



GMS Flash Alert

Immigration Edition

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Vietnam – New Immigration Practices Affecting Foreign Labour in Vietnam

As we reported in a previous [GMS Flash Alert](#), Vietnam announced the reopening of borders for international travel from 15 March 2022.¹ Since then, labour and immigration measures have changed gradually to meet the requirements of the new situation and to be in-line with current applicable regulations. These changes, in-turn, will affect the travel of foreign workers to Vietnam and the mobility policies of businesses in Vietnam.

WHY THIS MATTERS

In parallel with certain measures that have enabled international tourists to enter Vietnam (see [GMS Flash Alert 2022-065](#), 21 March 2022), a number of immigration practices – which were loosened to support foreign nationals who were staying/stuck in Vietnam during the COVID-19 crisis – have been adjusted/tightened to be in line with current immigration and labour regulations.

Also, recent developments/challenges from certain provincial labour authorities indicate that the authorities are also stepping up the review process for work permit applications for foreign workers in Vietnam.

The changes, which have immediate effect and without prior notice, may cause delays for businesses in mobilising and on-boarding foreign experts to Vietnam. This, in turn, may cause business disruption due to a potential shortage of suitable personnel to fill the roles necessary in a timely manner.

Businesses should evaluate the latest immigration measures to determine whether any changes to global mobility plans for assignments to/in Vietnam are in order.

Changes to Visa Issuance for Business Travellers

Visa Issuance at Border Checkpoints Is Strictly Controlled

Under current immigration law, visa issuance at border checkpoints (visa on arrival) is granted only for special cases:

- The foreign national departs from a country that does not have any Vietnamese-visa issuing authority;
- The foreign national has had to stop in multiple countries before arriving in Vietnam;
- The foreign national comes to Vietnam to take a tour organised by an international tourism company in Vietnam;
- Foreign crew-members of a ship anchoring at a Vietnamese port and who wish to leave Vietnam through another border checkpoint;
- The foreign national comes to Vietnam to attend the funeral of his/her relative, or to visit a gravely ill relative;
- The foreign national comes to Vietnam to deal with an emergency, rescue, prevention of natural disasters, epidemics, or for another purpose at the request of a competent authority of Vietnam.

During the COVID-19 crisis, Vietnam's immigration authorities allowed for "visa on arrival" for a number of other cases as it was difficult to obtain a visa at Vietnamese embassies overseas.

However, recently it has been observed that a visa on arrival is strictly controlled and deemed appropriate only for cases as noted above, with certain explanation/evidence to prove the eligibility of the passport holder.

Challenges When Obtaining (i) a Business Visa of Over 29 Days or (ii) Extending a Temporary Stay in Vietnam

According to current labour regulations, expatriates coming to Vietnam to hold a position of expert, manager, technician, or CEO but staying in Vietnam for less than 30 days and no more than three trips per year are exempt from the requirement to obtain a work permit.

However, immigration regulations allowed foreign nationals without a work permit to be granted a business visa (i.e., DN visa) with validity of up to 90 days to enter and stay in Vietnam during the period of validity of the visa.

KPMG NOTE

Due to the inconsistency between the above regulations, expatriates might obtain a business visa for 90 days and stay in Vietnam for more than 30 days without flying out every 29 days or obtaining a work- permit.

However, recently it has been observed that in order to align the immigration regulations with the labour regulations, certain provincial immigration departments have additionally required that if seeking a business visa with a duration from 30 days to 90 days for an individual, businesses must prove that the specific foreign employee is in the process of obtaining a valid work permit in order to work for a long term in Vietnam.

In addition to the above, for expatriates who have already entered Vietnam with a business visa which is going to expire, if a work permit is not ready or not going to be issued, businesses and the relevant expatriates cannot ask for a temporary stay extension for the expatriates to stay any longer in Vietnam. Instead, the expatriates must fly out of Vietnam then fly in again for another business visa to be granted.

Steps/Opportunities to Consider

Given the above tightening of immigration practice, businesses and their expatriates should plan the expatriates' travel such that they reserve enough time for the expatriates to obtain the relevant visa at a Vietnamese embassy overseas or to prepare proper explanation/supporting documents for the immigration authority if intending to obtain a visa on arrival.

Also, the above practices could negatively affect the travel plans of foreign workers coming to Vietnam, especially for those (i) who want to travel as soon as possible due to the urgent need of a Vietnam-based project and want to stay for a long term in Vietnam but do not have proper documentation ready for a work permit application; or, (ii) who are currently working in Vietnam with a business visa but their work permits are not readily available.

As such, businesses are recommended to, where possible, plan for business travel well in advance, to always stay up to date with the changes, and double check with the relevant provincial authorities to adjust mobility plans accordingly.

Enhancing the Management of Foreign Labour in Vietnam

Work Permit Regulations Are Being Stringently Interpreted with Further Evidence Requested to Support Applications

In accordance with current labour regulations, businesses can only employ foreign nationals to hold the position of manager, executive director, expert, and technical worker for roles where a Vietnamese individual cannot meet the requirements for that role.

Recently, certain provincial labour authorities have requested further evidence to support that a Vietnamese individual cannot fill a role.² As a result, in addition to a strong written justification as to why a foreign employee must fill the role (as previous practice), businesses must further provide evidence that the need for the use of foreign labour is real and the businesses cannot find a suitable candidate among the local talent pool to fill the role.

The evidence requested has included the following:

- Businesses placing advertisements for the recruitment for the specific position are required to prove that they have tried to recruit local talent;
- Supporting documents to prove that local talent was recruited but could not meet the requirements for the role or have terminated a labour contract and the business must find foreign talent to fill the role;
- Supporting documents evidencing that the business proposes to recruit local talent through a labour supply vendor or job centre but could not find suitable candidates.

In addition, the provincial labour authorities may request the following documents to support the demand for talent for the operation of the business and that the business has a plan to train local talent to replace foreign labour in the positions:

- a foreign employee "usage plan" and a training plan which shows a succession plan for a Vietnamese employee to take over the position of the foreign employee;
- documents describing project progress and demand for talent to prove that the demand for the applied position is real.

KPMG NOTE

These changes may create challenges to businesses intending to recruit foreign employees to work in Vietnam and in turn may prolong the work permit application process.

Provincial Authorities Are Exchanging Information among Foreign Labour Management Authorities to Enhance the Management of Foreign Labour

Recently, some provincial labour management authorities are enhancing the management of foreign labour.

Danang People Committee on 14 September 2022, issued Decision No. 2425/QDD-UBND about Rules on co-operation among related labour management authorities to enhance the management of foreign labour in the province, including reporting on the status of management of foreign labour staying and working in the province and the audit and post-work-permit issuance check at businesses to make sure there is compliance in recruiting and use of foreign labour. In addition, Danang DOLISA is authorised to co-ordinate with other related authorities to build a single software that can manage foreign labour in the province which is accessible by all related authorities for foreign labour management purposes.

Certain districts in Hanoi are also carrying out labour audits for businesses using foreign labour to check the compliance status of the businesses using that foreign labour.

KPMG NOTE

As labour practices are changing over-time without prior notice and the relevant immigration and labour regulations are being applied stringently, it is recommended that businesses, where possible, plan for the assigning of personnel and business travel well in advance to avoid disruption to operations due to shortages of suitable and available personnel. Also, mobility and recruitment procedures should be revisited to capture the changes in work permit application practices.

In addition, as there will be more mechanisms to manage and supervise the use of foreign labour working in Vietnam and foreign labour audits are likely to be in depth and more frequent, businesses should review their internal foreign labour policies for compliance purposes.

FOOTNOTES:

1 Socialist Republic of Viet Nam Government News website, "[Travel regulations relaxed as Viet Nam fully resume tourism](#)."

2 As noted in a guideline of the provincial DOLISA, by means of a PowerPoint file provided during a meeting between the competent authorities and representatives of enterprise in Ho Chi Minh City.

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Contact us

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