

Alert on immigration

February 2022

From 01 January 2022, the Vietnam Government has re-opened international commercial flights to many territories in the world and loosened the quarantine requirements for foreigners entering into Vietnam. With the significant cover rate of vaccination in the country, Vietnam is optimistic in minimizing the impact of the COVID-19 pandemic while gradually opening its borders to help boost the economic recovery and look to future growth. In this regard, when the COVID-19 pandemic is well controlled, some regulations which were issued to support businesses and foreigners during the COVID-19 pandemic may be removed (including potentially Resolution 105¹) and the immigration requirements for foreigners revert back to pre-pandemic norm. Highlighted below are key points to note in the current environment:

1. Current and potential changes in entry permit requirements for foreigners

- From 01 January 2022, Vietnam has gradually re-opened commercial flights to different destinations. This change gives more flight options to foreigners to arrive in Vietnam. From the 15th February 2022, the Civil Aviation Authority of Vietnam have stated that a full schedule of international flights will resume.
- Foreigners, Vietnamese overseas and their dependents who have temporary resident cards, visa and visa exemption, are no longer required to get entry permit approvals (including personnel check, approval from the provincial people committees and approval from the immigration authorities) to enter Vietnam
- Tourists are still required to enter Vietnam through trial package tours while other foreigners without valid visa/TRC/visa exemption certificate are still required to obtain entry approvals from the provincial People's Committee. However, the quarantine rules have been relaxed giving more favorable conditions for foreigners to choose flight destination and quarantine place in Vietnam.
- It is expected that entry approval for all travelers to Vietnam will be removed by 15 March 2022 according to the joint proposal of relevant competent authorities to the Government on 15 February 2022, leaving a visa being the only approval requirement to enable foreigners to enter Vietnam. There will also be no trial package tours for tourists from that date. Also stated in the proposal is that the e-visa, unilateral and bilateral visa exemption schemes shall be resumed from 15 March 2022.

2. Potential foreign labour compliance risks and challenges post COVID-19 pandemic

- The expected removal of entry permit approval will attract foreigners to Vietnam for different purposes (i.e. business travel, working, investing, studying). From a labor perspective the local DOLISA² will have stricter supervision or management over the increasing number of foreigners in Vietnam post the COVID-19 pandemic in accordance with Decree 152³. The authorities may resume regular foreign labor audits which were postponed during the COVID-19 situation to have better control on the work permit compliance of foreign workers in Vietnam.
- Resolution 105 is one of the Government's means to support enterprises and businesses during the COVID-19 pandemic and relaxed some of the requirements of Decree 152. It is hoped that the Government will extend the provisions in Resolution 105 post the pandemic but there is no certainty that the relaxation of all or some of the conditions under resolution 105 will remain. As such regulations on work permit application could revert to the stricter standards and regulations mandated

¹ Resolution No.105/NQ-CP dated 09 September 2021 on provision of assistance for enterprises, cooperatives, household businesses amid covid-19 pandemic

² DOLISA means Department of Labour, War Invalids and Social Affairs

³ Decree No. 152/2020/ND-CP dated 30 December 2020 guiding foreign workers working in Vietnam, recruitment and management of Vietnamese workers working for foreign employers in Vietnam

by Decree 152, with the original purpose to prioritise the use of local workforce and limit the number of unqualified foreigners entering Vietnam to work, namely:

- the degree/qualification and the relevant experience must link to the position the foreign expert/ technician has applied for in Vietnam;
- the flexibility for work permit holders to work at multiple locations for a temporary period of up to 6 months without having to obtain another work permit as regulated in Resolution 105 was not mentioned in Decree 152. This could again result in challenges for businesses when mobilizing their foreign labour to work at multiple locations;
- While Resolution 105 benefited the processing of recent work permit applications and its potential removal might cause certain difficulties for businesses as mentioned above, certain provisions in Decree 152, which have not have been thoroughly implemented due to the complication of Covid-19 to date, are likely now to be implemented and might also trigger compliance risk for businesses, specifically:
 - Mechanism for information provision of visa sponsored by the businesses from the Ministry of Public Security to MOLISA⁴ for supervision of foreign labour in Vietnam;
 - Bi-annual reporting requirement on foreign labour working for/working with the businesses to DOLISA;
 - Periodical or unscheduled foreign labour audits carried out by provincial DOLISA in collaboration with relevant competent authorities to supervise the use of foreign labour of foreign contractors in the specific provinces.
- From 1 January 2022, eligible foreign individuals working in Vietnam and their employers are required to fully participate in compulsory social insurance program. It is important for businesses and the individual employees to review their work permit and the relevant application dossiers to determine if the relevant employees are required to make compulsory social insurance contributions in Vietnam to ensure compliance.
- Decree 12⁵ on administrative penalties on violations on labour, social insurance, Vietnamese labour working overseas issued on 17 January 2022 to replace Decree 28⁶ reaffirms penalties on violations on using foreign labour, including violation on reporting, inconsistency among labour documents, working without work permit/exemption certificates. The penalties include monetary fines and deportation of foreign labour depending on level of the violations.

KPMG notes

To prepare for potential foreign labour audits and to confirm the compliance status while using foreign labour, businesses are recommended to revisit the company's mobility rules, work permit/work permit exemption certificates and other labour documents and identify if there is any non-compliant/inconsistent documents/information that might trigger compliance risks in a future audit.

Please contact KPMG should you need our support in reviewing your labour compliance status while sponsoring your foreign labour to visit/work in Vietnam.

⁴ MOLISA means Ministry of Labour - Invalids and Social Affairs

⁵ Decree No.12/2022/ND-CP dated 17 January 2022 on administrative penalties for violations arising from labor, social insurance and sending Vietnamese workers abroad under contracts

⁶ Decree No. 28/2020/ND-CP dated 01 March 2020 on administrative penalties for violations arising from labor, social insurance and sending Vietnamese workers abroad under contracts

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