

Alert on Immigration

September 2023



On 18 September 2023, the Vietnam Government issued the long-awaited Decree No. 70/2023/ND-CP (amended Decree No. 70), amending some articles of Decree 152/2020/ND-CP dated 30 December 2020 with regard to foreign workers working in Vietnam and management of Vietnamese laborers working for foreign organizations or individuals in Vietnam.

Highlighted below are certain notable points pertaining to foreign workers working in Vietnam:

1. Notable easing of regulations in relation to conditions for work permits/work permit exemption certificates

- 1.1. The relevance between the education/training background and the job position that foreign employees will undertake in Vietnam has been removed. According to the amended Decree No.70, for expert position there is no longer the requirement that the university degree must be relevant with the experience and the job position that the foreign employees will work in Vietnam. Further, for skilled workers, the requirement that the training field must be relevant to their experience and the job position in Vietnam is also removed. Also, as well as the degree, a graduation certificate is accepted as educational evidence for experts.
- 1.2. Other than the certificate of experience issued overseas, the amended Decree No.70 also indicates that a work permit or work permit exemption certificate issued in the past can also be used as evidence for work experience of the foreign worker.
- 1.3. The amended Decree No.70 further clarifies the definition and required documents to evidence for executive positions. Executive officers are now defined as:
 - (i) heads of branches, representative offices, business locations; and,
 - (ii) heads and those who directly supervise a division belonging to an organisation/business and under the direction of the head of the organization/business.
- 1.4. Sponsor's certification on a copy of the passport of foreign labour is now accepted, as an alternative to the requirement of a notarized true copy of the document. In this regard, foreign labour can complete their work permit application overseas prior to coming to Vietnam to work instead of coming to Vietnam to hand-in their original passport for notarization purposes. Therefore, the sponsoring organization can submit their work permit application in advance of their arrival.
- 1.5. When recruiting foreign lawyers and foreign labour married to Vietnamese citizens, their employers in Vietnam will no longer need to obtain approval on using foreign labour from labour management authorities. Foreign labour married to Vietnamese citizens will now need to submit the application dossiers to obtain a work permit exemption certificate. Accordingly, their employers in Vietnam can sponsor for their work visa/temporary resident card in Vietnam such that they will not need to fly out of Vietnam every six months if staying in Vietnam under a dependent visa under the sponsorship of their spouse.
- 1.6. For foreign labour entering Vietnam to work in positions of managers, executives, principals, deputy principals for educational institutions established under the proposal of a foreign diplomatic representative agency or intergovernmental organization, they will also be entitled to obtain a work permit exemption certificate as for the foreign teachers of the same organizations.
- 1.7. It is noted that the conditions for foreign teachers remain unchanged.

2. Notable changes relating to the application procedure, the foreign labour management authority and reporting responsibilities

- 2.1. From 01 January 2024, 15 days prior to submitting the application for using foreign labour to the labour management authorities, businesses using foreign labour must submit the job posting for the positions they intend to use foreigners through the electronic information portal of the Ministry of Labor, War Invalids and Social Affairs (Department of Employment) or electronic information portal of the Employment Service Center established by the provincial People's Committee. The requirement will be applied to all positions that businesses wish to use foreign labour, regardless of whether the foreigners will be under intra-corporation transfer or locally hired.
- 2.2. Another notable change of the amended Decree No.70 is in relation to the working location of the foreign labour.
 - (i) In the case where the intention is for foreign labour to work in different locations, all work locations must be included in the application.
 - (ii) In the case the foreign labour works for one employer in different locations in different provinces, within three working days from the starting date of the employee's work, the employer must notify electronically to the Ministry of Labor, War Invalids and Social Affairs and the respective provincial Department of Labor, War Invalids and Social Affairs about the work arrangement.
- 2.3. The management authorities of economic zones or industrial zones are no longer responsible for the issuance of work permits or work permit exemptions for foreign labour. The responsibilities now revert to the Ministry of Labor, War Invalids and Social Affairs and the provincial Department of Labor, War Invalids and Social Affairs.
- 2.4. The amended Decree No.70 also restates that the management of recruitment and management of foreign workers will be implemented in a unified way from central to local levels and the Ministry of Public Securities will, on a monthly basis inform the Ministry of Labor, War Invalids and Social Affairs about foreigners entering Vietnam using business, working and investment visas for supervision purposes.

The amended Decree No.70 takes effect from 18 September 2023 except for the provision on job posting which will take effect from 01 January 2024.

KPMG notes

The relaxation of some of the requirements to obtain a work permit in the amended Decree No.70 is very welcome. However, the additional requirement and condition for recruitment of foreigners could cause some concern to businesses.

In respect of particular aspects of the amended Decree:

- The documentation requirements for executive positions appear more extensive than in the past and further clarification is expected to be sought as to the documentation requirements.
- There is still uncertainty about where the application for a work permit for a foreigner working in multiple provinces need to be submitted, to Ministry of Labor, War Invalids and Social Affairs or whether the employer can choose to submit the application at either Ministry of Labor, War Invalids and Social Affairs or Department of Labor, War Invalids and Social Affairs .
- The requirement for a job posting on the electronic portal of the competent authorities will add a further administrative burden to businesses using foreign labour and might also trigger some concerns if the recruited position is sensitive or confidential.
- In addition, the consistency between the job posting publicly at the electronic portal of the competent authorities and the explanation in the application will be important for assessment if the application for using foreign labour for the specific position is acceptable or not.
- The reemphasis of the role of the Ministry of Public Security in co-ordinating with the labour authority highlights the increasing co-operation between the relevant authorities in managing foreign labour in Vietnam.

As a result of the implementation of the amended Decree businesses are suggested to revisit your mobility policies and recruitment plans to align with the changes in the regulations. Also, it is further noted that as the amended Decree No.70 is newly issued, please expect different interpretations from different local labour management authorities until the unification from central to local levels is fully implemented.

Please contact KPMG should you need further discussion on the impact of the changes on the businesses' mobility plan.

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