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New Decree on Foreign Workers in Vietnam

Following adoption of the new Labor Code (in force since May 1, 2013), the government of Vietnam recently issued Decree 102/2013/ND-CP (Decree 102) elaborating the Labor Code's provisions on foreign nationals working in the country. Under Decree 102, which took effect on November 1, 2013, employers using foreign workers will be required to submit an annual "foreign labor demand report" to the local authorities. While the Decree adds some clarity with regard to issuance and reissuance of work permits and eligibility for work permit exemption, some uncertainties remain as to its application and interpretation.

Work Permit Eligibility

To qualify for a work permit in Vietnam, a foreign worker must, among other conditions: (1) be capable of civil acts; (2) undergo a health check (in his/her home country or in Vietnam); and (3) have a clean criminal record. Under the previous decree on foreign workers, those who qualified as *managers*, *executive officers*, or *experts* were eligible for work permits. Decree 102 retains those categories but adds the new category of *technicians*, defined as those who have undergone technical training for at least one year and have worked in their field for at least three years.

The Decree defines foreign "experts" as: (1) workers who are recognized by a foreign country as experts, or (2) workers having at least an engineering degree, bachelor's degree, or the equivalent, and at least five years of working experience in the field in which they were trained. But the Decree does not clarify how a foreign worker is to be recognized as an "expert" in a foreign country or what kind of proof is required, nor does it define "managers" or "executive officers."

New "Foreign Labor Demand Report" Requirement

While it is indeed a positive development that Decree 102 expands the list of foreign workers eligible for a work permit, the procedure for obtaining one has become more complicated with the requirement of an annual "foreign labor demand report."

Decree 102 confirms the Labor Code's provisions that employers (with some exceptions) are to report their demand for foreign workers in respect of positions for which qualified Vietnamese workers cannot be found. These reports must be sent annually by the employer to the Chairman of the provincial People's Committee, which is to issue written approval to the employer for employing foreign workers for each position. This written approval must be submitted along with the work permit application for each foreign worker. If the employer's need for foreign workers changes, it must notify the Chairman of the provincial People's Committee of such changes.

Additional Categories for Work Permit Exemption

The Labor Code already exempts certain categories of

foreign workers from the work permit requirement, such as capital-contributing members or owners of limited liability companies, members of the board of management of shareholding companies, and lawyers licensed by the relevant Vietnamese authority. Decree 102 adds to this list a number of new categories, including: (1) those who have been licensed by the Ministry of Foreign Affairs to act as journalists; (2) teachers at international schools under the management of diplomatic missions or international organizations; (3) volunteers; and (4) persons with master's degrees or higher who come to Vietnam for a maximum of 30 days to provide consultancy services, to teach, or to conduct research at universities.

Foreign nationals entering Vietnam to work for a period of less than three months, however, are no longer exempted from the work permit requirement, as was the case under the previous law. As a result, foreign nationals coming to Vietnam must, in accordance with Decree 102, have a work permit or business visa regardless of how long they intend to work in Vietnam (unless otherwise exempted).

Decree 102 also introduces some changes as to the procedure for obtaining a work permit exemption. The foreign national's employer must request the relevant labor authority to *certify* in writing that the foreign national satisfies the conditions for exemption. Previously, the employer had only to *report* to the labor authorities that the foreign worker was eligible for an exemption. In order to obtain a work permit exemption certificate, however, the applicant is no longer required to legalize the foreign documents in the application file—only translation into Vietnamese and a relatively simple authentication process in Vietnam of such documents is required. Moreover, fewer documents are required in order to obtain a confirmation of a work permit exemption. Previously, the same set of documents required for a work permit was required for a work permit exemption. It is not entirely clear, however, which documents must be provided, but interestingly, the Decree appears not to require that a copy of the approved "foreign labor demand report" be submitted.

Replacing an Expired Work Permit

The new Labor Code abolished the possibility of applying for *extension* of expired work permits; the maximum term of a work permit is now two years. However, under Decree 102, a foreign worker whose work permit will expire may apply for *reissuance* of the work permit. The duration of a reissued work permit is, again, a maximum of two years. A work permit that has expired shall be reissued within three business days from the date the relevant authorities receive a complete application for reissuance.

Another positive change introduced by Decree 102 is that the employer, in the case of expired work permits, will not have to submit a training contract for a Vietnamese national to replace the foreign employee in order to obtain a reissued work permit.

Conclusion

While Decree 102 contains some positive developments, such as expanding the categories of workers eligible for a work permit, and workers exempted from the same, the process of obtaining a work permit or a work permit exemption appears to have tightened up under the new Decree. Moreover, the Decree lacks clarity as to the interpretation of certain terms, as well as the documents required for work permit applications or exemptions. A circular on foreign workers, expected to be issued later this year, may provide some clarity and guidance in this regard. 🍷