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Recent Legal Developments in Vietnam

Decree No. 11/2016/ND-CP on foreign workers

On 03 February 2016, the Government issued Decree No. 11/2016/ND-CP to regulate some articles of the Labor Code regarding foreign workers in Vietnam ("Decree 11"). The following points in Decree 11 deserve to be highlighted:

(a) The definition of job positions for foreign employees are clearly clarified as follows:¹

(i) An Expert is required to satisfy two conditions: (1) obtaining certification for being an expert of an overseas agency, organization or enterprise; and (2) having a bachelor's degree or equivalent or higher qualifications provided that he/she has worked at least three (03) years in his/her field of training in correspondence with the job position appointed in Vietnam;

As a matter of recent practice, the authority now also strictly requires the notarised bachelor degree of employee for their assessment on a work permit application dossier which is a material change in the dossier compared to the previous practice based on the previous regulations.

(ii) Managers and chief executive officers will be: (1) Managers are persons in charge of managing the companies² or heads or vice-heads of agencies or organizations; and (2) Chief executive officers are the heads who directly manage subordinate units of agencies, organizations or enterprises;

(iii) Technicians are workers who have undergone training in a technique or other majors for at least 01 year and have worked for at least 03 years in their field of training.

(b) The workers enter Vietnam to hold the positions of experts, managers, chief executive officers or technicians for a period of under 30 days and an accumulated working period of under ninety (90) days per year would be exempted from work permit.³

In addition, Decree 11 specifically regulates the term for exemption of a work permit is two (02) years.⁴

(c) Decree 11 specifically regulates conditions to be applied for the documents in the application dossier for work permits, such as a health test report must be valid and issued within twelve (12) months from the date of the application, the criminal record or written certification that the foreign worker is not a criminal or liable to criminal prosecution issued by the foreign competent authority. Furthermore, the foreign worker is only required to provide a Vietnamese criminal record if he/she is a lawful resident of Vietnam.⁵

(d) Decree 11 specifically regulates some special cases whereby a foreign worker is entitled to be issued with a work permit such as:

(i) The foreign worker who is the holder of an unexpired work permit wants to enter into the employment contract with another employer under the

¹ Article 3, Decree 11

² Article 4.18, Law on Enterprise

³ Article 7.2, Decree 11

⁴ Article 11, Decree 11

⁵ Article 10.3, Decree 11

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same position as defined under his/her work permit in accordance with the law; and

- (ii) The foreign worker who is the holder of an unexpired work permit wants to hold another job position which is different from that defined in his work permit in accordance with the law but the employer is unchanged; and
 - (iii) The foreign worker whose work permit expires wants to continue his employment at under the position being the same as what is defined in his/her work permit in accordance with the law; and
 - (iv) The foreign workers regulated at Point (i), (ii), (iii) of this paragraph have previously been issued with work permits.⁶
- (e) Reducing the timeline for processing work permit application from 10 days to 7 days from the submission of full and valid application dossier.
 - (f) Work permits shall be re-issued if lost or damaged if it is still valid for five (05) to forty-five (45) days.⁷
 - (g) Note that foreign workers who are working in Vietnam without a valid work permit or a certificate to certify they belong to one of the exempted cases will face expulsion from Vietnam. Employers who hire foreign workers without a valid work permit or having an expired work permit might face a fine from 30 to 75 million VND and the risk of operation being suspended from 01 to 03 months.⁸
 - (h) Decree 11 takes effect from 01 April 2016, replacing Decree No. 102/2013/ND-CP.

⁶ Article 10.8, Decree 11

⁷ Article 13, Decree 11

⁸ Decree No. 95/2013/ND-CP dated 22 August 2013

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ASEAN Economic Community Portal

With the launch of the ASEAN Economic Community ("AEC") in December 2015, businesses looking to tap the opportunities presented by the integrated markets of the AEC can now get help a click away. Rajah & Tann Asia, United Overseas Bank and RSM Chio Lim Stone Forest, have teamed up to launch "Business in ASEAN", a portal that provides companies with a single platform that helps businesses navigate the complexities of setting up operations in ASEAN.

By tapping into the professional knowledge and resources of the three organisations through this portal, small- and medium-sized enterprises across the 10-member economic grouping can equip themselves with the tools and know-how to navigate ASEAN's business landscape. Of particular interest is the "Ask a Question" feature of the portal which enables companies to pose questions to the three organisations which have an extensive network in the region. The portal can be accessed at <http://www.businessinasean.com/>.

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