

VISAS AND WORK PERMITS FOR EXPATRIATES IN VIETNAM

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GLOSSARY

BCC	Business Cooperation Contract
CSS	Contractual Service Supplier
DOLISA	Department of Labor, War Invalids and Social Affairs
FIE	Foreign Invested Enterprise
MOLISA	Ministry of Labor, War Invalids and Social Affairs
MPS	Ministry of Public Security
NGO	Non-Government Organization
ODA	Official Development Aid
PRC	Permanent Residence Card
RO	Representative Office
SSP	Service Sales Person
TRC	Temporary Residence Card
WTO	World Trade Organization

VISAS AND WORK PERMITS FOR EXPATRIATES IN VIETNAM¹

This paper outlines regulations governing the entry and immigration of expatriates to work for a foreign or Vietnamese entity in Vietnam.

A. ENTRY AND IMMIGRATION

The regulations governing immigration and residency for expatriates in Vietnam are provided in the following legal documents:

- Law No. 47/2014/QH13 on Entry, Exit, Transit and Residence of Expatriates in Vietnam (“**Immigration Law**”) as amended by Law No. 51/2019/QH14 dated November 25, 2019 (“**Amended Immigration Law**”);
- Circular No. 04/2015/TT-BCA of the Ministry of Public Security (“**MPS**”) dated January 5, 2015, providing the forms on Entry, Exit, Transit and Residence of Expatriates in Vietnam; and
- Circular No. 31/2015/TT-BCA of the MPS dated July 6, 2015 providing guidance for foreigners on visas, temporary residence, exit and entry permits and permanent residence.

1. Entry visa

1.1 General background

According to the Immigration Law, an expatriate may enter Vietnam if he is granted an entry visa. To obtain an entry visa, the expatriate must meet the following conditions:

- have a passport or laissez-passer;
- be invited or sponsored by an organization or individual in Vietnam, or by the head of the overseas visa-issuing authority of Vietnam;
- be on a white-list to enter Vietnam; and
- hold papers evidencing a qualified purpose to enter into Vietnam, such as: a work permit for a foreign employee, an investment certificate with respect to a foreign investor, a practice license with respect to a foreign lawyer, etc.

A visa must be granted to each expatriate who enters Vietnam, except for (i) visas issued

¹ This book has been written and updated by lawyers from Russin & Vecchi. It is current through August 2020.

A new Labor Code (No. 45/2019/QH14 issued by the National Assembly on November 20, 2019) will come into effect on January 1, 2021 (the “**New Labor Code**”). To the extent that the New Labor Code changes current practice, we have changed the text to reflect the changes brought about by the New Labor Code.

to children under the age of 14 who will receive a visa jointly with their parent or guardian, and (ii) visas issued in accordance with a list approving foreigners visiting or transiting by sea and for tourism organized by an international travel agency in Vietnam, or members of certain foreign military ships.

An expatriate will apply for a visa based on his occupation, status, or intended travel purpose. Each visa category has a maximum duration ranging from 30 days to five years, unless otherwise specified in an international agreement. Under the Immigration Law, there are 27 specific visa categories. We focus only on visas with a commercial, tourist or related purpose.

Visa Categories	Description	Visa Duration
<i>Group 1: Working Visas</i>		
<i>Group 1A: Expatriate enters to work with a Vietnamese Authority, a Non-Government Organization (“NGO”), or a Foreign Trader</i>		
NN1	Visa for a foreign head of either a Representative Office (“RO”) or of a project of an international organization or foreign NGO	Up to 12 months
NN2	Visa for a foreign head of an RO/branch of a foreign trader, an RO of other foreign economic, cultural, or professional organization	Up to 12 months
NN3	Visa for an expatriate who will work for a foreign NGO, RO/branch of a foreign trader or an RO of other foreign economic, cultural, or professional organizations	Up to 12 months
<i>Group 1B: Expatriate enters to work with Vietnamese parties/companies</i>		
DN1	Visa for an expatriate who will work with an enterprise or other organization which is a legal entity under Vietnamese law	Up to 12 months
DN2	Visa for an expatriate who will offer services, establish a commercial presence or conduct other activities recognized by international treaty	Up to 12 months
LD1	Visa for an expatriate working in Vietnam who is exempt from a work permit, except in a case where a treaty of which Vietnam is a member provides otherwise	Up to 2 years
LD2	Visa for an expatriate who will work in Vietnam and who requires a work permit	Up to 2 years
<i>Group 2: Professional Visas</i>		
LS	Visa for a foreign lawyer practicing in Vietnam	Up to 5 years
DT1	Visa for a foreign investor or a representative of a foreign organization which invests in Vietnam with capital contribution with a value of at least VND 100 billion or which invests in a business with incentives or in a region entitled to incentives	Up to 5 years
DT2	Visa for a foreign investor or a representative of a foreign organization which invests in Vietnam with a capital contribution from VND 50 billion to less than	Up to 5 years

	VND 100 billion or which invests in businesses encouraged for investment	
DT3	Visa for a foreign investor or a representative of a foreign organization which invests in Vietnam with a capital contribution from VND 3 billion to less than VND 50 billion	Up to 3 years
DT4	Visa for a foreign investor or a representative of a foreign organization which invests in Vietnam with a capital contribution of less than VND 3 billion	Up to 12 months
PV1	Visa for a foreign journalist who has permanent residence in Vietnam	Up to 12 months
PV2	Visa for a foreign journalist who will work for a short period of time in Vietnam	Up to 12 months
Group 3: Other Visas		
DH	Visa for an expatriate who will study or for an internship	Up to 12 months
HN	Visa for an expatriate who will attend a convention or conference	Up to 3 months
DL	Visa for a foreign tourist	Up to 3 months
TT	Visa for an expatriate who either is a spouse or is a child under-18-years of an expatriate holding LV1/LV2/LS/DT1/DT2/DT3/NN1/NN2/DH/PV1/LD1/LD2 visa, or is a parent, spouse, or child of a Vietnamese citizen	Up to 12 months
VR	Visa for an expatriate who visits his relatives or for other purposes	Up to 6 months
EV	Electronic visa (e-Visa) for an expatriate who holds a valid passport (of a country satisfying the following conditions: has diplomatic relations with Vietnam, [the issuance of e-visa] conforms with Vietnamese policies on socio-economic development and diplomacy, and poses no threat to Vietnamese defense, national security, social safety and social order), and does not fall within the categories of NG1, NG2, NG3 and NG4 visas	Up to 30 days ²

Vietnam made broad commitments as part of its WTO accession³ (“**Vietnam’s WTO Commitments**”) with regard to the immigration of expatriates working as managers, executives or experts in a foreign “**commercial presence**”⁴ in Vietnam. In particular, Vietnam has made the following commitments:

- An expatriate recruited by the commercial presence of a foreign entity to take the position of “manager”, “executive” or “expert” may obtain an entry visa with a

² E-visa is valid for a single entry.

³ Vietnam committed to World Trade Organization (“WTO”) on November 7, 2006, and the WTO Commitments took effect on January 11, 2007.

⁴ This is an awkward term, but it is used in Vietnam’s WTO commitments and best encompasses both commercial entities and commercial offices that are not juridical entities.

duration of up to three years, renewable subject to his term of employment in Vietnam, in which:

A “**Manager**” or “**executive**” is a person who manages a foreign invested enterprise (“**FIE**”), or a branch or the RO of a foreign trader, or a business cooperation contract (“**BCC**”), and reports only to the board of directors or shareholders. Management responsibilities include directing the FIE, the branch or the RO, or the office of the BCC themselves, or directing a department, division or independent unit. Management responsibilities also consist of supervising the performance of other supervisory, professional, or managerial staff, including recruiting and dismissing staff. Oddly, it appears that a manager or an executive can only manage the “supply” of services or production, but cannot provide the services or be involved in production. This is limiting in certain businesses. For example, a software, architectural, or similar service provider in which a manager both manages the operations and provides services to their clients appears not to qualify.

An “**Expert**” is a person who has qualifications at an advanced level of expertise or who has knowledge of services, research equipment, techniques, or management.

- An expatriate transferred from abroad to work for the commercial presence of a foreign entity in the position of “manager”, “executive”, or “expert” may obtain a renewable entry visa with a duration of more than three years.

The difference between the Immigration Law and Vietnam’s WTO Commitments is the duration of the visa for an expatriate employed by a Vietnamese company (under visa categories LD1 and LD2 in Group 1B of the table above). Under the Immigration Law, visas can only be issued for a maximum of two years; this term can be three years or more under Vietnam’s WTO Commitments. According to the Amended Immigration Law, it appears that the difference has been eliminated, as it provides that the visa term will be issued in accordance with applicable treaties--that is possibly three years.

1.2 Purpose of Entry

The purpose of a visa cannot be converted to another purpose, except in the four following cases.

The visa holder:

- is an investor or the representative of a foreign investor which is an organization;
- has documents proving his/her relationship as the parent, spouse, or child of the sponsoring person;
- has been invited or is sponsored by an organization to work and has a work permit or a work permit exemption;
- entered Vietnam using an electronic visa and has a work permit or a work permit

exemption.

In order to convert his/her visa in such cases, (without the need to exit Vietnam) the visa holder must apply for a visa with a new purpose.

A visa may be renewed provided that conditions on which the original visa was issued continue.

1.3 Visa exemptions

Under Article 12 of the Immigration Law, a visa is not required if the expatriate:

- is eligible for a visa exemption in accordance with international agreements to which Vietnam is a member;
- holds a residence permit (see Section A.2 below);
- enters a border-gate economic zone or special administrative-economic unit;
- enters a coastal economic zone⁵;
- is eligible for a unilateral visa exemption; or
- is an overseas Vietnamese holding a passport or a laissez-passer issued by a foreign government or agency and foreigners who are the spouse or children of such a foreigner; is the spouse or child of a Vietnamese citizen who is granted visa-free entry under Government regulations).

a. Exemption from visas under international agreements, protocols, etc.

As of July 2020, Vietnam has entered into entry visa exemption agreements with 87 countries.⁶ However, most of these agreements only grant exemptions to persons with diplomatic or public affairs passports.

Entry visa exemptions for persons holding ordinary passports and staying in Vietnam for 30 days or less are granted under agreements with Cambodia, Laos, Thailand, Malaysia, Indonesia, the Philippines, Singapore, Kyrgyzstan, and Chile. Citizens from Brunei are exempt from visas if they enter and stay in Vietnam for less than 15 days. Such exemptions are also granted to citizens of Russia, Japan, Republic of Korea (South Korea), Denmark, Sweden, Norway, Finland and Belarus if they hold ordinary passports and if they stay in Vietnam for 15 or fewer days. All of this is set out in Resolution No. 117/NQ-CP issued on December 9, 2019. This Resolution is scheduled to expire on December 31, 2022.

⁵ What qualifies as a coastal economic zone is decided by the Government. Generally, the following conditions must exist: having an international airport; having separate air space; having a defined geographical border, and is separate from the mainland.

⁶<https://lanhsuvietnam.gov.vn/Lists/BaiViet/B%3%A0i%20vi%20E1%BA%BFt/DispForm.aspx?List=dc7c7d75%2D6a32%2D4215%2Dafeb%2D47d4bee70eee&ID=306>

In this regard, the Government issued Resolution No. 54/NQ-CP dated May 10, 2018, for citizens of the United Kingdom, France, Germany, Spain, and Italy, as long as the term of temporary residence in Vietnam does not exceed 15 days. This Resolution is scheduled to expire on June 30, 2021, but it can be extended.

b. Exemption from visas for expatriates who are overseas Vietnamese

Under Decree No. 82/2015/ND-CP of the Government dated September 24, 2015, an overseas Vietnamese does not need a visa if he has obtained a certificate of visa exemption issued either by a Vietnamese diplomatic office abroad or by the Immigration Department of the MPS. A person with such a certificate may stay in Vietnam for up to six months upon each entry.

In order to be granted a certificate of visa exemption, a person must meet the following conditions:

- Has a passport or another international travel document that is valid for at least one more year;
- Has documents proving that he is an overseas Vietnamese or is the spouse/child of an overseas Vietnamese or of a Vietnamese citizen;
- Not banned or suspended from entry or exit under the Immigration Law.

In order to apply for such a certificate, an overseas Vietnamese must present one of the following documents:

- Birth certificate; or
- Decision to permit renunciation of Vietnamese nationality or certification of loss of Vietnamese nationality;
- Other documents showing/proving previous Vietnamese nationality.

In case there are no papers proving that the applicant is of Vietnamese origin residing overseas, the Vietnamese diplomatic office abroad will examine any documents which applicant can present to show that he is of Vietnamese origin, to decide whether to accept the application.

A visa exemption will also be issued to the spouse and children of an overseas Vietnamese. Evidence of the relationship is required. A certificate of visa exemption for an overseas Vietnamese and his spouse or children is valid for up to five years and must be at least six months shorter than the remaining term of his passport or of his international travel document. Of course, the certificate is renewable.

2. Residence permit

2.1 Temporary Residence Card (“TRC”)

An expatriate who has entered Vietnam with an appropriate visa may apply for a TRC from the Immigration Department. With a TRC, an expatriate may stay and travel in and out of Vietnam without a visa while his TRC remains valid.

The Immigration Law classifies TRCs into several categories similar to visa categories. There are 14 categories of TRCs. Four different terms apply to TRCs. For example, a foreign investor or a representative of a foreign organization which invests in Vietnam with a capital contribution of VND 100 billion or more or which invests in a business with incentives or in a region with incentives may obtain a 10-year TRC; a foreign investor or a representative of a foreign organization which invests in Vietnam with a capital contribution of VND 50 billion to less than VND 100 billion or which invests in a business encouraged for investment, a foreign lawyer or an overseas student may obtain a five-year TRC; a chief representative of a foreign trader’s RO/branch may obtain a three-year TRC; and a foreign employee may obtain a two-year TRC.

If an expatriate works for an FIE or under a BCC as a manager, an executive or an expert, he may obtain a TRC under the more favorable terms specified in Vietnam’s WTO Commitments. In this regard, the law distinguishes between the case of an intra-company transfer and the normal recruitment of an expatriate. In particular:

- A manager, executive, or expert who has transferred from abroad to work for the commercial presence of a foreign entity in Vietnam may receive an extendable TRC with an initial term of three years. To qualify, the employee must have been employed by the foreign enterprise for at least 12 months before being transferred to work in Vietnam.
- A manager, executive, or expert who is recruited by the commercial presence of a foreign entity may be granted a TRC for the duration of his employment contract or for an initial period of three years, whichever is shorter. A TRC may be extended, subject to the duration of the employment contract.

The term of a TRC for someone with a work permit depends on the term of the work permit and the validity of his passport, whichever term is shorter.

2.2 Permanent Residence Card (“PRC”)

A PRC may be granted to an expatriate who has a legal residence and earns a stable living in Vietnam, as follows:

- An expatriate who contributes to the development and protection of Vietnam and is awarded a medal or title by the Government;
- An expatriate who has resided temporarily in Vietnam for three or more consecutive years, and is sponsored by his parent, spouse, or child who is a Vietnamese citizen and has permanent residence in Vietnam;

- Foreign scientists or experts who temporarily reside in Vietnam and are recommended by the Minister or head of a ministerial or governmental agency in their fields; and
- Persons who have no nationality and have resided temporarily in Vietnam since before 2000.

An expatriate holding a PRC may stay in Vietnam without a visa. Ironically, a PRC must be re-issued every ten years.

3. Transit and Exit

An expatriate is granted transit through Vietnam if he presents the following documents:

- a ticket showing the next destination after Vietnam; and
- a visa issued by the competent authorities of the next destination.

An expatriate may exit Vietnam if he does not fit one of several categories that relate to business, employment, marriage, or family matters.

The Immigration Department may compel an expatriate to exit if he fails to leave Vietnam upon expiration of his temporary residence permit. If there is a reason that relates to national defense, national security, or social order, the Minister of either National Defense or MPS may compel the expatriate to exit.

B. EMPLOYMENT OF EXPATRIATES IN VIETNAM

The employment and management of expatriates working in Vietnam is regulated by the following legal documents:

- Labor Code No. 10/2012/QH13 issued by the National Assembly on June 18, 2012 (“*Labor Code*”)⁷;
- Decree No. 11/2016/ND-CP dated February 3, 2016 of the Government detailing implementation of a number of articles of the Labor Code regarding foreign employees (“*Decree 11*”);
- Decree No. 140/2018/ND-CP dated October 8, 2018 of the Government amending Decrees related to business conditions and administrative procedures under the management of the Ministry of Labor, War Invalids and Social Affairs (“*MOLISA*”) (“*Decree 140*”);
- Circular No. 40/2016/TT-BLDTBXH of MOLISA dated October 25, 2016 promulgating guidance on a number of articles of Decree 11 (“*Circular 40*”);
- Circular No. 18/2018/TT-BLDTBXH of MOLISA dated October 30, 2018 amending and supplementing certain articles of Circulars related to administrative procedures under the State management of MOLISA (“*Circular 18*”);
- Circular No. 35/2016/TT-BCT of the Ministry of Industry and Trade dated December 28, 2016 regarding foreign employees seconded to enterprises belonging to one of the eleven services on the list of Vietnam’s WTO Commitments (“*Circular 35*”);
- Resolution No. 47/NQ-CP of the Government dated July 8, 2014 related to the Government’s regular session of June 2014 (“*Resolution 47*”).

1. Employment of expatriates

1.1 Approval for recruitment of expatriates

An employer (other than a contractor) must determine that there is a need for an expatriate because Vietnamese citizens do not qualify. It must then file a report to explain the absence of Vietnamese employees and the need to employ an expatriate. It must do so 30 calendar days or more prior to the proposed recruitment. The report must be filed with and approved by the provincial People’s Committee⁸ or by MOLISA⁹. This is a

⁷ The Labor Code is effective until December 31, 2020. It will be replaced by a New Labor Code. Hence, we have included here points that will become law when the New Labor Code comes into effect.

⁸ Under Circular 40 (as amended by Circular 18), the provincial DOLISA is authorized by the provincial People’s Committee to consider and approve the request for employment of expatriates.

⁹ Under Circular 40 (as amended by Circular 18), MOLISA is the authority which approves requests for employment of expatriates by the following employers:

- (a) Central state authorities; central authorities of political organizations, social-political organizations, social-political-professional organizations, social organizations, and social-professional organizations;

compulsory first step in order for an expatriate to be issued a work permit. Such a filing is normally routinely approved.

1.2 Exemption from Approval to recruit expatriates

An employer is not required to request approval from the provincial People's Committee or MOLISA (see Section B.1.1 above) in certain circumstances:

The expatriate:

- (i) is head of either the RO or a project operated by an international organization or by a foreign NGO in Vietnam;
- (ii) enters and stays in Vietnam for less than three consecutive months to offer services;
- (iii) enters and stays in Vietnam for less than three consecutive months to handle complicated technical or technological problems that affect or could affect production/business, and these problems cannot be adequately addressed within Vietnam;
- (iv) is a foreign student who is studying in Vietnam;
- (v) works as a manager, executive director, expert or technician for a period of less than 30 consecutive days and the accumulated working period in Vietnam will be no more than 90 cumulative days in one year;
- (vi) is a student studying in a foreign school or institution having an agreement for an internship in agencies, organizations, and enterprises in Vietnam; or
- (vii) is a relative of a member of a foreign representative agency in Vietnam who is exempt from obtaining a work permit under an international treaty to which Vietnam is a party.

In those circumstances in which approval to recruit an expatriate is not required, expatriates described in items (ii), (iii), (v) and (vii) will not be required to obtain a work permit nor an exemption (see second paragraph of Section B.2 below).

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- (b) Foreign non-governmental organizations and international organizations in Vietnam;
 - (c) Affiliates of ministries, ministerial-level agencies, governmental agencies; organizations, other than public service suppliers, established by the Government, Prime Minister; Hanoi National University and Ho Chi Minh City National University;
 - (d) Offices of international organizations or of foreign projects in Vietnam;
 - (e) Enterprise Associations lawfully incorporated in Vietnam;
 - (f) Employers operating pursuant to the Law on Enterprises, Law on Investment or pursuant to an international treaty of which Vietnam is a member, whose headquarters are located in a province or centralized city, but whose representative offices and branches are located in other provinces or central cities.

1.3 *Qualifications to obtain a work permit*

Decree 11 sets out a number of conditions that an expatriate must meet in order to be issued a work permit. In particular:

- An expatriate must have full capacity of civil acts;¹⁰
- His health must be appropriate for the required working conditions;
- An expatriate must hold the position of manager, executive director, expert or technician;
- The expatriate must not: (i) have a criminal record that involves a national security offense or (ii) be subject to criminal prosecution or be under criminal sentence under Vietnamese or foreign law; and
- The employer must receive approval to recruit an expatriate (see Section B.1.1 above).

Under Decree 11, a “**manager**” means the manager of an enterprise as described in the Law on Enterprises¹¹ or the head or deputy head of an agency or organization. An “**executive director**” is an executive who is the head of and who directly runs a subsidiary of an agency, organization or enterprise. A manager or an executive director is authorized to give instructions within an enterprise and its subsidiaries, and supervise and control performance of experts, supervisors, and staff. An “**expert**” is a person (i) having a certificate from an agency, organization or enterprise overseas confirming that he is an expert, **or** (ii) having a university degree or higher or their equivalent *and* having at least three years’ working experience in the specialty in which he was trained. The experience must relate to the position that the expatriate will fill in Vietnam. In special cases, where this condition is not satisfied, the Prime Minister may consider and decide. A “**technician**” is a person who has received at least one year of training in his technical or other specialty *and* has at least three years experience working in the specialty in which he was trained.

1.4 *Numerical limit*

There is no limitation on the number of expatriates that can be employed by an employer.

1.5 *Form of employment*

An expatriate who qualifies as a manager, executive director, expert, or technician can

¹⁰ One condition for full capacity of civil acts is that he must be 18 years of age or older (Articles 20 of Civil Code No. 91/2015/QH13 dated November 24, 2015).

¹¹ The Law on Enterprises at Article 4.24, provides that the “Manager of an enterprise means a manager of a company or a manager of a private enterprise, comprising the owner of a private enterprise, a partner of a partnership, the chairman of a members’ council, a member of a members’ council, the president of a company, the chairman of a board of management, a member of a board of management, a director or general director, and an individual holding another managerial position who is authorized to enter into transactions of the company in the name of the company as stipulated in the charter of the company.”

work in Vietnam under any of the following circumstances:

(a) Recruited by an entity in Vietnam

An entity in Vietnam, including a foreign entity's commercial presence or a Vietnamese entity, can recruit a qualified expatriate to work for it as a manager, executive director, expert, or technician under a labor contract.

(b) Under a secondment

A foreign entity may transfer a manager, executive director, expert, or technician ("*intra-company transferee*") to its commercial presence in Vietnam. To do so, the intra-company transferee must have been employed by the foreign entity for at least 12 consecutive months.

(c) Performance of contract

An expatriate may work in Vietnam to perform a contract between a foreign entity and a Vietnamese counterparty when the contract requires the use of the expatriate's services. Types of such contracts involve economic, commercial, financial, banking, insurance, scientific and technical, cultural, sporting, educational, vocational training and medical health matters.

(d) Contractual service supplier ("*CSS*")

Decree 11 does not define a CSS. However, under Circular 40, the following conditions and requirements apply to a CSS who is an employee of an offshore entity and enters into Vietnam on behalf of the offshore entity, to render services for a Vietnamese counterparty:

- A service contract must have been agreed to by the offshore entity and the Vietnamese counterparty;
- The CSS must have been employed by the foreign entity for a period of at least two years; and
- The CSS must meet the requirements to be classified an expert as discussed in Section B.1.3 above.

(e) Service salesperson ("*SSP*")

Under Circular 40, an SSP is an expatriate employee who neither lives in Vietnam, nor receives remuneration from any source in Vietnam. The SSP will participate as a representative of an offshore service provider in negotiations in respect of the service of that provider, as long as he neither directly sells the service to the public nor directly provides the service to a party which consumes them. An appointment letter from an offshore service provider appointing the SSP to come to Vietnam to negotiate an agreement involving services is required.

Besides the above forms of employment which require an expatriate to have a work permit, there are other forms of employment prescribed in Decree 11 (as amended by Decree 140), namely: (a) expatriate working for a foreign non-governmental organization or international organization permitted to operate in Vietnam; (b) volunteer (means an expatriate working in Vietnam on a voluntary basis and without entitlement to a salary in order to implement an international treaty of which Vietnam is a member); (c) expatriate who is responsible to establish a commercial presence; (d) expatriate involved in tender packages [or] projects in Vietnam; and (e) relative of a member of a foreign representative agency in Vietnam permitted to work in Vietnam pursuant to an international treaty to which Vietnam is a party. Some of these forms of employment require no work permit.

2. Work permit exemptions

A work permit is not required if the expatriate:

- a. is an owner or a capital contributing member of a limited liability company established in Vietnam with a level of capital contribution as stipulated by the government¹²;
- b. is a chairman or a member of a management board of a joint stock company established in Vietnam with a level of capital contribution as stipulated by the government¹³;
- c. is head of either the RO or a project or is the person mainly responsible for the operation in Vietnam of an international organization or a foreign NGO. This exemption does not include the chief representative of a foreign trader's RO;
- d. enters and stays in Vietnam for less than three consecutive months to provide services (defined in Section B.1.5(e)). A work permit is required if a foreign SSP stays in Vietnam for three consecutive months or more;
- e. enters Vietnam and stays for less than three consecutive months to handle complicated technical or technological problems that affect or could affect production/business and these problems cannot be adequately addressed within Vietnam. However, if the situation requires the expatriate to stay in Vietnam for three months or more, a work permit is necessary;
- f. is a foreign lawyer with a Certificate of Law Practice in Vietnam granted by the Ministry of Justice;
- g. is married to a Vietnamese and living in Vietnam;
- h. is seconded to Vietnam as permitted under Vietnam's WTO Commitments. Under Appendices 1 and 2 of Circular 35, the 11 services include: business services (such as: professional services, computer and related services, research and development services, rental services without operator), communication services,

¹² Level of capital contribution will be stipulated in a government decree issued under the New Labor Code.

¹³ As above.

construction and related engineering services, distribution services, educational services, environmental services, financial services, medical and social services, tourism and related travel services, recreational, cultural and sporting services, and transport services;

- i. provides expert and technical consultancy services or undertakes other tasks with respect to research, formulation, evaluation, monitoring and assessment, or management and implementation of a program or project using official development aid (“ODA”) in accordance with an international treaty on ODA signed by both Vietnam and the foreign country;
- j. has a media license issued by the Ministry of Foreign Affairs;
- k. is appointed by a competent authority in a foreign country to teach at an international school that is managed by a foreign diplomatic office or an international organization in Vietnam or is permitted by the Ministry of Education and Training to teach and research in Vietnam’s education and training institutions;
- l. is a volunteer certified by a foreign diplomatic mission or international organization in Vietnam;
- m. works as an expert, manager, executive director or technician for less than 30 days and with no more than 90 cumulative days in one year;
- n. implements an international treaty to which a Vietnamese government authority, provincial body, or central socio-political organization is a signatory;
- o. is a student studying in a foreign school or institution having an agreement on an internship in agencies, organizations, and enterprises in Vietnam;
- p. is a relative¹⁴ of a member of a foreign representative agency in Vietnam who is exempt from obtaining a work permit under an international treaty of which Vietnam is a party;
- q. has an official/mission passport and works for a State agency, political organization or socio-political organization; or
- r. is preparing to establish a commercial presence.

Seven working days prior to the date the exempt expatriate is scheduled to start working in Vietnam, the employer/Vietnamese counterparty must send an application for exemption to the DOLISA of the locality where the expatriate will be working, except in the following cases:

- The expatriate enters Vietnam for less than three months to offer services for sale (ie, the SSP in section B.2(d) above);

¹⁴ There is no language that clearly defines a “relative”, such as whether a relative means parents, spouse, children only or whether it includes parents-in-law, cousins, nephews and nieces, etc.

- The expatriate enters Vietnam for less than three consecutive months to handle complicated technical or technological problems that affect or could affect production/business activities, and these problems cannot be adequately handled within Vietnam;
- The expatriate enters Vietnam to work as a manager, executive director, expert, or technician for a period of less than 30 consecutive days, and the accumulated working period in Vietnam will not exceed 90 days per year¹⁵; or
- is a relative of a member of a foreign representative agency in Vietnam who is exempt from obtaining a work permit under an international treaty of which Vietnam is a party.

The application to confirm a work permit exemption must contain:

- An approval for recruitment of an expatriate issued by a provincial DOLISA or MOLISA, as the case may be (see Section B.1.1 above);
- A request for confirmation that the expatriate is not required to obtain a work permit (made on a standard form); and
- Documents to prove that the expatriate falls into an exempt category.

A document in a foreign language need not be legalized, but it must be translated into Vietnamese and the translation must be notarized.

Within three working days from receipt of a complete application, the DOLISA will provide the employer/Vietnamese counterparty with a letter of confirmation on work permit exemption. In case of refusal, the DOLISA will issue a letter containing the reasons for refusal.

3. Compulsory work permits, second work permits

Unless as described in Section B.2, an expatriate is required to obtain a work permit in order to work in Vietnam.

The work permit requirement applies equally to expatriates working for the commercial presence of a foreign entity as well as expatriates working for a Vietnamese entity. A work permit is specific to an employer or Vietnamese counterparty. If an expatriate wishes to work concurrently for another employer in Vietnam, even if his current work permit is valid, he must obtain another work permit.

Decree 11 discusses documents required in order to apply for a second work permit in

¹⁵ This accumulated working period during a year is calculated as 12 full consecutive months counting from the date on which the expatriate first comes to Vietnam to work.

cases where the expatriate works for more than one employer or holds more than one position for the same employer:

- If an expatriate has a valid work permit and plans simultaneously to work for another employer in the same position, a health certificate, criminal record, and documents proving that the foreigner is a manager, executive director, expert, or technician are not required;
- If an expatriate has a valid work permit but plans to work in another position for the same employer, a new work permit is required, but the health certificate and criminal record to obtain a new work permit are not required; or
- If an expatriate has a work permit that is no longer valid pursuant to article 174¹⁶ of the Labor Code and wishes to continue working in the same position¹⁷ prescribed in the work permit, then documents proving that the expatriate qualifies as a manager, executive director, expert, or technician are not required in the application for a new work permit.

In order to obtain a second and/or concurrent work permit, several burdensome documents (such as health certificate, judicial record, proof of expertise, etc.) have been eliminated. This is similar to the case of re-issuance or renewal of an existing work permit. See Section B.3.5 below.

3.1 Application to obtain a work permit

The entity for which an expatriate will work, not the expatriate himself, is responsible for applying for a work permit. The application for a work permit includes the following documents:

(i) Standard documents

- A request to issue a work permit (made on a standard form);
- A health certificate issued in a foreign country or in Vietnam, and issued no more than 12 months prior to the date the application is filed;
- A judicial record issued by an authority (ie, a judicial or law enforcement agency) in the country in which the expatriate resides, showing whether he has a criminal record. If the expatriate is a resident of Vietnam, then **only** a judicial record issued in Vietnam is required.

A judicial record must have been issued within six months prior to the date of filing the application.

This provision needs further clarification as a foreign judicial record is still required in some circumstances. For example, consider that an expatriate

¹⁶ This will be article 156 of the New Labor Code.

¹⁷ We think this refers only to renewal of a work permit by the same employer, not the move of the employee to a new employer.

has resided in Vietnam for two years, but then leaves Vietnam to live abroad for, say, one year, and then returns to Vietnam. In such case, a judicial record issued by the authority abroad is required as the Vietnamese authorities will not know whether he committed any crime before returning to Vietnam.

- Documents to certify that the expatriate is a manager, executive director, expert, or technician.

In some occupations, certification of specialist and technical qualifications may be replaced by one of the following documents:

- (a) Document issued by the authority of the foreign country recognizing that the expatriate is a craftsman in a traditional occupation or trade;
 - (b) Document proving the experience of a foreign soccer player;
 - (c) Pilot's license for aviation transportation aircraft issued to the foreign pilot by the competent authority of Vietnam;
 - (d) Aircraft maintenance license issued to the expatriate working in aircraft maintenance by the competent authority of Vietnam.
- Letter of approval on employment of expatriate issued to the employer by the provincial People's Committee;
 - Copy of a valid passport (or valid document in place of a passport); and
 - Two passport photos [4cm x 6cm] taken within six months prior to the filing date.

A document issued in a foreign country must be legalized. Legalization requires the following steps:

- A photocopy of a document must first be certified as a "true copy" by the licensing authority or a notary public in the place where it was issued ("**Country of Origin**");
- Second, the certified copy must be endorsed by the State Department or Foreign Affairs Office of the Country of Origin (if required by the law of the Country of Origin); and
- Finally, the endorsed document must be either: (i) legalized by the Vietnamese Embassy/Consulate in the Country of Origin, or (ii) authenticated by the Embassy/Consulate of the Country of Origin in Vietnam and then legalized by the Vietnamese Ministry of Foreign Affairs.

A notarized Vietnamese translation of a legalized document is also required.

(ii) Specific documents relating to the expatriate’s work in Vietnam

Along with the standard documents listed above, depending on the category, the application must also include the following additional documents:

Category	Documents
Recruitment by an entity in Vietnam	No other documents are required.
Intra-company transfer ¹⁸ by a parent company to its subsidiary in Vietnam (under a secondment)	<ul style="list-style-type: none"> • Intra-company transfer/secondment decision; and • Document proving that the expatriate has been employed by the parent for at least 12 consecutive months immediately prior to coming to Vietnam to work (eg, employment contract, confirmation from parent company, decision on employment recruitment, or receipt of tax/insurance payments). Generally, this document establishes that the expatriate has been employed by the parent company for at least 12 months before being transferred. See the definition of intra-company transfer in footnote No. 12. <p>[In our experience, an expatriate may not qualify as an <u>intra-company</u> transferee if he is transferred from an affiliate, not the parent of the commercial presence. However, an expatriate can be transferred from a foreign company (not a parent) to its affiliate in Vietnam. For such a transfer see our discussion at section B.1.5 above. Generally, the fact that the transferring company is an affiliate has no relevance. Affiliates are treated as unrelated entities.]</p>
Performance of a contract in Vietnam	<ul style="list-style-type: none"> • Contract signed between the foreign entity and Vietnamese counterparty which contains a provision on the requirement for a foreigner.

¹⁸ An expatriate under an intra-company transfer means a manager, executive director, expert or technician of a foreign enterprise (the parent company) who is temporarily transferred to the parent’s commercial presence in Vietnam. There is no clear definition of the commercial presence under Vietnamese law. Under the WTO, a commercial presence is a subsidiary, an RO or a branch established in Vietnam by a foreign company. The DOLISA has taken the position that to qualify as a subsidiary, the parent’s ownership must be controlling.

The expatriate must have been employed by the parent company for at least 12 consecutive months just prior to the transfer.

Category	Documents
CSS	<ul style="list-style-type: none"> • Service contract signed by the foreign entity (as a service provider) and Vietnamese counterparty (as a customer); and • Document proving that the expatriate has already worked for the foreign entity (without a commercial presence in Vietnam) for at least two years (eg, employment contract, confirmation from foreign entity, decision on employment recruitment, or receipt of tax/insurance payments). <p>In this case, the work permit will be specific to the Vietnamese counterparty. An expatriate who is employed by an offshore entity and obtains a work permit to work as a foreign CSS for a Vietnamese counterparty cannot use that work permit to provide services to any other Vietnamese party, including a different Vietnamese counterparty of the same offshore entity.</p>
SSP	<ul style="list-style-type: none"> • Letter issued by foreign service provider (as an employer) to appoint the expatriate (as an employee) to Vietnam in order to negotiate the provision of services.
Work for a foreign NGO or international organization	<ul style="list-style-type: none"> • Copy of an operation permit of the foreign NGO or international organization permitted to operate under Vietnamese law.
Establishment of commercial presence of a foreign service provider in Vietnam	<ul style="list-style-type: none"> • Letter issued by the foreign service provider appointing the expatriate to Vietnam in order to establish the commercial presence of the foreign service provider.
Recruitment occurring after a foreign contractor has been awarded a contract	<ul style="list-style-type: none"> • Contractor permit; • Job application.

If the specific document is written in a foreign language, it does not have to be legalized, but it must be translated into Vietnamese and the translation must be notarized.

Upon receipt of a work permit, the employer and the expatriate must enter into an employment contract. Within five working days from the date of the employment contract, the entity at which the expatriate works must send a copy of the employment contract to the DOLISA. This requirement only applies to an expatriate directly recruited by a commercial presence of a foreign entity in Vietnam or a Vietnamese entity.

3.2 Time frame

An application for a work permit must be filed with the DOLISA in the province in which the expatriate will be working. If the expatriate has to work in several provinces or cities, the application will be filed with the DOLISA in the province in which the employer or Vietnamese counterparty is located. An employer whose headquarters is located within one province or centralized city but has representative offices and/or branches in other

provinces and cities is entitled to file an application for a work permit with MOLISA.

The application must be filed with the DOLISA or MOLISA at least 15 working days prior to the date the expatriate is scheduled to start working in Vietnam. An employer or Vietnamese counterparty will normally receive the work permit from the DOLISA or MOLISA within five working days from the date of filing and must then deliver it to the expatriate. Filing timelines should take into account that issuance of a work permit can be delayed. Moreover, filing should be coordinated with the recruitment timelines mentioned in Section B.1.1.

3.3 *Term of a work permit*

The term of a work permit coincides with the shortest of the following terms, but may not exceed two years:

- term of employment contract;
- term of transfer in case of an intra-company transfer;
- term of the contract in case of performance under a contract;
- term of the contract under which the expatriate works as a CSS;
- term of appointment as an SSP;
- term of license of the foreign NGO or international organization in Vietnam; or
- term of appointment for the expatriate to establish a commercial presence in Vietnam.

3.4 *Extension of a work permit*

The New Labor Code allows a work permit to be extended one time after its two-year term expires, for up to two more years depending on the remaining term of the employment.

3.5 *Reissuance of a work permit*

A work permit can be re-issued in the following two circumstances:

- (i) The current work permit is lost, destroyed or damaged, or there are changes to information in the work permit.

Within three days from the date a work permit is lost, destroyed or damaged, or if any information in the work permit changes, the expatriate must inform his employer, the Vietnamese counterparty, or the representative of the foreign NGO or international organization. Within five working days from receipt of the report, the employer, Vietnamese counterparty, or the representative must submit an application for reissuance. It must be submitted to the DOLISA where the work

permit was originally issued. The dossier must include:

- request for reissuance (on a standard form);
- copy of passport or equivalent document;
- work permit unless it is lost. Proof of loss is required; and
- two passport photos [4cm x 6cm] taken within six months prior to the filing date.

- (ii) The work permit will expire but is still valid for at least five days but not longer than 45 days.

At least five days but no earlier than 45 days prior to the expiry of the work permit, the employer must file an application with the DOLISA for reissuance of the work permit. Documentation for reissuance of a work permit is less complicated than that required for an initial work permit. Specifically, the employer is not required to submit the judicial records, documents confirming professional qualifications/skill certificates and required working experience, nor the copy of a passport as required in the standard documents discussed in Section B.3.1(i) above.

In this case, the dossier for a work permit includes:

- request for reissuance (on a standard form);
- health certificate;
- specific documents relating to the expatriate's work in Vietnam as mentioned in Section B.3.1(ii);
- work permit that is going to expire; and
- two passport photos [4cm x 6cm] taken within six months prior to the filing date.

The DOLISA will re-issue a work permit within three working days from the filing date of the completed application.

After receipt of the re-issued work permit, and when the employment contract is signed, a copy must be filed with the DOLISA that re-issues the work permit. Filing must be completed within five working days from the date of the employment contract.

3.6 Withdrawal of a work permit

The law no longer specifies the circumstances or reason a work permit may be

withdrawn. However, employers in several cases¹⁹ are generally required to notify DOLISA or MOLISA when an expatriate's work permit expires.

3.7 Consequences of working in Vietnam without a work permit

Except in the case of exemptions, a work permit is mandatory. An expatriate who works in Vietnam without a work permit may be deported within 15 working days from discovery. The employer's operation may be suspended for three months, and a maximum penalty of VND 75 million (approximately US\$ 3,400) may be applied to the employer.

4. Work permit, customs clearance of personal effects

Decree No. 08/2015/ND-CP of the Government dated January 21, 2015 guiding the Law on Customs No. 54/2014/QH13 ("**Decree 08**") (as amended by Decree No. 59/2018/ND-CP of the Government dated April 20, 2018 on amending a number of articles of Decree 08) regulates customs procedures, inspection, and supervision. Under Decree 08, an expatriate who brings personal effects into Vietnam has to submit: (i) a customs declaration; (ii) a bill of lading; and, most importantly (iii) written certification of his permission to work in Vietnam, issued by a competent authority (ie, a work permit). This requirement for a work permit for customs clearance purposes is also specified in the Labor Code.

* * *

¹⁹ Under Article 9.8 of Circular 18, employers are responsible to notify the expiry of a work permit to MOLISA or DOLISA (which issued the work permit) in the following circumstances (as provided in Article 174 of the current Labor Code):

- (i) The labor contract is terminated;
- (ii) The contract involves economic, commercial, financial, banking, insurance, scientific and technical, cultural, sporting, educational, vocational training or medical health is terminated or expires;
- (iii) There is a notice from the foreign party terminating the appointment of expatriate to work in Vietnam;
- (iv) The enterprise, organization, Vietnamese party or foreign NGO in Vietnam terminates its operation; and
- (v) The expatriate is sentenced to prison, dies, or is proclaimed by a court to be deceased or to be missing.