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New Guiding Decree on Labor Outsourcing Services in Vietnam

In the February issue of *Informed Counsel*, we discussed labor outsourcing, a new form of labor supply for Vietnam, introduced by the new Labor Code. While labor outsourcing did exist in practice in Vietnam before the new Labor Code came into force on May 1, 2013, it had been technically illegal until legislation relating to it was introduced.

On May 22, 2013, the Vietnamese government issued Decree No. 55/2013/ND-CP detailing the new Labor Code's provisions on labor outsourcing. The key points of Decree 55, which took effect on July 15, 2013, are discussed below.

Labor Outsourcing – For Limited Types of Work Only

The most notable aspect of Decree 55 is that it restricts labor outsourcing services to only 17 job categories, including:

1. Interpreters, translators, and stenographers
2. Administrative assistants
3. Receptionists
4. Tour guides
5. Sales support staff
6. Project support staff
7. Programmers of production machine systems
8. Manufacturers/installers of broadcasting and telecommunications equipment
9. Staff that operate, inspect, and/or repair construction machinery or electrical systems in manufacturing
10. Cleaning and sanitation staff for buildings and factories
11. Document editors
12. Bodyguards and security guards
13. Staff for marketing and customer care via telephone
14. Financial and tax consultants
15. Automotive mechanics
16. Industrial scanners/drafters and interior decorators
17. Drivers

In addition, the duration of the labor outsourcing may not exceed 12 months and may not be extended. This limitation on duration is placed upon the outsourced employee and not the enterprise providing the outsourced employee; thus, it would not be possible to switch enterprises to circumvent the 12-month limitation. The law, however, does not appear to limit replacing the outsourced laborer with another after the 12 months have elapsed.

Financial Commitments

The “sublessor,” defined as “an enterprise licensed to conduct labor outsourcing” and being the enterprise providing employees, must pay a deposit or “escrow” of VND 2 billion (approximately USD 95,000) into a blocked bank account prior to the commencement of labor outsourcing. The escrow serves as a security for the outsourced employee and may be used toward payment of unpaid salaries, statutory insurance contributions, and/or compensation for damages should the sublessor breach any of its obligations pursuant to the labor contract.

The sublessor is further required to have a legal capital (i.e., statutory capital) of VND 2 billion. It is unclear, however, whether the legal capital must be contributed in addition to the aforementioned escrow. Furthermore, additional requirements apply with respect to sublessors that are joint venture companies with a foreign partner. The foreign partner must: (1) be an entity specializing in labor subleasing services with share capital and assets amounting to at least VND 10 billion (approximately USD 476,000); (2) have at least five years of experience in labor outsourcing services; and (3) have a certificate of good standing issued by the company's country of origin.

Additional Requirements and Limitations

The office of the employee sublessor must be “stable,” though Decree 55 fails to define what constitutes this “stable” condition. The likely intention of the law drafters is that the office address of an employee sublessor should not be frequently changed. Along these lines, Decree 55 further requires that if it is a leased office, then the lease term must be at least two years.

In order to provide labor outsourcing services, the sublessor must obtain a license from the Ministry of Labor, War Invalids, and Social Affairs. The timeline for the issuance of such a license is 30 business days from the date the Ministry receives a valid application. A license is issued for a maximum of 36 months, but may be renewed. Each renewal, however, may not last for more than 24 months, and the maximum number of renewals is two.

A sublessor must pay salary to an outsourced employee at least equal to the salary that the subleasing employer pays its employees who have the same professional qualifications and are doing the same job or a job of the same value. A sublessor is also prohibited from:

- ▶ Collecting fees from an outsourced employee;
- ▶ Subletting an employee without his or her consent;
- ▶ Subletting an employee for a job not included in the list of permitted jobs set out above; and
- ▶ Subletting an employee to a parent company or subsidiary of the sublessor, or a company which belongs to a group in which the sublessor is also a member.

Companies using outsourced employees (i.e., subleasing employees) are prohibited from:

- ▶ Collecting fees from the outsourced employee;
- ▶ Subletting the outsourced employee to another company; and
- ▶ Using an outsourced employee for a job not included on the list of permitted jobs set out above.

Further Clarity Is Needed

It is unclear whether manufacturing companies (both domestic and foreign-invested companies) operating in industrial or processing zones, which have a high labor demand for a short period of time, may use outsourced employees in order to meet business demands. Arguably, the vaguely worded jobs of “sales support” and “project support” mentioned in points (5) and (6) above could apply in such circumstances, in the absence of further clarification from the government.

Decree 55 provides important clarifications regarding labor outsourcing activities in Vietnam, including the list of jobs for which labor outsourcing is permitted, statutory guarantee amounts, legal capital, and the requirements for obtaining a labor outsourcing license. However, more guidelines are needed from the labor authorities, as vague provisions remain in the Labor Code of Vietnam. 