that foreigners who are expected to work in Vietnam shall be granted the work permit by the competent State authorities before granted an entry visa.<sup>9</sup> The duration of the visa is up to two years.<sup>10</sup> The purpose of the visa is not permitted to change while under the Ordinance on entry, exit, transit and residence of foreigners 2000 provided that the visa will be considered for entry purposes transformation, if required.<sup>11</sup> The new regulation aims to ensure the management, mitigating the chance of foreigners visiting Vietnam with the purpose of sightseeing or tourist, then changing to other purposes, particularly for transformation to work purpose, as many workers are working on the project due to the Chinese winning contractors.

As a result of the promulgation and implementation of the labor law and legislation on the management of foreigners working in Vietnam, we have made considerable success in the State management in this field. The units allowed to hire foreigners abide by the provisions on the management of foreigners working in Vietnam.

As reported by the Department of Labor, Invalids and Social Affairs of provinces and cities directly under the Central Government, foreigners working in Vietnam come from more than 60 countries, including those of nationality of Asia (China, Japan, Korea, Malaysia, and Taiwan), which accounts for about 58% of the total number of foreign workers. The figure for Europe (England and France) is 28.5% and that for the other countries is 13.5%. Most of them are men (89.9%) and aged more than 30 years old (86%). As of July 2016, there were about 80,000 foreign workers, mainly highly skilled experts and experienced managers, who operated advanced technology in production and helped to train local human resources by exchanging experience, especially in education, healthcare, information technology, and banking.<sup>12</sup>

## II. Current issues

### ***First, no Act on foreign workers, these regulations are still part of the Labor Code***

While many countries in the world have enacted law on foreign workers, such as Korea, Japan, Singapore, and Malaysia, Vietnam still incorporates the regulations in this field. The regulations adjusting labor relation of foreigners are scattered on many laws and guiding documents, the legal effects of which are diverse such as Act, Ordinances, Decree, Circular. The legislation has not been included in the legislative program of the Congress.

### ***Second, existing regulations are inappropriate and should be modified***

- To some extent, regulations on procedures that recruitment shall be published in newspapers are not needed. Because, to hire foreigners with higher qualification as specified in the laws of the State, employers have conducted many different procedures in order to identify the main sources of recruitment determined. Moreover, the law has not yet recognized another way of informing.

7 Circular No 32/2013 / TT-NHNN guiding the implementation of regulations restricting the use of foreign currency in the territory of Vietnam.

8 Clause 1 Article 115 Labor Code 2012.

9 point c, Clause 4, Article 10 Law on entry, exit, transit and residence of foreigners 2015.

10 paragraph 5 Article 9 Law on entry, exit, transit and residence of foreigners 2015.

11 Clause 1, Article 7 Law on entry, exit, transit and residence of foreigners 2015.

12 Synthetic from data reported Department of Labor — Invalids and Social Affairs.

- In order to work legally in Vietnam, foreign workers must apply three important papers: judicial check, health certificate, copies of certificates of qualification. However, the State cannot control the legality of these documents because all of these papers are mainly provided by foreign parties. In Vietnam, the participation of the competent authorities in this activity is limited to a certain level (grading does not always include all three papers above). From what led to the violation: foreign workers have forged papers to get into Vietnam; most of them are unskilled workers, foreign contractors rationalized the worker's profile deliberately. More seriously, we cannot verify those who have criminal record such as theft or drug addicts.

- The Civil Code 2015 provides conflict rules determining the law applicable to contracts with foreign elements in Article 683. Accordingly, the parties may agree to choose the law applicable to the labor contract with foreign elements. In the case of disagreement, the court will apply the law of the country where the employees habitually carry out their work.

In contrast, Article 169 of the Labor Code 2012 provides that employees working in Vietnam shall comply with the labor law of Vietnam, international conventions and treaties, to which Vietnam is a signatory and provide differently. Foreign workers in Vietnam shall be protected by Vietnamese law. The provisions are controversial because the foreigners are obliged to comply with the labor laws of Vietnam, whether their labor contract agreements are allowed to apply foreign laws or not.

### ***Third, rights of foreign workers need to be ensured***

Provisions on the rights of foreigners working in Vietnam increasingly approach the principle of equality between domestic and foreign workers. This is illustrated by the fact that there is no discrimination by salary, gender or age between Vietnamese employees and foreign employees. The health insurance regime applies to all foreigners working in Vietnam. From 2018, foreign workers will be subject to social insurance applies, such as illness, accidents, occupational disease.<sup>13</sup> At the same time, foreign citizens working in Vietnam must comply with the Vietnamese labor law, international treaties to which Vietnam is a member.<sup>14</sup>

Although regulations on the rights of foreigners working in Vietnam have been improved in a more positive way, there was an undeniable manifestation of discrimination. In recent years, scholars have concerns about the fact that foreigners working in Vietnam don't join trade unions as domestic workers. Lawmakers have their own reasons why the right to form, join trade unions will not be applied to foreign employees but, from the perspective of equal treatment for migrant workers, more should be done in the future.

### ***Finally, the issue of illegal foreign workers needs addressing***

The work permit for foreigners working in Vietnam is not really effective. Among 74,438 foreigners working in 2012, 24,455 (32.85%) workers carry out procedures and do not obtain a work permit. Some localities do not complete statistics on foreign workers. The data reported is mainly through the examination and the granting of work permits.

This problem has been going on in Vietnam for many years. Even today, we don't know exactly how many foreigners are working in Vietnam without work permits. In some countries, the law on the recruitment of foreign workers is very strict. The number of foreign workers in a project is set at less than 3% of the labor force. However, in Vietnam, for "tender packages" the bid winners (foreign tenders) have the right to decide on how many foreign nationals they would hire. This may be a loophole in our laws. A case in point is the Chinese projects. People working on these projects are mostly Chinese, including their support staff.

Under Labor Code 2015, the local authorities are empowered to grant work permits to foreigners

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<sup>13</sup> Article 168 Labor Code 2012.

<sup>14</sup> Article 124 Law on Social Insurance 2014.

working in their localities. However, due to the policy of giving preferential treatment to foreign investors, many local authorities have turned a blind eye to foreigners working without permits in their localities. Department of Labor, Invalids and Social Affairs in each province has the responsibility of checking and inspecting the employment and management of foreign nationals in their locality but what would happen if the employers or employees violate the law. Department of Labor shall fine the employers and propose that the public security office (police) deport the employees. Nevertheless, there are no rules on the entity who would pay the cost of deportation. So, up to now, there has been no case of deportation reported.

### III. Conclusion and suggestions

There was a major step in changing thinking, awareness about foreigners working in Vietnam.<sup>15</sup> From the point of view that receiving foreign workers in Vietnam causes the unemployment of local workers as well as the poor, we are conscious that labor mobility to our country is an inevitable phenomenon as a result of global integration. The main problem is how to fully exploit their advantages and mitigate the negative economic-social impact. On the basis of the aforementioned findings, I would like to set out some of the suggestions, as follows:

First, Vietnam should enact a separated legislation to improve the efficiency in the management of foreigners working in Vietnam. One of my recommendations is studying the experience of other countries in this field.

Second, some unreasonable provisions need to be addressed, amended and supplemented.

- The Internet should be allowed as one of the forms of the recruitment notice. This provision helps both employers and employees save money and time.

- State agencies should be authorized to check the employees' certification and qualifications and to verify the accuracy of the papers issued by foreign authorities. In Australia, foreign workers who want to participate must work through a check issued by the Australian professional organization.<sup>16</sup> Federal Institute of Technology will conduct proficiency tests, and language expertise for professionals and Council will recognize federal skills test for other workers. The conclusion of the agency is made on the basis of the decision to grant visas to foreign workers in Australia. It helps to ensure the foreign workforce in good quality.

Third, it is also necessary to continue studying the possibility of allowing foreign workers to join the Vietnam trade union in order to fully implement free trade union rights of workers and ensure protection of equal treatment between domestic and foreign employees working in Vietnam.

Four, to force the employer to pay the cost of repatriation, the highly strict measure should be taken to deal with illegal foreign employees. The cost of sending them back home is usually withdrawn from the nation's budget. In the context that public debt increased considerably, some countries, namely France, argued that it is employers who are responsible for a part of this cost through paying fines because they do not perform their financial obligations to the employees and to the State. Moreover, illegal employees must be equally treated by compensation, salaries and social security as domestic employees, regardless of the disagreement of the employers. Thereby, the increasing cost of hiring foreigners is expected to be an effective measure to reduce the demand for illegal foreign workers.<sup>17</sup>

#### References

Vietnam's legal documents:  
Civil Code 2015.

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15 The X Congress (2006) of the Communist Party of Vietnam affirmed that one of policies on improving labor market is importing technical foreign workers in the field of technology and management.

16 <https://www.border.gov.au/Trav/Work/Work/Skills-assessment-and-assessing-authorities/assessing-authorities>

17 <http://www.west-info.eu/french-law-on-illegal-immigrants-complies-with-eu/lois-retenu-e-tranger/>

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