

# Legal news

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## Contents

<b>LABOUR LAW</b> .....	2
<b>Other Sectors</b> .....	4
Finance .....	4
Banking.....	4
Taxation.....	5
Trade .....	5
Education.....	6
Labour .....	6
Health .....	7
Transport.....	8
Construction.....	8
Science - Technology .....	10
Administration - Judiciary .....	10
Agriculture - Forestry - Fishery.....	11
Enterprise.....	11
Miscellaneous .....	12
<b>Contact Details</b> .....	13

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## LABOUR LAW

### New labour decree brings in tough new regulations for foreign workers

*Vuong Son Ha*

On 5 September 2013, the government ratified Decree No. 102/2013/ND-CP detailing the implementation of a number of articles of Labour Code with respect to foreign labour working in Vietnam (“**Decree 102**”), which is intended to better regulate the labour market, assure access for qualified foreigners to enter the labour market and align Vietnam’s labour laws with their international commitments.

When Decree 102 comes into force on 1 November 2013, there will be several important changes relating to the classification of workers and the issuance, re-issuance and terms of work permits for foreign nationals.

Most fundamentally, the decree intends to put an end to many cases of foreigners working in the country without a valid work permit. For the first time, the procedures and processes for expelling foreign workers currently working without permits has been stipulated.

Furthermore, the maximum length of work permit available to foreigners will be reduced from the previous three years, to just two. Prior to the new decree, employees could apply for an extension of their work permit upon expiration, however the new code decrees that foreign workers must now apply for a complete re-issuance.

In order to better regulate the labour market gradually opened for foreigners, a greater number of classifications of foreign workers have been recognized in the new decree. In addition to classifications stipulated previously, those implementing vocational training, working for international organizations, volunteers, persons in charge of the establishment of commercial presences, and technicians have been added. Besides, managers, executive directors, experts (like technicians) presently may select to be *Foreigner internally transferring within an enterprise* as stipulated previously or directly engaged by this enterprise’s presence in Vietnam.

While the means of restricting foreign labour have been strengthened, Decree 102 also increases the cases of foreign labour eligible to exemption of working permits. In addition to cases already provided for in previous decrees, Decree 102 supplements a number of cases, including teachers of foreign agencies and organisations sent to Vietnam to teach in international schools under the management of foreign diplomatic missions or international organizations in Vietnam; volunteers; holders of master or higher degrees who are consultants, teachers or scientific researchers at higher education establishments or vocational junior colleges for up to 30 days; and foreigners entering Vietnam to implement international agreements to which central state agencies, provincial state agencies, and central socio-political organizations are signatories.

Further measures to allow the free flow of qualified labour into the country have been implemented to insure that Vietnam's Labour Code is in compliance with its international commitments. To assure compliance, a previous measure stipulating that established enterprises employing intra-corporate transferees must employ Vietnamese citizens accounting for at least 20 per cent of the total number of its managers, executives and experts has been repealed. Under the new decree, the number of foreigners working as managers, executives and experts shall no longer be restricted in accordance with Vietnam's international labour commitments.

Naturally, the new decree comes with a raft of new administrative procedures for the application of work permits for foreign nationals. Foreigners entitled to exemption of work permit now need to have their application dossier submitted to the Department of Labour, War Invalids and Social Affairs of the province or city where the foreign worker will be employed for certification. The employer must complete the new procedures seven working days prior to the commencement of the foreign worker's work.

Prior to hiring a foreign national, or re-issuing a work permit for a foreigner, companies must follow thorough administrative steps designed to give priority to qualified and capable Vietnamese staff. According to previous decrees, at least 30 days prior to the recruitment of a foreigner, the employer must attempt to recruit Vietnamese nationals for the positions available via central or local newspapers, or engage the services of a recruitment organization. Nowadays, under Decree 102, every year the employer is responsible for reporting its demands for foreign employees including each specific position where Vietnamese nationals cannot meet the employer's requirements. This information must be reported to the people's committee of each province or city where the company's head office is located ("**provincial PC**").

Should a company's demands for foreign workers change during a calendar year, the employer must again report to the provincial PC. Permission to hire additional foreign workers will only be given once the chairman of the relevant provincial PC has given their written approval for each individual case./.

## **Other Sectors**

### **Finance**

- On 16 September 2013, the Government issued Decree No. 105/2013/ND-CP, on sanctioning of administrative violations in domains of accounting and independent audit.
- Decision No. 5799/QD-UBND, dated 25 September 2013, of the People's Committee of Hanoi, providing for the decentralization in tendering for procurement of assets to maintain regular operations of the State agencies; political organizations; socio - political organizations; political, social and professional organizations; social organizations, and socio - professional organizations under the management of Hanoi.
- On 19 September 2013, the Prime Minister stipulated Decision No. 54/2013/QD-TTg, promulgating the mechanism on financial management and staffing of the State Treasury.
- Decision No. 2247/QD-BTC, dated 6 September 2013, of the Ministry of Finance, promulgating the Regulation on monitoring and evaluation of enforcement of financial laws.
- On 18 September 2013, the Ministry of Finance issued Circular No.129/2013/TT-BTC, providing for the management and use of expenditures funded by the State budget to ensure the implementation of treaties and international agreements.

### **Banking**

- Decision No. 1886/QD-NHNN, dated 5 September 2013, of the State Bank of Vietnam, on promulgation of newly-issued administrative procedures in the field of foreign exchange control within the scope of the State Bank of Vietnam's management function.
- On 24 September 2013, the State Bank of Vietnam stipulated Circular No.22/2013/TT-NHNN, on providing guidelines for procedures for registration of foreign loans and international bond issuances guaranteed by the Government and registration of changes in such loans and issuances.
- Circular No. 21/2013/TT-NHNN, dated 9 September 2013, of the State Bank of Vietnam, providing for the operational network of commercial banks.
- On 9 September 2013, the State Bank of Vietnam issued Circular No.20/2013/TT-NHNN, providing for refinancing loans on the basis of special bonds of Asset Management Company for Vietnamese Credit Institutions.
- Circular No. 19/2013/TT-NHNN, date 6 September 2013, of the Ministry of

Finance, providing for the purchase, sale and settlement of bad debts of Vietnam Asset Management Company for Vietnamese Credit Institutions.

- On 3 September 2013, the Ministry of Finance stipulated Circular No.126/2013/TT-BTC, amending Circular No. 77/2013/TT-BTC, dated 4 June 2013, of the Ministry of Finance, on providing for the interest rates applicable to investment credits and export credits of the State and the difference of interest rates calculated as post-investment support.

### Taxation

- Circular No. 135/2013/TT-BTC, dated 27 September 2013, of the Ministry of Finance, on providing guidelines for the pilot application of policy on corporate income tax imposed on microfinance organizations.
- On 10 September 2013, the Ministry of Finance issued Circular No.128/2013/TT-BTC, promulgating customs procedures, customs inspection and supervision, export tax, import tax and tax management regarding exported or imported goods.

### Trade

- Decree No. 109/2013/ND-CP, dated 24 September 2013, providing for the sanctioning of administrative violations in the field of price management, charges, fees and invoices.
- On 19 September 2013, the Prime Minister stipulated Decision No. 1625/QD-TTg, on the approval for and execution of the Protocol on implementation of the 9<sup>th</sup> service commitment package within the framework of ASEAN Framework Agreement on Services.
- Decision No. 2341/QD-BTC, dated 18 September 2013, of the Ministry of Finance, on issuing a roadmap to initiate the use of public digital signatures in e-customs procedures.
- On 13 September 2013, the Prime Minister issued Decision No. 53/2013/QD-TTg, on temporary import, re-export, destruction and transfer of automobiles and motorbikes of entities eligible for privileges and immunities in Vietnam.
- Circular No. 21/2013/TT-BCT, dated 25 September 2013, of the Ministry of Industry and Trade, detailing a number of articles of Decree No. 67/2013/ND-CP, dated 27 June 2013, detailing a number of articles and implementation methods of Law on prevention of and fighting against tobacco's harms and cigarette business.
- On 24 September 2013, the Ministry of Finance stipulated Circular No.133/2013/TT-BTC, amending Clause 1, Article 15 and forms accompanying Circular No. 86/2013/TT-BTC, dated 27 June 2013, of the Ministry of Finance,

providing for the application of priority regime in the State management on customs to eligible enterprises.

## **Education**

- Decision No. 3704/QĐ-BGDĐT, dated 10 September 2013, of the Ministry of Education and Training, on promulgating the education branch's Action plan for implementing the Strategy on development of Vietnamese youth for the period from 2011 to 2020.
- On 19 September 2013, the Ministry of Education and Training, the Ministry of Home Affairs, and the Ministry of Finance jointly issued Inter-ministerial Circular No. 35/2013/TTLT-BGDĐT-BNV-BTC, providing guidelines for the implementation of Decree No. 19/2013/NĐ-CP, dated 23 February 2013, amending and supplementing a number of articles of Decree No. 61/2006/NĐ-CP, dated 20 June 2006, on policies on teachers and educational administrators working in specialized schools and in areas with special difficult socio - economic conditions.
- Circular No. 34/2013/TT-BGDĐT, dated 17 September 2013, of the Ministry of Education and Training, on the amendment and supplement to a number of equipment specified in the list of minimum Appliances - Toys - Education Equipment for preschool education accompanying Circular No. 02/2010/TT-BGDĐT, dated 11 February 2010, of the Minister of Education and Training.
- On 9 September 2013, the Ministry of Labour, War Invalids and Social Affairs stipulated Circular No. 17/2013/TT-BLĐTBXH, on promulgating the List of equipment for vocational training at intermediate and junior college levels for professions: Wood carving technique; Lacquer and pearl technique; Industrial wastewater treatment, Production of construction ceramic and china; Medium-density fireboard production technology; Construction carpentry and interior decoration; Protection of plants, Growing of industrial crops; Veterinary; Pharmaceutical technique, and Latex processing.

## **Labour**

- Decision No. 41/2013/QĐ-UBND, dated 25 September 2013, of the People's Committee of Hanoi, on the support to vocational training, job creation and credit for labour whose agricultural land is recovered in the area of Hanoi under Decision No. 52/2012/QĐ-TTg, dated 16 November 2012, of the Prime Minister.
- On 23 September 2013, Vietnam Social Insurance issued Decision No. 1023/QĐ-BHXH, promulgating the process of handling administrative procedures in accordance with ISO 9001:2008 standard in the field of payments under social insurance regimes to be applicable to Social Insurances at provinces and districts.

- Decision No. 1354/QD-BLDTBXH, dated 16 September 2013, of the Ministry of Labour, War Invalids and Social Affairs, on the correction of Circular No.08/2013/TT-BLDTBXH, providing guidelines for Decree No. 46/2013/ND-CP, detailing the implementation of a number of articles of Labour Code on labour disputes.
- On 27 September 2013, the Ministry of Health and the Ministry of Labour, War Invalids and Social Affairs jointly stipulated Inter-ministerial Circular No.28/2013/TTLT-BYT-BLDTBXH, providing for specific ratios of bodily injury due to injuries, diseases, disability and occupational diseases.
- Circular No. 19/2013/TT-BLDTBXH, dated 9 September 2013, of the Ministry of Labour, War Invalids and Social Affairs, providing guidelines for the implementation of wages, remunerations and bonuses for members of the Members' Council or Company Chairmen, Supervisors, General Directors or Directors, Deputy General Directors or Deputy Directors, and Chief Accountants of State-owned limited liability companies.
- On 9 September 2013, the Ministry of Labour, War Invalids and Social Affairs issued Circular No. 18/2013/TT-BLDTBXH, providing guidelines for the implementation of labour management, wages and bonuses for employees of State-owned limited liability companies.

## Health

- Decision No. 3861/QD-BYT, dated 30 September 2013, of the Ministry of Health, providing for the functions, tasks, powers and organizational structure of the Drug Administration Department directly under the Ministry of Health.
- On 19 September 2013, the Ministry of Health stipulated Decision No. 3569/QD-BYT, announcing the administrative procedures within the scope of the Ministry of Health's management function.
- Decision No. 3455/QD-BYT, dated 16 September 2013, of the Ministry of Health, on the amendment and supplement to Decision No. 517/QD-BYT, dated 23 February 2011, of the Ministry of Health, promulgating the sample List of costs of medical examination and treatment to be used in medical examination and treatment establishments.
- On 18 September 2013, the Ministry of Health issued Circular No. 27/2013/TT-BYT, promulgating the list of medical supplies within the scope of payments by Health Insurance Fund.
- Inter-ministerial Circular No. 25/2013/TTLT-BYT-BTC, dated 4 September 2013, of the Ministry of Health and the Ministry of Finance, providing the financial management regime for the implementation of social marketing activities on means of contraception, HIV/AIDS and sexually transmitted

diseases.

## **Transport**

- On 3 September 2013, the Government stipulated Decree No. 100/2013/ND-CP, amending and supplementing a number of articles of Decree No. 11/2010/ND-CP, dated 24 February 2010, providing for the management and protection of land road infrastructures.
- Decision No. 2985/QD-BGTVT, dated 30 September 2013, of the Ministry of Transport, on approving the Scheme on "Efficiency and quality improvement of management and exploitation of aviation infrastructures".
- On 30 September 2013, the Ministry of Transport issued Decision No. 2974/QD-BGTVT, on approving the Scheme on "Efficiency and quality improvement of management and exploitation of maritime infrastructures".
- Decision No. 2919/QD-BGTVT, dated 24 September 2013, of the Ministry of Transport, promulgating the Regulations on management of operations of mobile weigh stations.
- On 17 September 2013, the Ministry of Transport stipulated Decision No.2832/QD-BGTVT, promulgating the Plan of check and systematization in the first period of legal documents in the field of transport.
- Decision No. 2753/QD-BGTVT, dated 10 September 2013, of the Ministry of Transport, on approving the Planning for system of highways rest stops untill 2020, with orientation to 2030.
- On 19 September 2013, the Ministry of Finance issued Circular No.132/2013/TT-BTC, providing for the regime on collection, payment, management and use of charges for assessment, approval and evaluation of sea port security and sea port security plans and for the grant of sea-going ships' constant record books.
- Circular No. 127/2013/TT-BTC, dated 6 September 2013, of the Ministry of Finance, providing for the regime on collection, payment, management and use of fees for the issuance of registration forms and number plates of land road motorized vehicles.

## **Construction**

- On 12 September 2013, the Ministry of Transport stipulated Decision No.2783/QD-BGTVT, providing for the decentralization and authorization in the management of work construction investment projects funded by the State budget, which are managed and invested by the Ministry of Transport.
- Circular No. 15/2013/TT-BXD, dated 26 September 2013, of the Ministry of Construction, on issuing national technical regulations for construction projects

using energy efficiently.

### **Natural Resources - Environment**

- On 27 September 2013, the Ministry of Natural Resources and Environment issued Decision No. 1778/QD-BTNMT, on issuing the system of targets for tracking, monitoring and evaluating the implementation of the National Target Program on response to climate changes for the period from 2012 to 2015.
- Decision No. 41/2013/QD-UBND, dated 27 September 2013, of the People's Committee of Ho Chi Minh City, on promulgating the Regulations on the regimes, policies and assistance levels for remedy of natural disasters' consequences in the area of Ho Chi Minh City.
- On 24 September 2013, the People's Committee of Hanoi stipulated Decision No.40/2013/QD-UBND, on promulgating the Regulations on management of mineral activities in the area of Hanoi.
- Decision No. 1570/QD-TTg, dated 6 September 2013, of the Prime Minister, approving the strategy on sustainable exploitation and use of natural resources and protection of the marine environment until 2020, with orientation to 2030.
- On 5 September 2013, the Ministry of Natural Resources and Environment issued Decision No. 1651/QD-BTNMT, approving the projects as part of the National Target Program on response to climate changes for the period from 2012 to 2015.
- Decision No. 1546/QD-TTg, dated 3 September 2013, of the Prime Minister, approving the zoning plan for exploration, exploitation, processing and use of titanium ore until 2020, with orientation to 2030.
- On 26 September 2013, the Ministry of Natural Resources and Environment and the Ministry of Agriculture and Rural Development jointly stipulated Inter-ministerial Circular No. 27/2013/TTLT-BTNMT-BNNPTNT, on providing criteria for determination of invasive exotic species and promulgating the list of invasive exotic species.
- Circular No. 40/2013/TT-BNNPTNT, dated 5 September 2013, of the Ministry of Agriculture and Rural Development, promulgating the list of wild animals and plants specified in the Appendices to Convention on International Trade in Endangered Species of Wild Fauna and Flora.
- On 3 September 2013, the Ministry of Natural Resources and Environment issued Circular No. 24/2013/TT-BTNMT, on issuing the economic - technical norms to measure detailed gravity.

### **Land - Real Estate**

- Decision No. 2423/QD-BTP, dated 30 September 2013, of the Ministry of

Justice, promulgating the plan of strengthening the popularization and education of laws, and legal assistance in resolving complaints and denunciations; and of improving the quality of grassroots reconciliation in resolving complaints, denunciations and land disputes.

- On 13 September 2013, the Ministry of Construction stipulated Decision No.859/QD-BXD, on announcing newly-issued administrative procedures in the field of residential housing.
- Circular No. 14/2013/TT-BXD, dated 19 September 2013, of the Ministry of Construction, providing guidelines for the implementation of a number of contents of Decree No. 34/2013/ND-CP, dated 22 April 2013, on the State-owned residential housing use management.

### Science - Technology

- On 20 September 2013, the Government issued Decree No. 107/2013/ND-CP, on providing for the sanctioning of administrative violations in the field of atomic energy.
- Decision No. 1751/QD-TTg, dated 27 September 2013, of the Prime Minister, on the approval for and execution of energy co-operation documents within the framework of ASEAN co-operation.
- On 27 September 2013, the Ministry of Science and Technology stipulated Decision No. 2973/QD-BKHCHN, on promulgating the Regulation on organizing operational management and maintenance of the operations of the Ministry of Science and Technology's Portal.
- Decision No. 1621/QD-TTg, dated 18 September 2013, of the Prime Minister, on approving the "Planning for the development of chemical industry in Vietnam up to 2020, with an orientation to 2030".
- On 12 September 2013, the Ministry of Science and Technology issued Circular No. 21/2013/TT-BKHCHN, providing for the application of technical standards and codes on atomic safety to the selection of locations, designs, construction, operation and dismantlement of atomic energy machine plant units.

### Administration - Judiciary

- Decree No. 111/2013/ND-CP, dated 30 September 2013, of the Government, providing for the application of administrative sanction of education in communes, wards and townships.
- On 24 September 2013, the Government stipulated Decree No. 110/2013/ND-CP, providing for the sanctioning of administrative violations in the fields of legal aid, judiciary administration, marriage and family, enforcement of civil judgments, bankruptcy of enterprises and co-operatives.

- Decision No. 5684/QD-UBND, dated 23 September 2013, of the Hanoi People's, Committee on promulgating the Plan of initiating the implementation of the Strategy on development of legal assistance in the area of Hanoi from 2013 to 2020, with orientation to 2030.
- On 16 September 2013, the Hanoi People's Committee issued Decision No.37/2013/QD-UBND, on promulgating the Regulation on organization and operations of Ho Chi Minh City Inspectorate.
- Decision No. 2258/QD-BTP, dated 9 September 2013, of the Ministry of Justice, on announcing the amendment and supplement to administrative procedures in the fields of civic status and legal assistance within the scope of the Ministry of Justice's management function.
- On 30 September 2013, the Government Inspectorate stipulated Circular No.06/2013/TT-TTCP, providing for the process of settling denunciations.
- Circular No. 39/2013/TT-BCA, dated 25 September 2013, of the Ministry of Public Security, on the education and consultancy in favour of criminals who almost complete their imprisonment judgments.
- On 13 September 2013, the Ministry of Justice issued Circular No. 13/2013/TT-BTP, providing for standards of titles of public officials who hold managerial positions in civil judgment enforcement departments and civil judgment enforcement offices.

## Agriculture - Forestry - Fishery

- Decree No. 103/2013/ND-CP, dated 12 September 2013, of the Government, providing for the sanctioning of administrative violations in aquacultural activities.
- On 23 September 2013, the Ministry of Agriculture and Rural Development stipulated Decision No. 2152/QD-BNN-TCCB, on assigning management tasks and organizing the implementation of the project on "General inspection and inventory of forests in the entire country for the period from 2013 to 2016".
- Decision No. 2158/QD-BNN-PC, dated 23 September 2013, of the Ministry of Agriculture and Rural Development, stating that Circular No. 38/2013/TT-BNNPTNT ceased to be effective.
- On 19 September 2013, the Prime Minister issued Decision No. 1627/QD-TTg on the approval for and execution of Memorandum of Understanding between the Governments of ASEAN member countries and the Government of the People's Republic of China on co-operation in the fields of foods and agriculture.

## Enterprise

- Decision No. 5837/QD-UBND, dated 27 September 2013, of the People's

Committee of Hanoi, on returning the capital to small entrepreneurs in partnerships with the State in Hanoi.

- On 10 September 2013, the Ministry of Planning and Investment stipulated Decision No. 1241/QD-BKHDT, on the Framework of monitoring and evaluating the implementation situation of the Plan of development of medium and small enterprises in the period from 2011 to 2015.
- Decision No. 35/2013/QD-UBND, dated 4 September 2013, of the Hanoi People's Committee, on amending and supplementing the Regulation on management of enterprises operating under the Law on Enterprises and family households doing business in Hanoi accompanying Decision No. 29/2012/QD-UBND, dated 30 October 2012, of the People's Committee of Hanoi.

### Miscellaneous

- On 23 September 2013, the Government issued Decree No. 108/2013/ND-CP, providing for the sanctioning of administrative violations in the field of securities and securities markets.
- Decision No. 39/2013/QD-UBND, dated 24 September 2013, of the People's Committee of Ho Chi Minh City, providing for the Regulations on organizing the formulation, assessment and approval of the schemes, planning tasks, and norms of formulation, assessment and announcement of the planning for socio - economic development, and planning for the development of main industries, fields and products in the area of City.
- On 30 September 2013, the Prime Ministry stipulated Decision No. 1752/QD-TTg, on the approval for the "Planning for system of technical and material facilities for national sports and exercise until 2020, with an orientation to 2030".
- Decision No. 1178/QD-BTTTT, dated 23 September 2013, of the Ministry of Information and Communications on approving the Scheme on initiating the implementation of the service of switching mobile networks in keeping the numbers in Vietnam.

## Contact Details

### Hanoi Office

Mr. Pham Nghiem Xuan Bac

*Managing Partner*

Mr. Luu Tien Ngoc

*Director, Business Development*

Mr. Pham Minh Hai

*Partner, Consulting Practice*

Ms. Le Quynh Anh

*Executive Partner, Legal Practice*

Ms. Le Thi Kim Dzung

*Partner, Intellectual Property Practice*

Unit 308-310, 3<sup>rd</sup> Floor, Hanoi Towers

49 Hai Ba Trung, Hanoi, Vietnam

Tel: 84-4-3934 0629/ 3826 4797 Fax: 84-4-3934 0631

E-mail: [vision@vision-associates.com](mailto:vision@vision-associates.com)

### Ho Chi Minh City Office

Mr. Luu Tien Ngoc

*Director, Business Development*

Mrs. Nguyen Thi Van

*Head of Ho Chi Minh City Office*

Unit 905, 9<sup>th</sup> Floor, CitiLight Tower

45 Vo Thi Sau, District 1, Ho Chi Minh City, Vietnam.

Tel: 84-8-3823 6495 Fax: 84-8-3823 6496

E-mail: [hcmvision@vision-associates.com](mailto:hcmvision@vision-associates.com)

**[www.vision-associates.com](http://www.vision-associates.com)**