

VISAS AND WORK PERMITS FOR EXPATRIATES IN VIETNAM

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TABLE OF CONTENTS

GLOSSARY	ii
A. ENTRY AND IMMIGRATION.....	1
1. Entry visa	1
1.1 <i>General background</i>	1
1.2 <i>Purpose of Entry</i>	4
1.3 <i>Visa exemptions</i>	5
a. <i>Exemption from visas under international agreements, protocols, etc.</i>	5
b. <i>Exemption from visas for expatriates who are overseas Vietnamese</i>	6
2.1 <i>Temporary Residence Card (“TRC”)</i>	6
2.2 <i>Permanent Residence Card (“PRC”)</i>	7
3. Transit and Exit.....	8
B. EMPLOYMENT OF EXPATRIATES IN VIETNAM.....	8
1. Employment of expatriates	9
1.1 <i>Conditions for expatriates to work in Vietnam and for employment of expatriates</i>	9
1.2 <i>Approval to recruit expatriates</i>	10
1.3 <i>Exemption from Approval to recruit expatriates</i>	11
1.4 <i>Numerical limit</i>	12
1.5 <i>Form of employment</i>	12
2. Work permit exemptions	13
3. Compulsory work permits, second work permits	15
3.1 <i>Application to obtain a work permit</i>	16
3.2 <i>Time frame</i>	19
3.3 <i>Term of a work permit</i>	20
3.4 <i>Extension of a work permit</i>	20
3.5 <i>Reissuance of a work permit</i>	21
3.6 <i>Withdrawal of a work permit</i>	22
3.7 <i>Consequences of working in Vietnam without a work permit</i>	23
4. Work permit, customs clearance of personal effects	23

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 as amended by Circular No. 57/2020/TT-BCA dated June 10, 2020; 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 she 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 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.

¹ This book has been written and updated by lawyers from Russin & Vecchi. It is current through July 2022.

An expatriate will apply for a visa based on her 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
Group 1: Working Visas		
<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
Group 2: Professional Visas		
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 ² 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 VND 100 billion or which invests in businesses encouraged for investment	Up to 5 years
DT3	Visa for a foreign investor or a representative of a foreign	Up to 3 years

² Approx. US\$ 4,275,331. Rate of exchange is about US\$ 1 = VND 23,390.

	organization which invests in Vietnam with a capital contribution from VND 3 billion to less than VND 50 billion	
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 her 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 ³

Vietnam made broad commitments as part of its WTO accession⁴ (“**Vietnam’s WTO Commitments**”) with regard to the immigration of expatriates working as managers, executives or experts in a foreign “**commercial presence**”⁵ in Vietnam. In particular, Vietnam has made the following commitments:

- An expatriate recruited by the commercial presence of a foreign entity to take the

³ An E-visa is valid for a single entry. As of June 2022, an E-visa is available to passport holders of 80 countries who will enter Vietnam via one of 33 particular ports (including 8 international airports, 16 landports and 9 seaports) (according to the E-visa page of the National Web Portal on Immigration under the General Immigration Department).

⁴ Vietnam committed to the World Trade Organization (“WTO”) on November 7, 2006, and the WTO Commitments took effect on January 11, 2007.

⁵ 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. From the perspective of foreign employment, Article 3.7 of Decree 152/2020/ND-CP of the Government dated December 30, 2020 on foreign employees working in Vietnam and recruitment and management of Vietnamese employees working for foreign employers in Vietnam now provides for a clearer interpretation of “commercial presence” which includes a foreign-invested entity, representative office, branch of foreign trader in Vietnam, and executive office of a foreign investor in a business cooperation contract.

position of “manager”, “executive” or “expert” may obtain an entry visa with a duration of up to three years, renewable subject to her 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 be issued only 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 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 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 zone⁶;
- 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 is a foreigner who is the spouse or child 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 April 2022, Vietnam had entered into entry visa exemption agreements with 88 countries.⁷ 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 Germany, France, Italy, Spain, the United Kingdom of Great Britain and Northern Ireland, Russia, Japan, Republic of Korea (South Korea), Denmark, Sweden, Norway, Finland and Belarus if they stay in Vietnam for 15 or fewer days, regardless of the type of their passports. All of this is set out in Resolution No. 32/NQ-CP issued on March 15, 2022. This Resolution is scheduled to expire on March 14, 2025 and may be extended.

⁶ 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.

⁷<https://lanhsuvietnam.gov.vn/Lists/BaiViet/B%20C3%A0i%20vi%20E1%BA%BFt/DispForm.aspx?List=dc7c7d75%2D6a32%2D4215%2Dafeb%2D47d4bee70eee&ID=64>

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 she 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 she 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 her spouse or children is valid for up to five years and must be at least six months shorter than the remaining term of her passport or of her 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 her 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, she 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 her 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 her 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 her 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 she 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 she 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 she fails to leave Vietnam upon expiration of her 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. 45/2019/QH14 issued by the National Assembly on November 20, 2019 (“*Labor Code*”);
- Decree No. 152/2020/ND-CP dated December 30, 2020 of the Government on foreign employees working in Vietnam and recruitment and management of Vietnamese employees working for foreign employers in Vietnam (“*Decree 152*”);
- Decree No. 28/2020/ND-CP dated March 1, 2020 of the Government on administrative penalties for violations arising from labor, social insurance and sending Vietnamese workers abroad under contracts (“*Decree 28*”);
- 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 *Conditions for expatriates to work in Vietnam and for employment of expatriates*

Article 151 and Article 152 of the Labor Code sets out a number of conditions that an expatriate must meet in order to work in Vietnam and that an employer must meet to recruit an expatriate. In particular:

- An expatriate must be 18 years of age or older and have full capacity to perform civil acts;
- An expatriate must have qualifications, occupational skills, practical experience and adequate health as prescribed by the Ministry of Health;
- An expatriate is not serving a sentence or has not yet had her criminal record cleared or not being subject to criminal prosecution under Vietnamese or foreign law;
- An expatriate must have a work permit granted by a competent authority of Vietnam, except in the cases he is not required to have a work permit as prescribed by law;
- An employer must only employ expatriates to hold the position of manager, executive director, expert or technician with professional requirements which cannot be met by Vietnamese employees; and
- An employer must, before employing an expatriate, obtain local approval of the need to employ an expatriate.

Under Decree 152:

- (a) A “**manager**” means the manager of an enterprise as described in the Law on

Enterprises⁸ or the head or deputy head of an agency or organization.

(b) 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 to supervise performance of experts, supervisors, and staff.

(c) An “**expert**” is a person (i) having a university degree or higher or their equivalent *and* having at least three years’ working experience in the specialty in which she was trained. The experience must relate to the position that the expatriate will fill in Vietnam, **or** (ii) having at least five years’ working experience *and* having a practice certificate corresponding with and relating to the position that the expatriate will fill, **or** (iii) in special cases, where these conditions are not satisfied, the Prime Minister may consider and decide.

(d) A “**technician**” is a person (i) who has received at least one year of training in her technical or other specialty *and* has at least three years’ working experience in the specialty in which she was trained, **or** (ii) who has at least five years working experience relate to the position that the expatriate will fill in Vietnam.

1.2 Approval to recruit expatriates

An employer (other than a contractor) must determine that there is a need for an expatriate because there is no pool of qualified Vietnamese citizens. It must then file a report to explain the absence of skilled 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 Committee⁹ or by MOLISA¹⁰. This is a compulsory first step in order for an expatriate to be issued a work permit. Such a filing

⁸ 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.”

⁹ Under Article 30.6 of Decree 152, the provincial DOLISA is authorized by the provincial People’s Committee to consider and approve the request for employment of expatriates.

¹⁰ Under Article 30.1 and Article 30.6 of Decree 152, MOLISA is the authority which approves requests for employment of expatriates by the following employers:

(a) Offices of international organizations or of foreign projects in Vietnam; agencies and organizations established by the Government, the Prime Minister, ministries or central authorities as per the law;

(b) Central state authorities; central authorities of political organizations, social-political organizations, social-political-professional organizations, social organizations, and social-professional organizations established by the Government, the Prime Minister, ministries or central authorities;

(c) Public service entities, educational institutions licensed by the Government, the Prime Minister, ministries or central authorities;

(d) 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 may choose to obtain approval for the request for employment of expatriates either from the MOLISA or the provincial DOLISA;

(e) Foreign non-governmental organizations licensed by competent authorities of Vietnam may choose to obtain approval to employ expatriates either from MOLISA or the provincial DOLISA.

is normally routinely approved.

1.3 Exemption from Approval to recruit expatriates

An employer is exempt from the need for approval from the provincial People's Committee or MOLISA (see Section B.1.2 above) in certain circumstances:

The expatriate:

- (i) 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;
- (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 the owner or capital contributor of a limited liability company with a capital contribution of at least VND 3 billion;
- (v) is the chairperson or a member of the board of management of a joint stock company with a capital contribution of at least VND 3 billion;
- (vi) works as a manager, executive director, expert or technician for a period of less than 30 consecutive days and may do so up to three times a year;
- (vii) enters Vietnam to implement an international agreement to which a central or provincial authority is a signatory;
- (viii) is a student studying in a foreign school or institution having an agreement for an internship in agencies, organizations, and enterprises in Vietnam; or a student who is trainee or apprentice on a Vietnam oceangoing ship;
- (ix) is a relative of a member of a foreign representative agency in Vietnam who is permitted to work in Vietnam under an international treaty to which Vietnam is a party;
- (x) holds an official passport to work for a State agency, political organization, or socio-political organization; or
- (xi) takes charge of establishing a commercial presence.

In those circumstances in which approval to recruit an expatriate is not required, expatriates described in items (ii), (iv), (v), (vi) and (ix) will not be required to obtain a work permit nor an exemption (see second paragraph of Section B.2 below) but employer must notify the MOLISA or provincial DOLISA where the expatriate is expected to work, at least three days before such expatriate starts to work in Vietnam, on the following: full name, age, nationality, passport number, name of employer, starting date and completion date.

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 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 presence¹¹ 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*")

Under Article 3.8 of Decree 152, a CSS means an expatriate who has worked at least two years (24 months) for a foreign company that has no commercial presence in Vietnam and must meet the requirements of an expert as discussed in Section B.1.1 above.

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

Under Article 3.9 of Decree 152, 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 she 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.

¹¹ Under Article 3.7 of Decree 152 "commercial presence" includes a foreign-invested entity; representative office, branch of foreign trader in Vietnam; and executive office of a foreign investor in a business cooperation contract.

Besides the above forms of employment which require an expatriate to have a work permit, there are other forms of employment prescribed in Decree 152, 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 and having her status confirmed by a foreign diplomatic mission or international organization in Vietnam); (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 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;
- b. enters and stays in Vietnam for less than three consecutive months to provide services (ie, as the SSP is 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;
- c. 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;
- d. is a foreign lawyer with a Certificate of Law Practice in Vietnam granted by the Ministry of Justice;
- e. is married to a Vietnamese and living in Vietnam;
- f. is an owner or a capital contributor of a limited liability company established in Vietnam with a capital contribution of at least VND 3 billion;
- g. is a chairperson or a member of a board of management of a joint stock company established in Vietnam with a capital contribution of at least VND 3 billion;
- h. is an intra-company transferee seconded to Vietnam as permitted under Vietnam's WTO Commitments within 11 services, including: business services (such as: professional services, computer and related services, research and development services, rental services without operator), communication services, 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 and journalism practicing certificate issued by the Ministry of Foreign Affairs;
- k. is appointed by a competent authority in a foreign country to teach and research at an international school that is managed by a foreign diplomatic office or by United Nations or at a facility or organization established under a treaty to which Vietnam is a signatory;
- 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 for no more three times in one year;
- n. implements an international treaty to which a Vietnamese central or provincial authority is a signatory;
- o. is a student studying in a foreign school or institution having an agreement for an internship in agencies, organizations, and enterprises in Vietnam; or a student who is a trainee or apprentice on a Vietnamese oceangoing ship;
- p. is a relative¹² of a member of a foreign representative agency in Vietnam who is permitted to work in Vietnam 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.

At least 10 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 MOLISA or 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(b) above);
- The expatriate is a foreign lawyer with a Certificate of Law Practice in Vietnam granted by the Ministry of Justice;
- The expatriate is married to a Vietnamese and living in Vietnam;

¹² There is no language that clearly defines a “relative”, and whether a relative means parents, spouse, children only or whether it includes parents-in-law, cousins, nephews and nieces, etc.

- The expatriate is an owner or a capital contributor of a limited liability company established in Vietnam with a capital contribution of at least VND 3 billion;
- The expatriate is a chairperson or a member of a board of management of a joint stock company established in Vietnam with a capital contribution of at least VND 3 billion;
- The expatriate enters Vietnam to work as an expert, manager, executive director or technician for less than 30 days and for no more three times in one year; or
- The expatriate is a relative of a member of a foreign representative agency in Vietnam who is permitted to work in Vietnam under an international treaty of which Vietnam is a party.

In these cases, the employer must notify the MOLISA or provincial DOLISA where the expatriate is expected to work, at least three days before she starts to work, of the following: full name, age, nationality, passport number, name of employer, starting date and completion date.

The application to confirm a work permit exemption must contain, among others:

- An approval for recruitment of an expatriate issued by a provincial DOLISA or MOLISA (see Section B.1.2 above);
- A request for confirmation that the expatriate is not required to obtain a work permit; and
- Documents to prove that the expatriate falls into an exempt category.

A document issued by a foreign country must be legalized (unless it is exempt from consular legalization under an international treaty to which Vietnam and such foreign country are signatories or under the principle of reciprocity) and must be translated into Vietnamese and the translation must be notarized.

Within five working days from receipt of a complete application, the MOLISA or the DOLISA will provide the employer/Vietnamese counterparty with a letter of confirmation on work permit exemption. In case of refusal, the MOLISA or 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 have 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 her current work permit is valid, he must obtain another work permit.

Decree 152 discusses documents required in order to apply for a second work permit in 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; or
- 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.

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 Vietnamese entity for which an expatriate will work, not the expatriate herself, 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 she 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 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 proving the experience of a foreign soccer player or an international transfer certificate (ITC) issued to the foreign soccer player or a document of the Vietnam Football Federation which certifies temporary or official registration of a player of a club affiliated with the Vietnam Football Federation;

(b) A pilot license issued by a Vietnamese competent authority, or issued by a foreign competent authority and validated by the Vietnamese competent authority, in case of a foreign pilot; or a certificate of professional eligibility for working on aircraft issued by the Ministry of Transport, in case of a flight attendant;

(c) A certificate of professional eligibility for working on aircraft maintenance issued by a Vietnamese authority, or issued by a foreign competent authority and validated by the Vietnamese competent authority, in case of an expatriate who performs aircraft maintenance;

(d) A certificate of professional eligibility or confirmation of recognition of professional eligibility issued by a Vietnamese competent authority to a foreign seafarer;

(e) A certificate of high achievement in sports which is certified by the Ministry of Culture, Sports and Tourism, in case of a sports coach or at least one of the following certificates: AFC (Asian Football Federation) football coaching level B certificate or AFC goalkeeping coaching level 1 certificate or AFC fitness coaching level 1 certificate or AFC futsal coaching level 1 certificate or any equivalent foreign certificate accredited by AFC;

(f) A diploma issued by a competent authority in accordance with qualifications or standard qualifications in the Law on Education, the Law on Higher Education, the Law on Vocational Education and Regulation on organization and operation of foreign language and computer training centers issued by the Minister of Education and Training.

- Letter of approval on the need of employment of expatriate, unless it is not required;
- Certified copy of a valid passport (or valid document in place of a passport); and
- Two passport photos (4cm x 6cm, white background, front view, bare head, no color glasses) taken within six months prior to the filing date.

A document issued in a foreign country must be legalized (unless it is exempt from consular legalization under an international treaty to which Vietnam and such foreign country are signatories or under the principle of reciprocity). 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 ¹³ 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. <p>[In our experience, an expatriate may not qualify as an <u>intra-company transferee</u> if she 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>

¹³ Under Article 3.1 of Decree 152, 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. The expatriate must have been employed by the parent company for at least 12 consecutive months just prior to the transfer.

Category	Documents
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 to work in Vietnam.
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"> • Document appointing/sending the expatriate to enter to work for a foreign NGO or international organization in Vietnam. • Copy of an operation permit of the foreign NGO or international organization permitted to operate under Vietnamese law.
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 issued in a foreign country, it must be legalized (unless it is exempt from consular legalization under an international treaty to which Vietnam and such foreign country are signatories or under the principle of reciprocity) and must be translated into Vietnamese. The Vietnamese translation must also be notarized.

Upon receipt of a work permit but prior to the date the expatriate is scheduled to work, the employer and the expatriate must enter into an employment contract (as applicable). The employer then must send a certified copy or original copy of the employment contract to the MOLISA or the DOLISA where such work permit is issued. 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 are 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 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 approval of recruitment timelines mentioned in Section B.1.2.

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 operation license of the agency, organization or enterprise;
- term of appointment for the expatriate to establish a commercial presence in Vietnam;
- term of document proving the expatriate's eligibility to participate in the operation of a foreign company that has established its commercial presence in Vietnam; or
- term of the approval of the need for employment of the expatriate.

3.4 *Extension of a work permit*

The 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.

Under Decree 152, conditions for renewal of a work permit are as follows:

- The remaining validity period of the current work permit is at least five days but not exceeding 45 days.
- The employer is granted an approval of the need to employ an expatriate.

- Documents proving that the expatriate continues in employment with the employer as specified in the issued work permit.
- 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 MOLISA or the DOLISA (which issued such work permit) to renew the work permit. Documentation to renew a work permit is less complicated than that required for the initial work permit. Specifically, the employer is not required to submit the judicial records, documents confirming professional qualifications/skill certificates as required in the standard documents discussed in Section B.3.1(i) above.

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

- request for renewal (on a standard form);
- two passport photos (4cm x 6cm, white background, front view, bare head, no color glasses) taken within six months prior to the filing date;
- work permit that is going to expire;
- approval of the need to employ the expatriate;
- copy of current passport or equivalent document;
- health certificate;
- specific documents relating to the expatriate's work in Vietnam as mentioned in Section B.3.1(ii) above;

A document issued by a foreign country must be legalized (unless it is exempt from consular legalization under an international treaty to which Vietnam and such foreign country are signatories or under the principle of reciprocity) and must be translated into Vietnamese and the translation must be notarized.

The DOLISA will renew a work permit within five working days from the filing date of the completed application.

After receipt of the renewed work permit, and when the employment contract is signed, a copy must be filed with the DOLISA or the DOLISA that renews the work permit. Filing must be completed prior to the date the expatriate is scheduled to continue working for the employer. This requirement is applied only in case the expatriate who is directly recruited by the employer is in Vietnam.

3.5 *Reissuance of a work permit*

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

- (i) The current work permit is lost;

- (ii) The current work permit is destroyed or damaged; or
- (iii) There are changes to information relating to the name, nationality, passport number, place of work as recorded in the current work permit.

In case a work permit is lost, destroyed or damaged, or if any information in the work permit changes, the expatriate must inform her employer, the Vietnamese counterparty, or the representative of the foreign NGO or international organization. The employer, Vietnamese counterparty, or the representative must then submit an application to reissue the work permit. It must be submitted to the MOLISA or the DOLISA where the work permit was originally issued. The dossier must include:

- request for reissuance (on a standard form);
- two passport photos (4cm x 6cm, white background, front view, bare head, no color glasses) taken within six months prior to the filing date;
- work permit unless it is lost. Proof of loss is required;
- copy of passport or equivalent document and relevant documents to prove the changes of information; and
- approval of the need to employ the expatriate.

A document issued by a foreign country must be legalized (unless it is exempt from consular legalization under an international treaty to which Vietnam and such foreign country are signatories or under the principle of reciprocity) and must be translated into Vietnamese and the translation must be notarized.

The DOLISA or MOLISA shall re-issue a work permit within three working days from the date of receipt the complete application.

3.6 Withdrawal of a work permit

Under Decree 152, a work permit will be withdrawn in the following cases:

- The work permit ceases to be effective under circumstances set out in the Labor Code¹⁴.
- The employer or the expatriate fails to comply with regulations of foreign employment under Decree 152.

¹⁴ Cases where the work permit ceases to be effective under Article 156 of the Labor Code as follow:

- (i) The work permit expires;
- (ii) The labor contract is terminated;
- (iii) The contents of the labor contract are inconsistent with the contents of the work permit as issued;
- (iv) The work performed does not conform to the contents of the work permit;
- (v) The contract that is the basis for issuance of the work permit expires or is terminated;
- (vi) The foreign party issues a written notice which terminates appointment of the expatriate;
- (vii) The Vietnamese entity that employs the expatriate ceases its operation.

- The expatriate, during her working duration in Vietnam, fails to abide by Vietnamese law and this compromises security, social order and safety.

In case a work permit is withdrawn because it is no longer effective, within 15 days after the work permit ceases to be effective, the employee shall return the work permit to her employer so that the employer shall return it to the MOLISA or the DOLISA which issued that work permit and enclose a letter specifying reasons for withdrawal. If the work permit cannot be returned to the MOLISA or the DOLISA, such letter should specify reasons why the work permit cannot be returned.

Within five working days after receiving the withdrawn work permit, the MOLISA or the DOLISA (where applicable) shall send an acknowledgement of receipt of the withdrawn work permit to the employer.

3.7 Consequences of working in Vietnam without a work permit

Except in the case of exemptions, a work permit is mandatory. Under Decree 28, an expatriate who works in Vietnam without a work permit or a certificate of exemption, *or* having a work permit or a certificate of exemption that is expired, is subject to a monetary fine of up to VND 25 million and may be deported. The employer is also subject to a monetary fine of up to VND 75 million.

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 her 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.

* * *