

DECREE

On foreign workers in Vietnam and recruitment and management of Vietnamese workers working for foreign organizations and individuals in Vietnam¹

Pursuant to the June 19, 2015 Law on Organization of the Government; and the November 22, 2019 Law Amending and Supplementing a Number of Articles of the Law on Organization of the Government and Law on Organization of Local Administration;

Pursuant to the November 20, 2019 Labor Code;

Pursuant to the June 17, 2020 Law on Investment;

Pursuant to the June 17, 2020 Law on Enterprises;

At the proposal of the Minister of Labor, Invalids and Social Affairs,

The Government promulgates the Decree on foreign workers in Vietnam and recruitment and management of Vietnamese workers working for foreign organizations and individuals in Vietnam.

Chapter I

GENERAL PROVISIONS

Article 1. Scope of regulation

This Decree prescribes foreign workers in Vietnam and recruitment and management of Vietnamese workers working for foreign organizations and individuals in Vietnam under the following articles and clauses of the Labor Code:

1. Conditions, order and procedures for issuance, re-issuance, extension and revocation of work permits and certifications of exemption from work permit for

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foreign workers in Vietnam as specified in Article 157 of the Labor Code and foreign workers in Vietnam who are exempt from work permit as specified in Clauses 1, 2 and 9, Article 154 of the Labor Code.

2. The recruitment, recommendation and management of Vietnamese workers working for foreign organizations and individuals in Vietnam (below referred to as foreign organizations and individuals) as specified in Clause 3, Article 150 of the Labor Code.

Article 2. Subjects of application

1. Foreign citizens who work in Vietnam (below referred to as foreign workers) in the following forms:

- a/ Performing labor contracts;
- b/ Being intra-corporate transferees;
- c/ Performing contracts or implementing agreements on economics, commerce, finance, banking, insurance, science and technology, culture, sports, education, vocational education, or health;
- d/ Providing contractual services;
- dd/ Offering services;
- e/ Working for foreign non-governmental organizations or international organizations in Vietnam that are licensed to operate in accordance with Vietnam's law;
- g/ Working as volunteers;
- h/ Being responsible for establishing commercial presence;
- i/ Working as managers, executives, experts or technical workers;
- k/ Participating in the performance of bidding packages and projects in Vietnam;
- l/ Being relatives of staff members of Vietnam-based foreign representative missions who are licensed to work in Vietnam under treaties to which the Socialist Republic of Vietnam is a contracting party.

2. Employers of foreign workers, including:

- a/ Enterprises operating in accordance with the Law on Enterprises, the Law on Investment, or treaties to which the Socialist Republic of Vietnam is a contracting party;
- b/ Contractors participating in bidding or performing contracts;

c/ Representative offices and branches of enterprises, agencies or organizations established under licenses of competent agencies;

d/ State agencies, political organizations, socio-political organizations, socio-politico-professional organizations, social organizations, or socio-professional organizations;

dd/ Foreign non-governmental organizations with registration certificates granted by Vietnamese competent agencies in accordance with Vietnam's law;

e/ Non-business organizations and education institutions established in accordance with law;

g/ International organizations and offices of foreign projects in Vietnam; agencies and organizations established under permission of the Government, Prime Minister, ministries or sectors and operating in accordance with law;

h/ Lawfully registered executive offices of foreign investors to business cooperation contracts or of foreign contractors;

i/ Organizations practicing law in Vietnam in accordance with law;

k/ Cooperatives and cooperative unions established and operating in accordance with the Law on Cooperatives;

l/ Business households and individuals licensed to carry out business activities in accordance with law.

3. Vietnam-based foreign organizations that are foreign agencies and organizations licensed by Vietnamese competent authorities to operate in Vietnam's territory, including:

a/ Foreign diplomatic missions and consular offices, representative missions of international organizations belonging to the United Nations system, and regional and sub-regional organizations;

b/ Resident offices of foreign news, media, radio and television agencies;

c/ International organizations, inter-governmental organizations and foreign governmental organizations;

d/ Foreign non-governmental organizations with registration certificates granted by Vietnamese competent agencies in accordance with law;

dd/ Vietnam-based representative offices of foreign organizations operating in the fields of economics, commerce, finance, banking, insurance, science and technology, culture, education, health, and foreign law counseling.

4. Foreign individuals in Vietnam who are foreigners working in organizations specified in Clause 3 of this Article or persons permitted by Vietnamese competent agencies to reside in Vietnam.

5. Vietnamese workers working for Vietnam-based foreign organizations or individuals.

6. Employment service organizations and labor leasing enterprises that provide Vietnam-based foreign organizations and individuals with services relating to recruitment, recommendation and management of Vietnamese workers working for such foreign organizations and individuals.

Article 3. Interpretation of terms

1. Foreign worker being an intra-corporate transferee means a manager, an executive officer, an expert or a technical worker of a foreign enterprise that has established its commercial presence in Vietnam's territory, who is temporarily transferred within the enterprise to its commercial presence in Vietnam's territory and had worked for such enterprise for at least 12 consecutive months.

2. Volunteer means an unpaid foreign worker who voluntarily works in Vietnam to implement a treaty to which the Socialist Republic of Vietnam is a contracting party as certified by a Vietnam-based foreign diplomatic mission or international organization.

3. Expert means a foreign worker who falls into one of the following cases:

a/ Possessing a university or equivalent or higher degree and at least 3 years' working experience in his/her trained discipline relevant to his/her expected job assignment in Vietnam;

b/ Having at least 5 years' experience and possessing a practice certificate relevant to his/her expected job assignment in Vietnam;

c/ Special cases shall be decided by the Prime Minister at the proposal of the Ministry of Labor, Invalids and Social Affairs.

4. Manager means an enterprise manager as defined in Clause 24, Article 4 of the Law on Enterprises or the head or a deputy head of an agency or organization.

5. Executive means the head of a unit attached to an agency, organization or enterprise who directly manages this unit.

6. Technical worker means a foreign worker who falls into one of the following cases:

a/ Having been trained in a technical or another discipline for at least 1 year and having at least 3 years' working experience in his/her trained discipline;

b/ Having at least 5 years' working experience relevant to his/her expected job assignment in Vietnam.

7. Commercial presence may be a foreign-invested economic organization; Vietnam-based representative office or branch of a foreign trader; or executive office of a foreign investor to a business cooperation contract.

8. Contractual service provider means a foreign worker who has worked for at least 2 years (24 months) in a foreign enterprise without commercial presence in Vietnam and must meet the criteria for an expert specified in Clause 3 of this Article.

9. Foreign worker offering services means a foreign worker who does not reside in Vietnam and receive remuneration from any source in Vietnam, and takes part in activities relating to representation for a service provider to enter into negotiations on sale of services of such provider on the condition that he/she may neither sell such services directly to the public nor directly participate in the provision of such services.

Chapter II

APPROVAL OF THE DEMAND FOR EMPLOYMENT OF FOREIGN WORKERS; FOREIGN WORKERS EXEMPT FROM WORK PERMIT; ISSUANCE, RE-ISSUANCE, EXTENSION AND REVOCATION OF WORK PERMITS

Section 1

APPROVAL OF THE DEMAND FOR EMPLOYMENT OF FOREIGN WORKERS

Article 4. Employment of foreign workers

1. Determination of the demand for employment of foreign workers

a/ At least 30 days before the expected date of employment of foreign workers, employers (except contractors) shall determine their demand for employment of foreign workers for each job assignment which Vietnamese workers cannot perform, and send a report, made according to Form No. 01/PLI provided in Appendix I to this Decree, to the Ministry of Labor, Invalids and Social Affairs or provincial-level People's Committees of localities where foreign workers are expected to work.

If changing their demand for employment of foreign workers, at least 30 days before the expected date of employment of foreign workers, employers shall send a report on the change, made according to Form No. 02/PLI provided in Appendix I to this Decree, to the Ministry of Labor, Invalids and Social Affairs or provincial-level People's Committees.

b/ For foreign workers specified in Clauses 3, 4 and 5, Article 154 of the Labor Code and Clauses 1, 2, 8, 9, 10, 11, 12 and 13, Article 7 of this Decree, employers are not required to determine their demand for employment of foreign workers.

2. The Ministry of Labor, Invalids and Social Affairs or provincial-level People's Committees shall, within 10 working days after receiving an explanatory report or explanatory report on changes in the demand for employment of foreign workers, issue documents on approval or disapproval of the employment of foreign workers for each job assignment according to Form No. 03/PLI provided in Appendix I to this Decree.

Article 5. Employment of foreign workers by contractors

1. Before recruiting foreign workers, a contractor shall declare the number, professional qualifications and capacity and experience of foreign workers that it/he/she needs to recruit for executing bidding packages in Vietnam, and send a request, made according to Form No. 04/PLI provided in Appendix I to this Decree, for recruitment of Vietnamese workers for job assignments for which it is expected to recruit foreign workers to the chairperson of the provincial-level People's Committee of the locality where the contractor executes such bidding packages.

In case the contractor wishes to make changes in the declared number of workers, the project owner shall certify the contractor's request for changes in the demand for workers, made according to Form No. 05/PLI provided in Appendix I to this Decree.

2. Chairpersons of provincial-level People's Committees shall direct agencies and organizations in their localities to recommend and supply Vietnamese workers for contractors or coordinate with agencies and organizations in other localities in recommending and supplying Vietnamese workers for contractors. Within 2 months, 1 month or 15 days after receiving a request for recruitment of 500 or more Vietnamese workers, a request for recruitment of between 100 Vietnamese workers and under 500 Vietnamese workers, or a request for recruitment of under 100 Vietnamese workers for a contractor, respectively, if it is impossible to recommend or supply Vietnamese workers for the contractor, the chairperson of the concerned provincial-level

People's Committee shall consider and decide to issue a notice, made according to Form No. 06/PLI provided in Appendix I to this Decree, permitting the contractor to recruit Vietnamese workers for the job assignments for which Vietnamese workers cannot be recruited.

3. Project owners shall supervise and request contractors to strictly comply with the latter's declared contents on employment of Vietnamese workers and foreign workers; guide, urge and inspect contractors in implementing regulations on recruitment and employment of foreign workers to work for contractors in accordance with law; monitor and manage foreign workers in implementing regulations; and before July 5 of a year and before January 5 of the subsequent year, send biannual reports and annual reports on employment of foreign workers, made according to Form No. 07/PLI provided in Appendix I to this Decree.

The period for data cut-off for biannual reports shall be counted from December 15 of the year preceding the reporting period to June 14 of the reporting period, and the period for data cut-off for annual reports shall be counted from December 15 of the year preceding the reporting period to December 14 of the reporting period.

4. Annually or extraordinarily, provincial-level Departments of Labor, Invalids and Social Affairs shall assume the prime responsibility for, and coordinate with provincial-level Public Security agencies and Border Guard Commands or related agencies or units of the Ministry of National Defense in border areas, border gates, islands, strategic areas, key areas and important areas in terms of national defense, and related agencies in, inspecting the implementation of regulations by foreign workers working for bidding packages executed by contractors in localities, and report on inspection results to provincial-level People's Committees, the Ministry of Labor, Invalids and Social Affairs, Ministry of Public Security, and Ministry of National Defense.

Article 6. Reporting on employment of foreign workers

1. Before July 5 of a year and before January 5 of the subsequent year, employers of foreign workers shall send biannual reports and annual reports on employment of foreign workers, made according to Form No. 07/PLI provided in Appendix I to this Decree. The period for data cut-off for biannual reports shall be counted from December 15 of the year preceding the reporting period to June 14 of the reporting period, and the period for data cut-off for annual reports shall be counted from December 15 of the year preceding the reporting period to December 14 of the reporting period.

2. Before July 15 of a year and before January 15 of the subsequent year or upon request, provincial-level Departments of Labor, Invalids and Social Affairs shall send to the Ministry of Labor, Invalids and Social Affairs reports on the situation of foreign workers in localities, made according to Form No. 08/PLI provided in Appendix I to this Decree. The periods for data cut-off for biannual reports and annual reports must comply with the Government's regulations on reporting regime applicable to state administrative agencies.

Section 2

FOREIGN WORKERS EXEMPT FROM WORK PERMIT

Article 7. Cases in which foreign workers are exempt from work permit

In addition to the cases specified in Clauses 3 thru 8, Article 154 of the Labor Code, a foreign worker will be exempt from work permit if:

1. He/she is the owner or a capital contributor of a limited liability company with a contributed capital value of VND 3 billion or more.

2. He/she is the chairperson or a member of the Board of Directors of a joint stock company with a contributed capital value of VND 3 billion or more.

3. He/she is an intra-corporate transferee in the 11 service sectors listed in Vietnam's Schedule of World Trade Organization Commitments on Services, including business services, communication services, construction and related engineering services, distribution services, educational services, environmental services, financial services, health related and social services, tourism and travel related services, recreational, cultural and sporting services, and transport services.

4. He/she enters Vietnam to provide professional and technical consultancy services or perform other tasks to serve research, formulation, appraisal, monitoring and evaluation, management and implementation of programs or projects funded with official development assistance (ODA) loans under regulations or agreements in ODA treaties concluded between competent authorities of Vietnam and foreign countries.

5. He/she is granted by the Ministry of Foreign Affairs a license for carrying out media and press activities in Vietnam in accordance with law.

6. He/she is sent by a foreign authority to Vietnam to carry out lecturing or research activities at international schools managed by foreign diplomatic missions or the United Nations or at establishments or institutions established under agreements which Vietnam has signed or acceded to.

7. He/she is a volunteer defined in Clause 2, Article 3 of this Decree.

8. He/she enters Vietnam to work as a manager, an executive, an expert or a technical worker for fewer than 30 days per entry and with no more than 3 entries in a year.

9. He/she enters Vietnam to implement international agreements concluded by central- or provincial-level agencies or organizations in accordance with law.

10. He/she is a student in an overseas school or training institution that has agreements on apprenticeship in agencies, organizations or enterprises in Vietnam; or is an apprentice on board a Vietnamese seagoing ship.

11. He/she is a relative of a staff member of a Vietnam-based foreign representative mission as defined at Point 1, Clause 1, Article 2 of this Decree.

12. He/she holds an official passport to work for a state agency, political organization or socio-political organization.

13. He/she is a person responsible for establishing a commercial presence.

14. He/she is certified by the Ministry of Education and Training as a foreigner entering Vietnam to carry out lecturing and research activities.

Article 8. Certification of foreign workers' eligibility for exemption from work permit

1. The Ministry of Labor, Invalids and Social Affairs or provincial-level Departments of Labor, Invalids and Social Affairs may certify foreign workers' eligibility for exemption from work permit.

2. Employers shall request the Ministry of Labor, Invalids and Social Affairs or provincial-level Departments of Labor, Invalids and Social Affairs of localities where foreign workers are expected to work to certify such workers' eligibility for exemption from work permit at least 10 days before the date these workers start working.

For the cases specified in Clauses 4, 6 and 8, Article 154 of the Labor Code and Clauses 1, 2, 8 and 11, Article 7 of this Decree, it is not required to carry out procedures for certification of foreign workers' eligibility for exemption from work permit but it is required to report to the Ministry of Labor, Invalids and Social Affairs or provincial-level Department of Labor, Invalids and Social Affairs of the locality where a foreign worker is expected to work on the following information: full name, age, citizenship, passport number, and name of the employer of such foreign worker, and starting date and ending date of working, at least 3 days before the date the foreign worker is expected to start working in Vietnam.

The validity period of a certification of exemption from work permit must not exceed 2 years and equal the period stated in one of the cases specified in Article 10 of this Decree. For a re-issued certification, its validity period must not exceed 2 years.

3. A dossier of request for certification of exemption from work permit must comprise:

a/ A written request for certification of a foreign worker's eligibility for exemption from work permit, made according to Form No. 09/PLI provided in Appendix I to this Decree;

b/ A health certificate as specified in Clause 2, Article 9 of this Decree;

c/ A document on approval of the demand for employment of foreign workers, unless it is not required to determine the demand for employment of foreign workers;

d/ A certified copy of the foreign worker's passport that remains valid in accordance with law;

dd/ Papers proving the foreign worker's eligibility for exemption from work permit;

e/ The papers specified at Points b, c and dd of this Clause may be originals or certified copies; foreign-language papers shall be consularly legalized, translated into Vietnamese and certified, unless they are exempt from consular legalization under treaties to which the Socialist Republic of Vietnam and concerned foreign countries are contracting parties or on the principle of reciprocity or in accordance with law.

4. Within 5 working days after receiving a complete dossier of request for certification of exemption from work permit, the Ministry of Labor, Invalids and Social Affairs or provincial-level Departments of Labor, War Invalids and Social Affairs shall issue a certification of exemption from work permit, made according to Form No. 10/PLI provided in Appendix I to this Decree. In case of refusal to issue such a certification, it shall issue a written reply clearly stating the reason.

Section 3

ISSUANCE OF WORK PERMITS

Article 9. Dossier of application for a work permit

1. An employer's application for a work permit, made according to Form No. 11/PLI provided in Appendix I to this Decree.

2. A health certificate issued by a foreign or Vietnamese competent health authority no more than 12 months prior to the date of dossier submission, or a health certificate as prescribed by the Minister of Health.

3. A criminal record certificate or a document certifying that the foreign worker is not the person currently serving a penalty or having his/her criminal convictions net yet expunged or being examined for penal liability, issued by a foreign or Vietnamese competent authority no more than 6 months prior to the date of dossier submission.

4. A document or paper proving that the foreign worker is a manager, an executive, an expert, a technical worker, or a person doing certain occupations and jobs, specifically as follows:

a/ A paper proving that the foreign worker is a manager or an executive as defined in Clause 4 or 5, Article 3 of this Decree;

b/ A paper proving that the foreign worker is an expert or a technical worker as defined in Clause 3 or 6, Article 3 of this Decree, which may be a degree, certificate or certification of the expert's or technical worker's working experience issued by an overseas agency, organization or enterprise;

c/ A document proving a foreign footballer's experience or international transfer certificate (ITC) issued to a foreign footballer or a certification by the Vietnam Football Federation of temporary or official registration of a footballer of a club of the Vietnam Football Federation;

d/ A pilot license issued by a Vietnamese competent authority or issued by a foreign competent authority and recognized by a Vietnamese competent authority, for foreign pilots, or a professional certificate issued by the Ministry of Transport to flight attendants allowing them to work on board the aircraft;

dd/ A certificate of professional qualifications in the field of aircraft maintenance, issued by a Vietnamese competent authority or issued by a foreign competent authority and recognized by a Vietnamese competent authority, for foreign workers performing aircraft maintenance jobs;

e/ A certificate of professional capacity or a paper recognizing a certificate of professional capacity issued by a Vietnamese competent authority to foreign crewmen;

g/ A certificate of high achievements in sports as certified by the Ministry of Culture, Sports and Tourism, for coaches, or one of the following certificates: basic (B) coaching diploma awarded by the Asian Football Federation (AFC) or AFC goalkeeping coaching certificate - level 1, or AFC fitness coaching

certificate - level 1, or AFC futsal coaching certificate - level 1, or any foreign equivalent coaching certificate recognized by the AFC;

h/ A degree awarded by a competent authority showing the foreign worker's satisfaction of requirements on professional qualifications and standard qualifications provided in the Education Law, Law on Higher Education, Law on Vocational Education and Regulation on organization and operation of foreign languages-informatics centers promulgated by the Minister of Education and Training.

5. Two color photos (sized 4 cm x 6 cm, white background, front facing, bareheaded, no sunglasses) taken no more than 6 months prior to the date of dossier submission.

6. A document on approval of the demand for employment of foreign workers, unless it is not required to determine the demand for employment of foreign workers.

7. A certified copy of the foreign worker's valid passport in accordance with law.

8. Papers related to the foreign worker:

a/ For a foreign worker specified at Point b, Clause 1, Article 2 of this Decree, he/she shall produce his/her foreign enterprise's document sending him/her to work at the commercial presence of such enterprise in Vietnam's territory and a document proving that he/she had worked for such enterprise for at least 12 consecutive months before working in Vietnam;

b/ For a foreign worker specified at Point c, Clause 1, Article 2 of this Decree, he/she shall produce a contract or an agreement signed between Vietnamese and foreign partners, which states that the foreign worker works in Vietnam;

c/ For a foreign worker specified at Point d, Clause 1, Article 2 of this Decree, he/she shall produce a service provision contract signed between Vietnamese and foreign partners and a document proving that he/she has worked for a foreign enterprise without commercial presence in Vietnam for at least 2 years;

d/ For a foreign worker specified at Point dd, Clause 1, Article 2 of this Decree, he/she shall produce a service provider's document sending him/her to Vietnam to negotiate on service provision;

dd/ For a foreign worker specified at Point e, Clause 1, Article 2 of this Decree, he/she shall produce a document of the agency or organization sending

him/her to work for a foreign non-governmental organization or an international organization in Vietnam, except the case specified at Point a, Clause 1, Article 2 of this Decree, and the operation license of such foreign non-governmental organization or international organization in Vietnam in accordance with law;

e/ For a foreign worker specified at Point e, Clause 1, Article 2 of this Decree, he/she shall produce a document of the foreign enterprise, agency or organization sending him/her to work in Vietnam as suitable to the job assignment he/she is expected to perform.

9. Dossier of application for a work permit in special cases:

a/ For a foreign worker who has been issued a work permit that remains valid and who wishes to work for another employer in the same job assignment and with the same job title as stated in his/her work permit, a dossier of application for a new work permit must comprise the previous employer's certification that the foreign worker is currently working, the papers specified in Clauses 1, 5, 6, 7 and 8 of this Article, and a certified copy of the current work permit;

b/ For a foreign worker who has been issued a work permit that remains valid and whose job assignment, job title or working form is changed compared to that stated in current his/her work permit but who still works for the previous employer, a dossier of application for a new work permit must comprise the papers specified in Clauses 1, 4, 5, 6, 7 and 8 of this Article and the current work permit or a certified copy thereof.

10. Consular legalization or certification of papers:

The papers specified in Clauses 2, 3, 4, 6 and 8 of this Article may be originals or certified copies; foreign-language papers shall be consularly legalized unless they are exempt from consular legalization under treaties to which the Socialist Republic of Vietnam and concerned foreign countries are contracting parties, or on the principle of reciprocity or in accordance with law; and translated into Vietnamese and certified in accordance with Vietnam's law.

Article 10. Validity period of work permits

The validity period of a work permit must not exceed 2 years, and equals:

1. The term of the labor contract to be signed.
2. The period during which the foreign worker sent to Vietnam by the foreign partner will work.
3. The term of the contract or agreement signed between the Vietnamese and foreign partners.

4. The term of the service provision contract or agreement signed between the Vietnamese and foreign partners.

5. The period stated in the service provider's document sending the foreign worker to Vietnam to negotiate on service provision.

6. The period stated in the operation license of the foreign worker-employing agency, organization or enterprise.

7. The period stated in the service provider's document sending the foreign worker to Vietnam to establish its commercial presence.

8. The period stated in the document proving that the foreign worker is permitted to participate in the operation of a foreign enterprise that has established its commercial presence in Vietnam; or,

9. The period stated in the document on approval of employment of the foreign worker, unless it is not required to make an explanatory report on the demand for employment of foreign workers as specified at Point b, Clause 1, Article 4 of this Decree.

Article 11. Procedures for issuing a work permit

1. At least 15 days before the date a foreign worker is expected to start working in Vietnam, the person who shall submit a dossier of application for a work permit to the Ministry of Labor, Invalids and Social Affairs or provincial-level Department of Labor, Invalids and Social Affairs of the locality where the foreign worker is expected to work is specified as follows:

a/ The employer, in case the foreign worker works in the form specified at Point a, b, e, g, i or k, Clause 1, Article 2 of this Decree;

b/ The Vietnamese agency, organization or enterprise or foreign organization or enterprise operating in Vietnam where the foreign worker will work in the form specified at Point c or d, Clause 1, Article 2 of this Decree;

c/ The foreign worker who enters Vietnam to offer services or the person responsible for establishing a commercial presence in the form specified at Point dd or h, Clause 1, Article 2 of this Decree.

2. Within 5 working days after receiving a complete dossier of application for a work permit, the Ministry of Labor, Invalids and Social Affairs or provincial-level Department of Labor, Invalids and Social Affairs of the locality where the foreign worker is expected to work shall issue a work permit to the foreign worker according to Form No. 12/PLI provided in Appendix I to this Decree. The model work permit shall be uniformly printed and distributed by the

Ministry of Labor, Invalids and Social Affairs. In case of refusal to issue such a work permit, it shall issue a written reply clearly stating the reason.

3. For a foreign worker specified at Point a, Clause 1, Article 2 of this Decree, after he/she is issued a work permit, he/she and his/her employer shall sign a labor contract in written form in accordance with Vietnam's labor law before the date he/she is expected to work.

The employer shall send the signed labor contract to the competent agency that has issued the work permit. Labor contracts may be originals or certified copies.

Section 4

RE-ISSUANCE OF WORK PERMITS

Article 12. Cases in which a work permit may be re-issued

1. The work permit that remains valid is lost.
2. The work permit that remains valid is damaged.
3. The work permit remains valid but the worker's full name, citizenship, passport number or working place stated therein is changed.

Article 13. Dossier of request for re-issuance of a work permit

1. An employer's written request for re-issuance of a work permit, made according to Form No. 11/PLI provided in Appendix I to this Decree.

2. Two color photos (sized 4 cm x 6 cm, white background, front facing, bareheaded, no sunglasses) taken no more than 6 months prior to the date of dossier submission.

3. The issued work permit that remains valid:

a/ If the work permit is lost as specified in Clause 1, Article 12 of this Decree, it is required to obtain the certification of the commune-level public security office of the locality where the foreigner resides or of a competent foreign authority in accordance with law;

b/ If the work permit has its contents changed, supporting papers are required.

4. The document on approval of the demand for employment of foreign workers, unless it is not required to determine the demand for employment of foreign workers.

5. The papers specified in Clauses 3 and 4 of this Article may be originals or certified copies, except the case specified in Clause 1, Article 12 of this

Decree; foreign-language papers shall be consularly legalized and translated into Vietnamese, unless they are exempt from consular legalization under treaties to which the Socialist Republic of Vietnam and concerned foreign countries are contracting parties or on the principle of reciprocity or in accordance with law.

Article 14. Procedures for re-issuing a work permit

Within 3 working days after receiving a complete dossier of request for re-issuance of a work permit, the Ministry of Labor, Invalids and Social Affairs or concerned provincial-level Department of Labor, Invalids and Social Affairs shall re-issue a work permit. In case of refusal to re-issue such a work permit, it shall issue a written reply clearly stating the reason.

Article 15. Validity period of a re-issued work permit

The validity period of a re-issued work permit must equal that of the issued work permit minus the foreign worker's working period counted by the time of request for re-issuance of the work permit.

Section 5

EXTENSION OF WORK PERMITS

Article 16. Conditions for extension of a work permit

1. The work permit remains valid for between 5 days and 45 days.
2. A competent agency approves the demand for employment of foreign workers under Article 4 or 5 of this Decree.
3. There are papers proving that the foreign worker continues to work for the employer under the issued work permit.

Article 17. Dossier of request for extension of a work permit

1. An employer's written request for extension of a work permit, made according to Form No. 11/PLI provided in Appendix I to this Decree.
2. Two color photos (sized 4 cm x 6 cm, white background, front facing, bareheaded, no sunglasses) taken no more than 6 months prior to the date of dossier submission.
3. The issued work permit that remains valid.
4. The document on approval of the demand for employment of foreign workers, unless it is not required to determine the demand for employment of foreign workers.
5. A certified copy of the foreign worker's passport that remains valid in accordance with law.

6. A health certificate specified in Clause 2, Article 9 of this Decree.

7. One of the papers specified in Clause 8, Article 9 of this Decree proving that the foreign worker continues to work for the employer under the issued work permit.

8. The papers specified in Clauses 3, 4, 6 and 7 of this Article may be originals or certified copies; foreign-language papers shall be consularly legalized and translated into Vietnamese, unless they are exempt from consular legalization under treaties to which the Socialist Republic of Vietnamese and concerned foreign countries are contracting parties or on the principle of reciprocity or in accordance with law.

Article 18. Procedures for extending a work permit

1. Between 5 days and 45 days before a work permit expires, the employer shall submit a dossier of request for extension of a work permit to the Ministry of Labor, Invalids and Social Affairs or provincial-level Department of Labor, Invalids and Social Affairs that has issued such work permit.

2. Within 5 working days after receiving a complete dossier of request for extension of a work permit, the Ministry of Labor, Invalids and Social Affairs or provincial-level Department of Labor, Invalids and Social Affairs shall extend the work permit. In case of refusal to extend the work permit, it shall issue a written reply clearly stating the reason.

3. For a foreign worker specified at Point a, Clause 1, Article 2 of this Decree, after his/her work permit is extended, he/she and his/her employer shall sign a labor contract in written form in accordance with Vietnam's labor law before the date he/she is expected to continue working for the employer.

The employer shall send the signed labor contract to the competent agency that has extended such work permit. Labor contracts may be originals or certified copies.

Article 19. Validity period of an extended work permit

The validity period of an extended work permit must comply with Article 10 of this Decree but a work permit may be extended only once for no more than 2 years.

Section 6

REVOCATION OF WORK PERMITS

Article 20. Cases in which a work permit shall be revoked

1. The work permit expires under Clause 1, 2, 3, 4, 5, 6 or 7, Article 156 of the Labor Code.

2. The employer or foreign worker fails to strictly comply with this Decree.

3. While working in Vietnam, the foreign worker fails to strictly comply with Vietnam's law, thus affecting security and social order and safety.

Article 21. Procedures for revoking a work permit

1. For the case specified in Clause 1, Article 20 of this Decree, within 15 days after a work permit expires, the employer shall revoke the work permit and return it to the Ministry of Labor, Invalids and Social Affairs or provincial-level Department of Labor, Invalids and Social Affairs that has issued such work permit, enclosed with a document stating the reason for the revocation, in case the work permit is subject to revocation but cannot be revoked.

2. For the case specified in Clause 2 or 3, Article 20 of this Decree, the Ministry of Labor, Invalids and Social Affairs or provincial-level Department of Labor, Invalids and Social Affairs that has issued the work permit shall issue a decision on revocation of work permit according to Form No. 13/PLI provided in Appendix I to this Decree, and notify such to the employer for the latter to revoke the work permit and return it to the Ministry of Labor, Invalids and Social Affairs or provincial-level Department of Labor, Invalids and Social Affairs that has issued such work permit.

3. Within 5 working days after receiving the revoked work permit, the Ministry of Labor, Invalids and Social Affairs or provincial-level Department of Labor, Invalids and Social Affairs shall send to the employer a written certification of revocation of work permit.

Chapter III

RECRUITMENT AND MANAGEMENT OF VIETNAMESE WORKERS WORKING FOR FOREIGN ORGANIZATIONS OR INDIVIDUALS IN VIETNAM

Article 22. Competence to recruit and manage Vietnamese workers working for foreign organizations or individuals

1. Organizations competent to recruit and manage Vietnamese workers working for foreign organizations or individuals (below referred to as organizations competent to recruit and manage Vietnamese workers) include:

a/ Organizations that are decentralized or authorized or perform tasks assigned or orders placed or carry out bidding activities as assigned by the Ministry of Foreign Affairs;

b/ Organizations that are decentralized or authorized or perform tasks assigned or orders placed or carry out bidding activities as assigned by provincial-level Departments of Labor, Invalids and Social Affairs.

2. The organizations specified at Point a, Clause 1 of this Article may recruit and manage Vietnamese workers who work for:

a/ The foreign organizations specified at Points a, b, c and d, Clause 3, Article 2 of this Decree; and,

b/ Foreign individuals currently working for the foreign organizations specified at Points a, b, c and d, Clause 3, Article 2 of this Decree.

3. The organizations specified at Point b, Clause 1 of this Article may recruit and manage Vietnamese workers who work for:

a/ The foreign organizations specified at Point dd, Clause 3, Article 2 of this Decree; and,

b/ Foreign individuals currently working for the foreign organizations specified at Point dd, Clause 3, Article 2 of this Decree, and foreigners permitted by Vietnamese competent agencies to reside in Vietnam.

Article 23. Dossier of registration for recruitment participation of a Vietnamese worker

1. A registration form for recruitment participation, made according to Form No. 01/PLII provided in Appendix II to this Decree.

2. A certified copy of the worker's birth certificate or people's identity card or citizen identity card.

3. A health certificate issued by a competent health establishment no more than 12 months prior to the date of dossier submission.

4. Certified copies of the worker's degrees and certificates proving his/her professional and technical qualifications and foreign language skills relevant to the job for which he/she makes the registration for recruitment participation. Foreign-language papers shall be consularly legalized, unless they are exempt from consular legalization under treaties to which the Socialist Republic of Vietnamese and concerned foreign countries are contracting parties or on the principle of reciprocity or in accordance with law; and translated into Vietnamese and certified in accordance with Vietnam's law.

Article 24. Order and procedures for recruitment of Vietnamese workers for foreign organizations or individuals

1. When wishing to employ Vietnamese workers, foreign organizations and individuals shall recruit Vietnamese workers by themselves or through employment service centers or labor leasing enterprises or organizations competent to recruit and manage Vietnamese workers.

2. If wishing to recruit Vietnamese workers through an organization competent to recruit and manage Vietnamese workers, foreign organizations and individuals shall send a written request for recruitment of Vietnamese workers to such organization. Such request must clearly state requirements on job assignment, number, professional and technical qualifications and foreign language skills of Vietnamese workers to be recruited, time limit for recruitment, interests and obligations of Vietnamese workers and foreign organizations and individuals while Vietnamese workers work and when they quit jobs for each job assignment.

Within 15 working days after receiving the request from foreign organizations and individuals, the organization competent to recruit and manage Vietnamese workers shall recruit and manage Vietnamese workers. Past the above time limit, if such organization cannot recruit or recommend Vietnamese workers, it shall issue a written reply clearly stating the reason.

3. Within 7 working days after signing a labor contract with a Vietnamese worker, the foreign organization or individual shall send a notice, accompanied by a certified copy of the labor contract signed with the Vietnamese worker and the papers specified in Clauses 2 and 4, Article 23 of this Decree, to the organization competent to recruit and manage Vietnamese workers. Foreign-language labor contracts shall be accompanied by their Vietnamese translations.

Article 25. Responsibilities of Vietnamese workers working for foreign organizations or individuals

1. To observe the labor law of Vietnam.

2. To strictly comply with terms of labor contracts signed with foreign organizations or individuals.

3. To strictly comply with regulations of organizations competent to recruit and manage Vietnamese workers.

Article 26. Responsibilities of Vietnam-based foreign organizations and individuals employing Vietnamese workers

1. To strictly comply with the Labor Code and current regulations.

2. To strictly comply with labor contracts signed with Vietnamese workers.

3. Before December 15 every year or upon request, to send annual reports on recruitment and employment of Vietnamese workers they employ, made according to Form No. 02/PLII provided in Appendix II to this Decree. The period for data cut-off for annual reports shall be counted from December 15 of the year preceding the reporting period to December 14 of the reporting period; the sending of reports is specified as follows:

a/ The foreign organizations and individuals specified at Points a, b, c and d, Clause 3, Article 2 of this Decree shall send reports to the organizations competent to recruit and manage Vietnamese workers defined at Point a, Clause 1, Article 22 of this Decree;

b/ The foreign organizations and individuals specified at Point dd, Clause 3, Article 2 of this Decree shall send reports to the organizations competent to recruit and manage Vietnamese workers defined at Point b, Clause 1, Article 22 of this Decree.

Article 27. Responsibilities of organizations competent to recruit and manage Vietnamese workers

1. To receive dossiers for recruitment registration from Vietnamese workers and written requests for recruitment of Vietnamese workers from foreign organizations and individuals.

2. To recruit, recommend and manage Vietnamese workers working for foreign organizations and individuals.

3. To provide training and further training for Vietnamese workers in accordance with law so that they meet requirements of foreign organizations and individuals.

4. Before December 20 every year or upon request, to send reports on recruitment and management of Vietnamese workers working for foreign organizations and individuals in Vietnam, made according to Form No. 03/PLII provided in Appendix II to this Decree. The period for data cut-off for annual reports shall be counted from December 15 of the year preceding the reporting period to December 14 of the reporting period; the sending of reports is specified as follows:

a/ Organizations that are decentralized or authorized or perform tasks assigned or orders placed or carry out bidding activities as assigned by the Ministry of Foreign Affairs in recruitment and management of Vietnamese workers working for foreign organizations and individuals shall send reports to the Ministry of Foreign Affairs;

b/ Organizations that are decentralized or authorized or perform tasks assigned or orders placed or carry out bidding activities as assigned by provincial-level Departments of Labor, Invalids and Social Affairs in recruitment and management of Vietnamese workers working for foreign organizations and individuals shall send reports to provincial-level Departments of Labor, Invalids and Social Affairs.

5. To propose competent agencies or persons to handle agencies, organizations and individuals that violate this Decree.

6. To perform other tasks as prescribed by law.

Article 28. Responsibilities of employment service organizations and labor leasing enterprises

Before December 15 every year or upon requests, employment service organizations and labor leasing enterprises shall send reports on supply or lease of Vietnamese workers for Vietnam-based foreign organizations and individuals, made according to Form No. 04/PLII provided in Appendix II to this Decree, to organizations competent to recruit and manage Vietnamese workers. The period for data cut-off for annual reports shall be counted from December 15 of the year preceding the reporting period to December 14 of the reporting period.

Chapter IV

IMPLEMENTATION PROVISIONS

Article 29. Effect

1. This Decree takes effect on February 15, 2021.

2. The Government's Decree No. 11/2016/ND-CP of February 3, 2016, detailing a number of articles of the Labor Code regarding foreign workers in Vietnam (below referred to as Decree No. 11/2016/ND-CP), which was amended and supplemented under the Government's Decree No. 140/2018/ND-CP of October 8, 2018, amending and supplementing the Decrees concerning business investment conditions and administrative procedures within the scope of state management by the Ministry of Labor, Invalids and Social Affairs (below referred to as Decree No. 140/2018/ND-CP), and the Government's Decree No. 75/2014/ND-CP of July 28, 2014, detailing a number of articles of the Labor Code regarding recruitment and management of Vietnamese workers working for Vietnam-based foreign organizations and individuals, cease to be effective on the date this Decree takes effect.

3. Transitional provisions:

a/ Such papers as documents on approval of the employment of foreign workers, certifications of exemption from work permit, and work permits issued or re-issued under Decree No. 11/2016/ND-CP, which was amended and supplemented under Decree No. 140/2018/ND-CP, may continue to be used until they expire;

b/ Labor contracts for foreign workers in Vietnam already signed and still valid before the effective date of this Decree may continue to be performed until the expiration of work permits issued under Decree No. 11/2016/ND-CP, which was amended and supplemented under Decree No. 140/2018/ND-CP.

Article 30. Implementation responsibility

1. Responsibilities of the Ministry of Labor, Invalids and Social Affairs:

a/ To approve the demand for employment of foreign workers; to certify exemption from work permit; issue, re-issue, extend and revoke work permits for foreign workers working for the employers specified at Point g, Clause 2, Article 2, and agencies and organizations specified at Points d and e, Clause 2, Article 2, of this Decree that are established under permission of the Government, Prime Minister, ministries or sectors;

b/ The employers specified at Point a, Clause 2, Article 2 and having their head offices based in a province or city but having their representative offices or branches based in another province or city, and the employers specified at Point dd, Clause 2, Article 2 of this Decree may choose to obtain approval of the demand for employment of foreign workers; certification of exemption from work permit; and issuance, re-issuance, extension and revocation of work permits at the Ministry of Labor, Invalids and Social Affairs;

c/ To perform the state management of recruitment and management of foreign workers in Vietnam and Vietnamese workers working for foreign organizations or individuals in Vietnam;

d/ To assume the prime responsibility for, and coordinate with ministries and sectors in, annually or extraordinarily supervising, assessing, examining and inspecting related agencies, organizations and enterprises to see how they observe the law on foreign workers in Vietnam and Vietnamese workers working for Vietnam-based foreign organizations or individuals;

dd/ To assume the prime responsibility for, and coordinate with ministries, sectors, and central agencies and localities in, guiding and disseminating this Decree, and collecting information, carrying out research and evaluating the implementation of this Decree;

e/ To summarize and report to the Prime Minister information on foreign workers in Vietnam and Vietnamese workers working for foreign organizations or individuals upon request;

g/ To propose the handling of, or handle agencies, organizations and individuals that violate this Decree.

2. Responsibilities of the Ministry of Foreign Affairs:

a/ To assume the prime responsibility for, and coordinate with central agencies and localities in, guiding and disseminating regulations on recruitment and management of Vietnamese workers working for Vietnam-based foreign organizations or individuals under its management;

b/ To manage organizations that are decentralized or authorized or perform tasks assigned or orders placed or carry out bidding activities as assigned by the Ministry of Foreign Affairs in the recruitment and management of Vietnamese workers working for Vietnam-based foreign organizations or individuals;

c/ To guide the recruitment and management of Vietnamese workers working for the foreign organizations or individuals specified at Points a, b, c and d, Clause 3, Article 2 of this Decree;

d/ Before December 30 every year or upon requests, to send to the Ministry of Labor, Invalids and Social Affairs annual reports on recruitment and management of Vietnamese workers working for foreign organizations or individuals under its management, made according to Form No. 03/PLII provided in Appendix II to this Decree. The period for data cut-off for annual reports must comply with the Government's regulations on reporting regime applicable to state administrative agencies.

3. Responsibilities of the Ministry of National Defense:

To coordinate with agencies competent to manage foreign workers, Vietnamese workers working for foreign organizations or individuals and foreign organizations and individuals employing Vietnamese workers in implementing regulations on assurance of security and social order and safety in border areas, border gates, islands, strategic areas, key areas, and important areas in terms of national defense.

4. Responsibilities of the Ministry of Public Security:

a/ Monthly, to provide the Ministry of Labor, Invalids and Social Affairs with information on foreign workers who are issued visas coded LD, LV, DN or DT to work for agencies, organizations or enterprises;

b/ To coordinate with agencies competent to manage Vietnamese workers working for Vietnam-based foreign organizations or individuals and foreign organizations and individuals employing Vietnamese workers in implementing regulations on assurance of security and social order and safety.

5. Responsibilities of provincial-level People's Committees:

a/ To manage, and guide local agencies and organizations to implement regulations on, foreign workers in Vietnam and Vietnamese workers working for Vietnam-based foreign organizations or individuals;

b/ To direct local functional agencies to propagandize and disseminate, and carry out examination and inspection and handle violations of, the law on recruitment and management of foreign workers and Vietnamese workers working for foreign organizations or individuals in their localities;

c/ To direct local agencies and organizations in recommending and supplying Vietnamese workers for contractors;

d/ To decide to permit contractors to recruit foreign workers for job assignments for which local Vietnamese workers cannot be recruited;

dd/ To approve job assignments for which it is allowed to employ foreign workers in localities or assign authorized agencies to do so.

6. Responsibilities of provincial-level Departments of Labor, Invalids and Social Affairs:

a/ To approve the demand for employment of foreign workers; to certify exemption from work permit; issue, re-issue, extend and revoke work permits for foreign workers working for the employers specified at Points a, b, c, h, i, k and l, Clause 2, Article 2, and the agencies and organizations specified at Points d and e, Clause 2, Article 2, of this Decree that are established by provincial-level People's Committees, specialized agencies of provincial-level People's Committees or district-level People's Committees;

b/ The employers specified at Point a, Clause 2, Article 2 and having their head offices based in a province or city but having their representative offices or branches based in another province or city, and the employers specified at Point dd, Clause 2, Article 2 of this Decree may choose to obtain approval of the demand for employment of foreign workers; certification of exemption from work permit; and issuance, re-issuance, extension and revocation of work permits at provincial-level Departments of Labor, Invalids and Social Affairs;

c/ Upon receiving dossiers of request for issuance, re-issuance or extension of work permits or certification of foreign workers' eligibility for exemption

from work permit, to make entries in a book for monitoring foreign workers, made according to Form No. 14/PLI provided in Appendix I to this Decree, and issue a receipt to employers. Such receipt must clearly state the date of receipt of the dossier, papers included in the dossier, and time limit for reply;

d/ If refusing to certify exemption from work permit or refusing to issue, re-issue or extend work permits, to issue a written reply according to Form No. 15/PLI provided in Appendix I to this Decree;

dd/ To assume the prime responsibility for, and coordinate with local agencies in, guiding and disseminating this Decree;

e/ To perform the state management of foreign workers in Vietnam and recruitment and management of Vietnamese workers working for foreign organizations or individuals under local management;

g/ To manage organizations that are decentralized or authorized or perform tasks assigned or orders placed or carry out bidding activities as assigned by provincial-level Departments of Labor, Invalids and Social Affairs in the recruitment and management of Vietnamese workers working for foreign organizations or individuals;

h/ To inspect, examine and supervise the implementation of regulations on foreign workers in Vietnam and recruitment and management of Vietnamese workers working for foreign organizations or individuals under local management;

i/ Before December 30 every year or upon requests, to send to the Ministry of Labor, Invalids and Social Affairs reports on recruitment and management of Vietnamese workers working for foreign organizations or individuals under their management, made according to Form No. 03/PLII provided in Appendix II to this Decree. The period for data cut-off for annual reports must comply with the Government's regulations on reporting regime applicable to state administrative agencies.

7. Ministers, heads of ministerial-level agencies, heads of government-attached agencies, chairpersons of provincial-level People's Committees, and related agencies, organizations and individuals shall implement this Decree.-

On behalf of the Government

Prime Minister

NGUYEN XUAN PHUC

** The Appendices to this Decree are not translated.*