

GMS Flash Alert

Immigration Edition

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Vietnam – Modified Rules Facilitating Work Permits, Management of Foreign Labour

The Vietnamese government issued Decree No. 70 on conditions for work permit applications and procedures, which are expected to significantly impact the recruitment and mobility policies of businesses using foreign labour. This action followed pressure from the business community aiming to remove difficulties and obstacles around the granting of work permits for foreign labour working in Vietnam, while enhancing the state’s management of that foreign labour.

On 18 September 2023, Decree No.70/2023/ND-CP (Decree No.70),¹ amending a number of articles of Decree No.152/2020/ND-CP (Decree No.152) was issued. Decree No. 70 takes effect from 18 September 2023, except for the provision on job postings, which will take effect from 1 January 2024.

WHY THIS MATTERS

During the implementation of Decree No. 152 on work permits for foreign labour, many businesses, through foreign chambers of commerce, embassies, and business fora were calling for the amendment and relaxation of the strict rules as provided for in the Decree which had been causing difficulties for businesses and individual foreign national workers in obtaining the legal documents necessary for work in Vietnam.

The amendments to Decree 152 have been set out in Decree No. 70, which was issued with the purpose of creating open and favourable conditions – in accordance with international practices and the actual situation in Vietnam – for businesses/organisations to recruit highly-skilled foreign labour for positions that Vietnamese workers cannot meet. The other purpose of Decree No. 70 is to enhance the state management of foreign labour working in Vietnam.

As such, there are a number of notable points in Decree No. 70 that will impact work permit conditions and procedures and the management of foreign labour in Vietnam, which businesses will need to take on board where their mobility policies are concerned.

Notable Easing of Regulations in Relation to Conditions for Work Permits/Work Permit Exemption Certificates

Relaxation on documents evidencing educational background

The relation between an individual's educational/training background and the job position that the foreign national employee will undertake in Vietnam has been removed. According to Decree No.70, there is no longer a requirement for expert positions that the university degree be related to the experience of the foreign national employee and the job position that the foreign national employee will work in Vietnam. Further, for skilled workers, the requirement that the training must be related 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 foreign national experts.

Previous work experience in Vietnam recognised

As well as the certificate of experience issued overseas, Decree No.70 also stipulates that a work permit or work permit exemption certificate issued in Vietnam in the past can also be used as evidence for the work experience of the foreign national worker.

Copy of passport certified by Vietnamese entity is accepted

A sponsor's certification of a copy of the passport of a foreign national worker is now accepted as an alternative to the requirement of a notarised true copy of the document. Foreign national workers can now complete their work permit applications overseas prior to coming to Vietnam to work instead of coming to Vietnam to hand in their original passports for notarisation purposes in person. Therefore, the sponsoring organisation can submit the work permit application in advance of the individual's arrival.

Simplified requirement for foreign national lawyers and foreign nationals married to a Vietnamese spouse and more choice of visa for foreign nationals married to a Vietnamese spouse

When recruiting foreign national lawyers and foreign national workers married to Vietnamese citizens, their employers in Vietnam will no longer need to obtain approval for hiring/bringing in foreign labour from the labour management authorities. This will reduce significantly the required time and administrative work for the employers of these individuals.

A foreign national worker married to a Vietnamese citizen will now need to submit an application dossier to obtain a work permit exemption certificate. Accordingly, the employer in Vietnam can sponsor the individual's work visa/temporary resident card in Vietnam and he or she can stay legally in Vietnam throughout the validity of the documents. This option is more convenient in comparison to the dependent visa sponsored by the individual's Vietnamese spouse which requires that person to fly out of Vietnam every six months.

Relaxation for foreign nationals in education field

Foreign labour entering Vietnam to work in positions of manager, executive, principal, and deputy principal for educational institutions established under the aegis of a foreign diplomatic representative agency or intergovernmental organisation – they were required to have a work permit – will be entitled to obtain a work permit exemption certificate just as foreign teachers at the same organisations are currently allowed to do. The application dossiers for a work permit exemption certificate will be simpler than that of applying for a work permit.

It is noted that the conditions for foreign national teachers remain unchanged.

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The relaxation of some of the requirements to obtain a work permit in the amendments under Decree No.70 is very welcome. However, certain areas of the regulations must be clarified during implementation. Discrepancies in the application of certain rules in different provinces will be expected during early application of the Decree.

Specifically in respect of the above changes, clarification is expected to be sought on the following:

- The documentation requirements for executive positions as they appear more extensive than in the past.
- Which documents are required for applications for work permit exemptions for foreign national workers married to Vietnamese citizens. Specifically, whether they are required to provide supporting documents evidencing their expertise and experience, in addition to the document(s) to prove their marriage status with their Vietnamese spouse.

Further, since conditions for work permits for foreign teachers remain unchanged, further guidance is expected from the Ministry of Education and Training.

Public Job Postings for Local Talent Required Prior to Application to Use Foreign Labour

During the implementation of Decree No.152, provincial DOLISA (Department of Labour, War Invalids and Social Affairs), from time to time, might request evidence that businesses have tried, but failed to find local talent prior to submitting the application for the use of foreign labour. The evidence, among others, would be the job advertisement.

From 1 January 2024, under new regulations, 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 foreign national workers for through the electronic information portal of the MOLISA (Ministry of Labour, War Invalids and Social Affairs) or electronic information portal of the Employment Service Centre established by the provincial People's Committee. The requirement will be applied for all positions for which the business wishes to use foreign labour, regardless of whether the foreign labour will be under an intra-corporate transfer or locally hired.

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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 in terms of the assessment of the application for use of the foreign labour to determine if the specific position is acceptable or not.

More Clarity Required for Those Working in Different Locations at the Same Time for Management Purposes

Another notable change of Decree No.70 is in relation to the working location of the foreign national worker:

- (i) In cases where the intention is for the foreign national worker to work in different locations, all work locations must be included in the application.
- (ii) In case the foreign national worker works for one employer in different locations in different provinces, within three working days from the starting date of his or her work, the employer must notify MOLISA electronically and the respective provincial DOLISA about their work arrangement.

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Decree No.70 provides for additional declaring/reporting obligations.

The Decree remains unclear on where to submit the application for a work permit for a foreign national working in multiple provinces, i.e., the application needs to be submitted to MOLISA or whether the employer can choose to submit the application to either MOLISA or DOLISA.

If the submission is to MOLISA, it will trigger difficulties for businesses where their staff responsible for the application are not in Hanoi (location of MOLISA). Meanwhile, if the application is made at a provincial DOLISA, certain concerns arise relating to the power of that provincial DOLISA to grant a license to work in the other province not under their supervision.

Businesses operating in construction or green energy with sites/plants in different provinces are those mainly impacted by the above regulations as their foreign national experts tend to be mobilised to work across those provinces. Therefore, clarification/guidance is expected for proper implementation.

Changes Relating to the Management of Foreign Labour Working in Vietnam

Power to issue work permits withdrawn from management authorities of economic zones or industrial zones

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. These responsibilities now only rest with the Ministry of Labour, War Invalids and Social Affairs and the provincial Department of Labour, War Invalids and Social Affairs.

Co-operation among competent authorities

Decree No.70 also restates that the management of recruitment and management of foreign national workers will be implemented in a standardised way from central to local levels and the Ministry of Public Securities, on a monthly basis, will inform the Ministry of Labour, War Invalids and Social Affairs about foreign nationals entering Vietnam using business, working, and investment visas for purposes of supervision.

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With the power to issue work permits and manage foreign labour working in Vietnam recalled to the MOLISA and DOLISA, it is expected that the regulations will be implemented carefully and consistently among the labour management authorities.

Further, the re-emphasis of the role of the Ministry of Public Security in coordinating with the labour authority highlights the increasing cooperation between the relevant authorities in managing foreign labour in Vietnam.

FOOTNOTE:

1 To see Decree No.70/2023/ND-CP (in Vietnamese) on the Vietnam government website, click [here](#).

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Contact us

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