
Labour & Employment

New Decree guiding foreign employees working in Vietnam and recruitment and management of Vietnamese employees working for foreign organisations and individuals in Vietnam

On 30 December 2020, the Government promulgated Decree No. 152/2020/ND-CP (“**Decree 152**”) regulating foreign employees working in Vietnam as well as the recruitment and management of Vietnamese employees working for foreign employers in Vietnam. Decree 152 came into effect on 15 February 2021, replacing Decree No. 11/2016/ND-CP on foreign employees working in Vietnam (“**Decree 11**”) and Decree 75/2014/ND-CP on the recruitment and management of Vietnamese employees working for foreign organisations and individuals in Vietnam (“**Decree 75**”). Highlighted below are certain notable provisions of Decree 152:

1. Criteria for Determining a Foreign Expert and Technician

Criteria for determining an expert: Under Decree 152, a certificate issued by foreign authorities, organisations, or enterprises shall no longer form a basis for determining a foreign employee as an expert as in Decree 11. Instead, Decree 152 introduces new criteria where foreign employees who (i) have at least five (05) years of experience and (ii) obtain practice certificate pertinent to the relevant job(s) to be conducted in Vietnam will be classified as experts.

Criteria for determining a technician: Whilst inheriting the previous criterion under Decree 11, Decree 152 further introduces a new criterion where foreign employees having at least five (05) years of experience working in jobs pertinent to those expected to be conducted in Vietnam will be considered a technician.

2. Work Permit Exemptions

In addition to the work permit exemption cases under Decree 11, Decree 152 further introduces new exemption cases, including individuals who:

Labour & Employment

- (a) are in charge of operations of international or foreign non-governmental organisations in Vietnam;
- (b) get married to a Vietnamese citizen and are living in Vietnam; or
- (c) are probationers on a Vietnamese seagoing ship.

Other than the above additional exemption cases, Decree 152 also amends and clarifies some notable conditions applicable for certain exemption cases provided in Decree 11. In particular:

- (a) **Minimum capital contribution threshold requirement:** Decree 152 adds a new condition on a **VND three (03) billion** minimum capital contribution value threshold for work permit exemption cases where foreigners are owners or members of limited liability companies, or the chairman or members of the Boards of Directors of joint stock companies; and
- (b) **More stringent in the timeline for working in Vietnam:** Decree 152 allows foreigners to enter Vietnam to work as managerial personnel, executive directors, experts, and technicians with a working period of under 30 days and not exceeding three (03) times per year. This is more stringent than the requirement of under 30 days and not exceeding 90 accumulated days per year under Decree 11.

3. New Requirement to Report Foreign Nationals' Information to Labour Authorities

Under Decree 152, some work permit exemption cases can *ex officio* work in Vietnam without being required to obtain work permit exemption certificates. These include individuals who:

- (a) enter Vietnam for a period of less than three (03) months to offer services;
- (b) are foreign lawyers with a lawyer practicing certificate in Vietnam;
- (c) are married to a Vietnamese citizen and living in Vietnam;
- (d) are owners or members of limited liability companies having at least VND three (03) billions of capital contribution;
- (e) serve as chairman or are members of Boards of Directors in a joint stock company having at least VND three (03) billions of capital contribution;
- (f) enter Vietnam to work as managerial personnel, executive directors, experts, or technicians with a working period of under 30 days and not exceeding three (03) times per year; and/or

Labour & Employment

(g) are relatives of members of foreign representative agencies in Vietnam.

However, Decree 152 also requires such above cases to be reported to the Ministry of Labour, Invalids, and Social Affairs or the relevant provincial-level Department of Labour, Invalids, and Social Affairs at least three (03) days prior to the tentative commencement date. The report includes relevant information being name, age, nationality, passport number, employer, and work commencement and ending dates.

4. New Provision on Work Permit Extension

Under Decree 11, where a work permit is expired, it must be reapplied. However, Decree 152 introduces a new provision on work permit extension. In particular, the maximum term of the work permit is up to two (02) years and can be extended once for another two (02) year term. Meanwhile, work permit reapplication no longer applies to expiration cases.

This implies that foreign employees will need to apply for a brand-new work permit to continue working in Vietnam upon expiration of the extended term.

5. Recruitment and management of Vietnamese citizens working for foreign organisations and individuals in Vietnam

Under Decree 152, applicable foreign organisations and individuals are now also allowed to directly recruit Vietnamese citizens by submitting written notice (attached with a certified copy of the labour contract) to the labour authority within seven (07) working days from the date of signing the labour contract, as opposed to only engaging recruitment organisations as previously provided in Decree 75.

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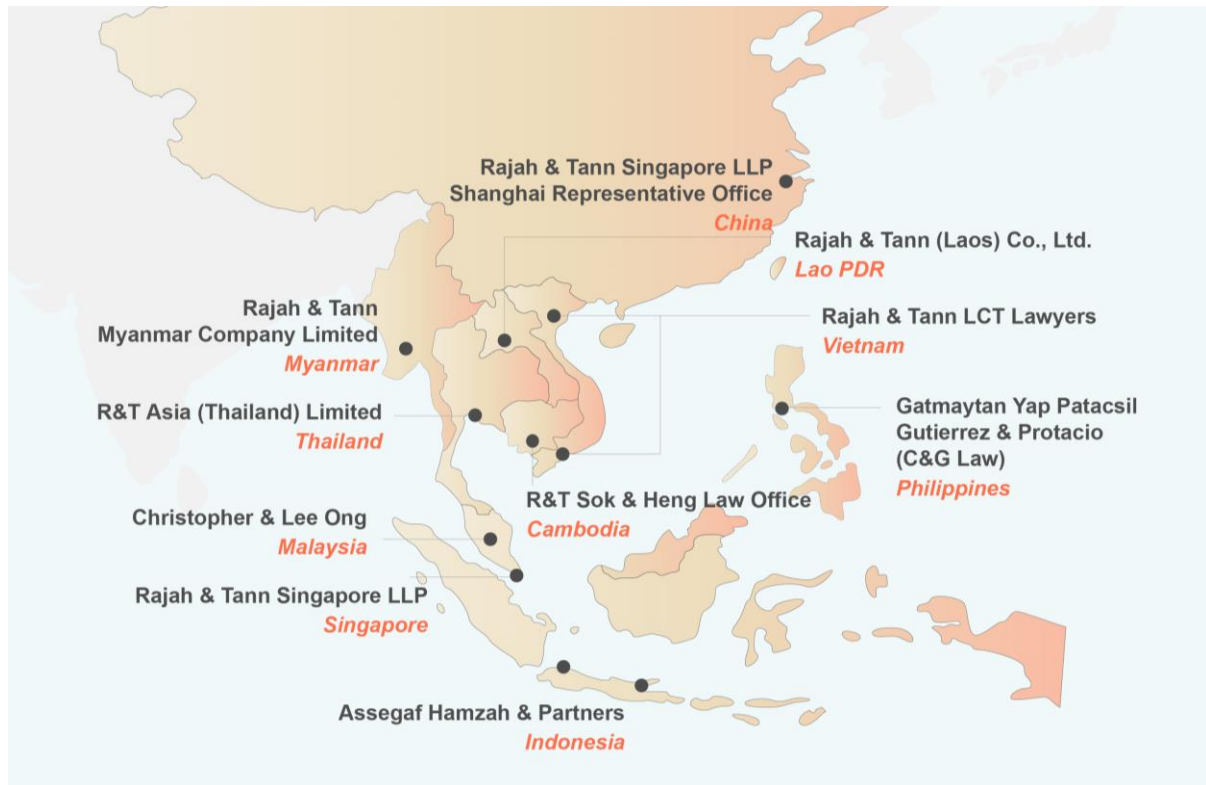
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