

DRAFT AMENDMENT OF DECREE 152/2020/NĐ-CPM ABOUT FOREIGN EMPLOYEES WORKING IN VN AND VN EMPLOYEE WORKING FOR FOREIGNZ EMPLOYER

Blue letter is new point

No	No. in Draft	Item	Draft	Comment	BritCham 's proposal
1	2	Article 2.1 Object	1. Workers who are foreign nationals moving to Vietnam for employment (hereinafter referred to as foreign workers) <u>must comply with VN labor law</u> and be protected by VN law, except for some other international law that VN is a member in the following forms:	The object might cause confusion for a worker who comes to Vietnam for entertainment/as a dependent but still works remotely for an overseas company, as to whether they will need a WP	1. Workers who are foreign nationals moving to Vietnam to work for <u>foreign employers specified in Clause 2, Article 2 of this Decree</u> (hereinafter referred to as foreign workers) must comply with VN labor law and be protected by VN law, except for some other international law that VN is a member in the following forms:
2	4	Article 3.1 Definition	1. "intra-company transferee" according to Commitments on WTO are managers, executives, experts of a foreign company which has established a commercial presence in Vietnam's territory who is temporarily transferred within the company to the commercial presence in Vietnam's territory and has been recruited by the foreign company at least 12 consecutive months prior to the transfer date.	According to the amendment, only foreign assignees transferred from businesses within sectors regulated in the commitments on WTO are considered "intra-corporation transferees" instead of businesses from every sectors as in current decree. Further, technical workers are not recognised as intra-corporation transferees even if they come from the same foreign company to its commercial presence in Vietnam. Such amendment limits the business sectors and prevent highly skilled technical workers to be considered "intra-corporation transferees" which is not reasonable since it does not reflect the nature of "intra-corporation transfer" arrangement and prevent business to transfer highly skilled technical workers to support their business in Vietnam	We suggest to keep the definition as in Decree 152

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3	8. (paragraph 2)	Article 4.1 Determination of demand for foreign workers	Employers recruiting foreign workers in the form of labor contracts must notify the recruitment process and the results of recruitment of Vietnamese workers for the expected positions to recruit foreign workers on the national employment website at www.vieclamvietnam.gov.vn and the website of job seekers of job service centers of provinces and cities and other means (if necessary) at least 10 days before the reporting date explain labor needs. A dossier of report explaining the demand for foreign workers includes the following documents: A report explaining the demand for foreign workers, a valid establishment or operation license of the agency/organization, Proof of recruitment announcement	<p>The draft adds procedures for announcing the recruitment process and recruitment results for Vietnamese workers on the national website. However, this content overlaps with the reason for not recruiting Vietnamese for the position that is expected to employ foreign workers in the report explaining the need for labor use (Form No. 01/PLI Appendix I issued attached to Decree 152). " Further, since recruitment plan of enterprise is not fixed may be confidential and might be done more effectively by many different methods to get the best result (company website, use Head-hunter service, company fanpage, employee's introduction with bonus...). Therefore, the requirement to notify recruitment information on national website is not suitable in many cases.</p> <p>(Risk: all foreign workers not belong WTO may be forced to have labor contracts, in case remove "intra-company transferee") 'Recruitment plan of enterprise is not fixed and informed by many different methods to have the best result (company website, use Head-hunter service, company fanpage, employee's introduction with bonus... --> Requirement of notify recruitment information on national website is unnecessary and increase job for enterprises</p>	<p>If the Draft adds procedures for online notification of the recruitment process and recruitment results for Vietnamese workers, this content should be deleted in the report form explaining the need for employers of Decree 152. (Form No. 01/PLI Appendix I) and vice versa. if the declaration in the form No.01/PLI is required, we propose to amend the article as follow: Employer using foreign labour under the labour contract form for certain position must announce their recruitment of Vietnamese labour for the position prior to recruiting foreign labour, by any means that is suitable with the employer. A dossier of report explaining the demand for foreign workers includes the following documents: A report explaining the demand for foreign workers, a valid establishment or operation license of the agency/organization, Proof of recruitment announcement</p> <p>Propose to amend as follow: <i>Employer using foreign labour under the labour contract form for certain position must announce their recruitment of Vietnamese labour for the position prior to recruiting foreign labour, by any means that is suitable with the employer. A dossier of report explaining the demand for foreign workers includes the following documents: A report explaining the demand for foreign workers, a valid establishment or operation license of the agency/organization, Proof of recruitment announcement</i></p>
4	8. (paragraph 3)	Article 4.2 Approve the demand for foreign workers	MOLISA or the People's Committee of province shall issue a document specifying accepted job positions and non-accepted job positions, using Form No. 03/PLI Appendix I hereto appended within 10 working days after receiving the foregoing report on demand for foreign workers or report on change thereof. Job positions that are <u>approved for the use of foreign workers are valid for use within 180 days from the start date of each job position</u> in the written approval.	Due to certain reason such as the strengthen of the legalisation procedure in overseas which might delay the WP application to 6 months or more, the limit of validity of the approval to only 180 days will cause certain difficulty and limit for enterprise to complete the WP application for foreign labour.	We suggest to remove the validity of the approval of 180 days

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5	8.a.	Article 6.3 Report on employment of foreign workers	<p>In case a work permit or confirmation of not being eligible for a work permit has been granted under Clause 1, Article 30 of this Decree, <u>within 30 days from the date of issuance, the employer is responsible for reporting the DOLISA</u> where the foreign employee is expected to work information: full name, age, nationality, passport number, name of foreign employer, start and end date of work together with work permit or confirmation of not being eligible for a granted work permit</p>	<p>It is understood that when WP is granted by MOLISA, enterprise must send the information about such WP to provincial DOLISA where foreign labour mobilise.</p>	<p>In this situation, we agree with the draft degree</p>
6	10	Article 4.1 Determinati on of demand for foreign workers	<p>a) At least 30 days and no more than 180 days before the date on which foreign workers are expected to be employed, the employer (except contractor) shall determine the demand for foreign workers for every job position for which Vietnamese workers are underqualified and send a corresponding report to the Ministry of Labor, War Invalids and Social Affairs or the People's Committee of province or central-affiliated city (hereinafter referred to as province) where the foreign workers are expected to work, using Form No. 01/PLI Appendix I hereto appended.</p>	<p>(Increase jobs for enterprises)</p> <p>- Limiting the time of making Determination of demand for foreign workers + Before: at least 30 days before, no max. + After: at least 30 days and max. 6 months In fact, enterprise must plan their personnel in long term plan to make sure their high-level-personnel source meets meet the enterprise's demand for operation, as such, we recommend to remove the limit of " 180 days"</p>	<p>We suggest to remove the limit of 180 days</p>

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7	11	Article 4.1 Change the demand for foreign workers	During the process, in case of changing to the demand for foreign workers that was approved for location, form or working time , the employer shall send a report to the MOLISA or the People's Committee of province, using Form No. 02/PLI Appendix I hereto appended at least 30 days before the date on which the foreign worker are expected to be employed.		<i>We propose to amend the wordings to make it clearer During the process, in case of changing to the demand for foreign workers that was approved for location, form or working time , the employer shall send a report to the MOLISA or the People's Committee of province, using Form No. 02/PLI Appendix I hereto appended at least 30 days before the date on which the foreign worker are expected to to be employed change the above content</i>
8	14	Article 8.2 Certification of exemption from work permit	For any of the circumstances in clauses 4, 6 and 8 article 154 of the Labor Code and clauses 1, 2, 8 and 11 Article 7 of this Decree, the employer is not required to apply for the certification of exemption but it must report the Ministry of Labor, War Invalids and Social Affairs or Department of Labor, War Invalids and Social Affairs of province where the foreign worker is expected to work, at least 3 days before such foreign worker starts to work in Vietnam, on the following: full name, age, nationality, passport number, name of employer, starting date and completion date.	It is understood that foreign labour married to Vietnamese citizen must apply for WP exemption certificate. On that basic, employer can sponsor work visa/TRC for them for staying long term in Vietnam, instead of using sponsorship of their partner under which they must leave Vietnam every 6 months. This is more favorable for the individual and the enterprise. However, we request that the dossier to apply WP exemption certificate for foreigner marriage Vietnamese citizen will be simplified, not as complicated as that for other cases	<i>We suggest that for foreign labour married to Vietnamese citizen, supporting documents to obtain WP exemption certificate will only be documents evidencing that they married to Vietnamese citizen, and thay the foreigner will not need to prove their expertise/experience as other cases</i>

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9	15.a1		a1) The document proving that he/she is a manager as prescribed in Clause 4, Article 3 of this Decree is the company's charter or operating regulations and one of the following papers: Paper proving the establishment of the organization or business registration certificate; establishment and operation license; establishment licenses; work permit that has been granted or confirmed not be subject for the work permit as a manager before	Evidence foreigner as a manager	Recommend to amend as follow "a1) The document proving that he/she is a manager as prescribed in Clause 4, Article 3 of this Decree is the company's charter or operating regulations and one of the following papers <i>proving that the foreigner was a manager</i> : Paper proving the establishment of the organization or business registration certificate; establishment and operation license; establishment licenses; work permit that has been granted or confirmed not be subject for the work permit as a manager before
10	15.a2		a2) The document proving that he/she is an executive director as prescribed in Clause 5, Article 3 of this Decree is the company's charter or operation regulations and one of the following documents: Certificate of branch operation registration or representative office; Appointment decision of an organization or enterprise in a foreign country or work permit that has been granted or confirmed not be subject for the work permit as an executive before	Evidence foreigner as a manager	Recommend to amend as follow " The document proving that he/she is an executive director as prescribed in Clause 5, Article 3 of this Decree is the company's charter or operation regulations <i>or RO's establishment license or certificate of branch operation registration</i> and one of the following documents <i>proving that the foreigner was executive director</i> : Certificate of branch operation registration or representative office; Appointment decision of an organization or enterprise in a foreign country or work permit that has been granted or confirmed not be subject for the work permit as an executive before "
11	18.d	Article 9.9 Application for issuance of work permit in special cases:	c) <u>For foreign employees working at more than one location</u> which is a branch, representative office or business location in a province or city, <u>the written request for a work permit must fully list the working locations.</u> Dossier of application for a work permit shall comply with the provisions of Article 9 of this Decree. In case the foreign worker works at the location inside and outside the IP, the employer shall submit the application to the DOLISA.	(Difficult to get WP) 'For the enterprise with some different branches/factories, foreign workers have the responsibility to manage the jobs of one more branch/factory, however the main working place is only one. Further, in many cases, due to demand of their clients from time to time, the foreign workers might need to work in some other locations other than those applied, in which cases, amendment multiple times will be required, which is burdensome and time consuming for enterprise, especially as provincial DOLISA will further require evidence about other locations --> Should be provided information of one working place being work location of the enterprise in order to conveniently apply WP	Remove the requirement of fully list the working place locations. The WP should be valid to work anywhere in Vietnam with notification to the Authorities in which the Foreign labour are working/transferred

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12	20	Article 12.3 Cases of re-issuance of a work permit	The unexpired work permit needs changes of full name, nationality, passport number, or working place, change the name of the enterprise without changing the working enterprise code	(Increase job for enterprises and affect to employee) Changing the name of enterprise due to some objective reasons affect much to employees who are working at enterprises. If employees have to get re-issuance of WP, he/she will have to stop working or not? It can cause difficulties for employees	Agree with the Draft degree, however request for further clarification/guidance in case enterprise changes their office to other province, under the supervision of other provincial DOLISA but keeps their name and ID.
13	24.a	Article 30.1 MOLISA's responsibility	a) Consider accepting demand for foreign workers; certifying exemption from work permits; issuing, re-issuing, renewing and revoking work permits from foreign workers who work for the employers prescribed point g clause 2 Article 2 and agencies and organizations prescribed in points d, e clause 2 Article 2 hereof that the Government, the Prime Minister, ministry or central authority approves their establishment; and foreign employees working for one employer in many provinces and cities directly under the Central Government.	According to the article, MOLISA will approve WP for foreign employees working for one employer in many provinces and cities. It is unclear if company/organisation will only submit the WP application to MOLISA for those foreigners who work for the company/organisation in multiple provinces/cities. For those work for the company/organisation but work only in the specific company/organisation, the application will still be submitted in the provincial DOLISA. If it is the case, it will be burden to the related company/organisation since they must report to/work with different labour management authorities (being MOLISA/DOLISA). Further, from time to time, due to the business operation, the employees might be mobilised to different provinces to work, accordingly, each time, company/organisation must redo the WP application for them (2 steps) to get the WP updated, which is very time consuming (30 days before the employee intend to be mobilised for step 1 and 15 days before tentative working date for step 2) and sometime can cause the delay of their urgent job as the WP re-issuance can not be completed as early as the business need.	We suggest that foreign labour will obtain WP in one location and company will notify provincial DOLISA about their mobility if they are assigned to other province from 10 consecutive days (As previously regulated in Circular 40/2016/TT-BLDTBXH), as follow: <i>2. In case a foreign worker already granted a work permit which has yet to expire is designated and dispatched to take up the same job position in a province other than where (s)he is now working for at least 10 consecutive days, (s)he shall be exempted from application for a new work permit. However, that foreign worker's employer shall submit a certified true copy of the existing work permit and inform the Department of Labor, War Invalids and Social Affairs of the province where the foreign worker's new workplace is located in writing which specifies the enterprise name, address of the new workplace, job position, title and working period.</i>
14	27	Point 10, Article 9- Supporting documents for WP application	Not mentioned	Passport could only be notarised on original document once the expatriate already enters Vietnam, which cause extra cost for entering before commencement of work in Vietnam and the approval is granted by DOLISA/MOLISA itself which already has in DOLISA/MOLISA system for verification. The request to obtain notarised true copy and approval is useless. Request to remove the requirement of legalisation of assignment letter of overseas company/organisation to assign foreign employee to work in Vietnam (assignment letter), same as that of Decree 11	Request to remove the requirement of notarisation of passport (in Point 7) and approval on using foreign labour issued by DOLISA/MOLISA (Pint 6) as (i) passport could only be notarised on original document once the expatriate already enters Vietnam, which cause extra cost for entering before commencement of work in Vietnam and (ii)the approval is granted by DOLISA/MOLISA itself which already has in DOLISA/MOLISA system for verification. The request to obtain notarised true copy is useless. Request to remove the requirement of legalisation of assignment letter of overseas company/organisation to assign foreign employee to work in Vietnam (assignment letter), same as that of Decree 11

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15		Article 16. Eligibility requirements for renewal of a work permit	N/A	Decree 152: 1.The remaining validity period of the work permit is at least 5 days but not exceeding 45 days.”	Consider a revision to the current policy regarding the work permit renewals that are not submitted before 45 days from the current work permit expired date. We believe that extending the timeframe beyond 45 days would greatly assist companies and expats in effectively managing their paperwork, especially related to visa process, as long as there is no overlap in the working time between Work permits.