



Newsletter No. 44 (EN)

**Work Permits for Foreigners
Employed in Vietnam**

August 2011

Although Lorenz & Partners always pays great attention on updating information provided in newsletters and brochures we cannot take responsibility for the completeness, correctness or quality of the information provided. None of the information contained in this newsletter is meant to replace a personal consultation with a qualified lawyer. Liability claims regarding damage caused by the use or disuse of any information provided, including any kind of information which is incomplete or incorrect, will therefore be rejected, if not generated deliberately or grossly negligent.

I. Introduction

One of the major issues which all foreigners doing business in Vietnam have to face is the issue of work permits.

Questions frequently raised in regards to this issue include:

- In which situations do I need a work permit?
- What are the requirements for the issuance of a work permit?
- Are there any exceptions?
- And what are the consequences for breaching the set procedures?

Work permits (and the employment of foreigners in general) are currently governed by:

- The Labour Code
- Decree 34/2008/ND-CP providing guidelines for implementation of Labour Code regarding foreign employees in Vietnam (“Decree 34”)
- Circular 08/2008/ TT-BLDTBXH guiding the implementation of Decree 34 (“Circular 08”)
- Decree 46/2011/ND-CP amending and modifying a number of articles of Decree 34 (“Decree 46”)

Of the above it is Decree 46 (promulgated on 17 June 2011) which has caused the most controversy and which will be discussed further below.

II. Requirements

1. Employee Requirements

A foreigner wishing to work for an enterprise or organization in Vietnam must meet all of the following conditions:

- (1) Be at least 18 years old
- (2) Be in good health suitable to the requirements of the job
- (3) Be a manager, executive director or an expert with high professional or technical qualifications, experience in one’s field or in management that Vietnamese employees do not yet possess. In practice, holding a university degree in the applicable field is usually sufficient to satisfy this requirement
- (4) Have no criminal convictions or civil record in respect of a breach of national security or be subject to any outstanding criminal prosecutions or criminal sentences in accordance with Vietnamese and foreign laws
- (5) Hold a work permit issued by the Vietnamese competent authority, except where stipulated at point 2 below.

2. Exemption from a Work Permit

According to Vietnamese law, unless one of the below exemptions applies, a foreigner working in Vietnam must obtain a work permit from the local Department of Labour, War Invalids, and Social Affairs (“DOLISA”).

The exemptions are as follows:

- (1) A foreigner working in Vietnam for less than three (3) months

- (2) A foreigner being a member of a limited liability company with two or more members
- (3) A foreigner being an owner of a limited liability company with one member
- (4) A foreigner being a member of the Board of Management of a joint stock company
- (5) A foreign lawyer licensed to practice in Vietnam
- (6) A foreigner who enters Vietnam to resolve an emergency situation such as a breakdown or a technically/ technologically complex situation which affects production and/or business and which Vietnamese experts or foreign experts already in Vietnam are unable to deal with. If the situation is not resolved within three (3) months the foreigner must apply for a work permit.
- (7) A foreigner entering Vietnam to offer services. A “foreigner offering services” is defined as a person who does not live in Vietnam, who does not receive remuneration from any source in Vietnam, but who participates in activities relating to the representation of a service supplier in order to negotiate the sale (or consumption) of the supplier’s services, on condition that he does not directly sell such services to the public and does not directly participate in the provision of the services.
- (8) A foreigner who is a Chief of a Representative Office of a foreign entity in Vietnam, Head of the Project Office or a foreigner authorised to represent the activities of a non-governmental organisation.
- (9) A foreigner being internally transferred within an enterprise. This exemption only applies to those enterprises carrying out the business lines included in Vietnam’s WTO Commitments. These are: business services, communication, construction, distribution, education, environment, finance, healthcare, tourism, cultural entertainment and transportation services.
- (10) A foreigner entering into Vietnam to provide professional and technical consultancy services for a project funded by Official Development Assistance (ODA).
- (11) International correspondents licensed by the Ministry of Foreign Affairs to practice in Vietnam.
- (12) Other cases as decided by the Prime Minister from time to time.

Please note that exemptions (8) to (12) were introduced by the new Decree 46 dated 17 June 2011.

However just because a foreigner is exempt from the work permit requirement does not mean that they, or their employer, are free from all administrative responsibility. In all cases, whether a work permit is required or not, the employer must submit details of the foreigner’s employment to the local DOLISA. These details shall include the names, ages, nationality and passport numbers of all the company’s foreign employees, their date of commencing and finishing work, and the work to be undertaken. This spreadsheet must be submitted either at least seven (07) days before or within seven (07) after the foreigner is due to begin work depending on the exact exemption in question.

Further in the case of exemptions (1) to (4) these details must be accompanied by:

1. Copies of criminal records
2. Curriculum vitas
3. Copies of qualifications.

Please note that any documents which are issued, certified or notarized by a foreign body or organization must be consularised in accordance with the law of Vietnam and then translated into Vietnamese. The said translation must also be notarized in accordance with the law of Vietnam.

Finally, in some cases even when a work permit is not required, the foreigner must

still obtain other certifications before being allowed to commence their employment. For example in the case of exemption (5) the lawyer in question must apply for a foreign lawyer's license from the Ministry of Justice before practising in Vietnam.

3. Appropriate Employer

Enterprises in all economic sectors, Vietnamese as well as foreign and international organizations, are equally entitled to employ non-Vietnamese employees so long as the regulations described herein are satisfied.

4. Procedure to Apply for a Work Permit

A foreigner wishing to work in Vietnam must submit two copies of the following documents to the DOLISA:

- (1) Application form
- (2) Copy of criminal record
- (3) Copies of qualifications
- (4) A recent health certificate issued by a public hospital (dated within the last 6 months) by foreign hospital or competent Vietnamese hospital
- (5) Curriculum vitae
- (6) Valid visa
- (7) 3 passport-size colour photographs

Please see above in regards to the procedures which must be followed if any of the required documents are in a foreign language.

Further, depending on the nature of work intended in Vietnam, further documents evidencing the employee's status may be required (e.g. appointment letter for internal transfer, service contract if a foreigner entering into Vietnam to perform service, etc.). Within 10 days of the receipt of the complete dossier, the DOLISA will notify the employer of its decision. Under the law a foreigner cannot execute a valid labour contract until the work permit has been issued. However in practice many foreigners work

under the terms of an appointment or offer letter while the work permit procedure is being completed.

III. Term of Work Permit

The maximum term for each work permit is 36 months. The exact term will reflect the term of the labour contract.

A work permit may be renewed for another 36 months if despite the training program (see V below) there is no Vietnamese employee capable of replacing the foreign employee at that time. If there is still no viable Vietnamese replacement after the first extension, a second extension may be allowed if approved by the Chairman of the provincial level People's Committee.

IV. Limit on the Number of Foreign Employees

According to Decree 34 in any Vietnamese enterprise, irrespective of its size, at least twenty per cent (20%) of the managers, executive directors and experts must be Vietnamese citizens. In contrast a foreign enterprise is allowed to have a minimum of three managers, executive directors and experts who are not Vietnamese.

V. The Apprenticeship Requirement

Under Decree 34, before a foreigner can be employed the employer must demonstrate that the position in question could not be filled by a local Vietnamese person. Further the employer must also show that there is a training program in place the purpose of which is to train a local citizen to replace the foreigner in due course. As noted above whenever a foreigner wishes to extend their work permit the employer must show why the training program has not yet been completed and why the foreigner is still necessary. This requirement

has been significantly tightened under the new Decree 46. Under the new law all work permit extensions must be accompanied by an apprenticeship contract. The apprenticeship contract has been signed between the employer and the intended replacement. This amendment has caused a great deal of concern among both the local and expat community. As a result a number of international organizations have approached the Vietnamese Government to request the postponement or even reconsideration of these provisions. Details on further developments in this matter will be posted on our website as they occur.

VI. Consequences of Breach

Working in Vietnam without a work permit is still an administrative violation. Such violation is subject to administrative sanctions, but not criminal liability.

Correspondingly, a foreigner may not be imprisoned but they can be deported; even if they manage to avoid deportation foreigners without a work permit still face several disadvantages. These disadvantages include not being able to obtain a residency card or bring a labour dispute to the Vietnamese Courts. Finally as it is the employer's duty to obtain work permits for their foreign employees, any employer whose foreign employees do not have a work permit may be fined.

VII. Outlook

The legal framework regulating the working requirements for foreigners in Vietnam reflects the development of the country as a whole. While the government is eager to reap the benefits of foreign expertise and this expertise must not come at the expense of employment opportunities for local citizens.

This dual focus is clearly demonstrated by the provisions of Decree 46 which on one side expands the list of work permit exemptions but on the other side makes work permit extensions more laborious. As noted above this (somewhat contradictory) approach has resulted in criticism from the international community. Whether this criticism directly leads to a policy change is yet to be seen. What is certain is that this area of law will continue to evolve in response to Vietnam's economic position. It is therefore vital that all foreigner employers and employees both familiarise themselves with the current law and monitor the law for future developments.

*We hope that the information provided in this brochure was helpful for you.
If you have any further questions please do not hesitate to contact us.*

Lorenz & Partners (Vietnam) Co., Ltd.

Floor 3 Viconship Building

6-8 Doan Van Bo Street, District 4

Ho Chi Minh City, Vietnam

Tel: +848 (0) 626 182 31

E-Mail: vietnam@lorenz-partners.com