

LEGAL ALERT

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VIETNAM'S DRAFT OF NEW DECREE ON FOREIGN EMPLOYEES: A CLOSER LOOK AT WORK PERMIT EXEMPTIONS

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In May 2025, the Ministry of Home Affairs (“MHA”) submitted a proposal to the Government for a new draft decree (“**Draft Decree**”) regulating foreign employees working in Vietnam, which aims to replace Decree No. 152/2020/ND-CP dated December 30, 2020 (“**Decree 152/2020**”), as amended by Decree No. 70/2023/ND-CP dated September 18, 2023 (“**Decree 70/2023**”). The Draft Decree is expected to simplify administrative procedures relating to work permits (“**WP**”), advance national priorities on digital transformation, innovation and enhance employers’ access to high-quality foreign talents. Among its key proposals are notable changes to the framework governing WP exemptions and relevant procedures. This legal update highlights such changes, with a particular focus on the provisions relating to certificates for exemption from WP requirements.

1. Changes to cases exempted from WPs

a. Removal of the three-time-per-year limit for short-term foreign employees

Under the current Decree 152/2020, foreign nationals entering Vietnam to work as managers, executives, experts, or technical workers for less than 30 days are exempted from obtaining WPs if their cumulative entries do not exceed 03 times per calendar year [1].

Under Draft Decree, foreign nationals entering Vietnam to work as managers, executives, experts, or technical workers “with a total working period less than 30 days in a year” are exempted from WP [2]. Accordingly, Draft Decree removes the “no more than three times per year” restriction, thereby enabling repeated short-term entries (i.e., under 30 days), without triggering WP requirements.

This revision is significant for Vietnamese enterprises that engage foreign-based service providers or contractors through signing service agreements. These enterprises usually face

challenges when contractors or service providers send employees to Vietnam more than 30 days and 03 times in a year to perform the works or services. Particularly, under the applicable law, short-term visits by a foreign employee exceeding 03 times per year would require a WP. In such case, the Vietnamese enterprise would bear the responsibility of applying for the WP for the foreign employee working at its office location [3], although this employee is not under the Vietnamese enterprise's payroll or direct management.

With the proposed amendment, repeated short-term visits exceeding 03 times per year would no longer require a WP. Such may reduce administrative burden and facilitate service provision from contractors or service providers overseas.

b. New case of foreign employees working in priority sectors

The Draft Decree introduces a new case of WP exemption for foreign employees working in fields of science, technology, innovation, national digital transformation and other priority development sectors [4]. This supplementation is in line with the Government's development policies in which the MHA is assigned to propose improvements concerning foreign employees working in Vietnam [5]. As stated by MHA, the proposed regulation intends to attract highly qualified and skilled professionals, employees, and investors with technical and financial capabilities to Vietnam.

2. Procedures for reissuance and extension of WP Exemption Certificates

Decree 152/2020 and Decree 70/2023 do not provide guidelines for the re-issuance and extension of work permit exemption certificates ("**WP Exemption Certificates**"). The Draft Decree addresses these longstanding gaps, provides legal clarity to employers and foreign employees and streamline administrative procedures. In particular, it proposes the following key changes:

a. Supplementation of re-issuance and extension of WP Exemption Certificates procedures

Under Decree 152/2020, once the WP Exemption Certificate expires or if there is a minor change to the information, WP Exemption Certificate must be re-applied because there is no procedure for its extension or re-issuance. The Draft Decree fills this gap by additionally providing:

- the extension procedure, whereby the employer may apply to extend an existing WP Exemption Certificate once only. The maximum extension term is 02 years, similar to WP's extension [6]. Further, it is worth noting that the employer must apply for extension at least 10 days, but no later than 45 days, prior to the expiry of the WP Exemption Certificate [7].
- the procedure for re-issuance of WP Exemption Certificate due to lost, damaged, or changes such as full name, nationality, passport number, workplace location, or the name of the agency, organization, or enterprise (without altering of their identification

/enterprise registration number) in the valid WP Exemption Certificate [8]. In any of such cases, the employer can reapply for a WP Exemption Certificate with a validity period equal to the original Certificate's term minus the term that the employee has already worked in Vietnam [9].

- documents to be submitted, aligning with each procedure of extension or re-issuance. Especially, re-issuance procedure only requires an application form, documents confirming the changes (if any) to the Certificate and the valid WP Exemption Certificate (except for case of loss) [10].

As explained by MHA, these changes help employers to avoid re-submitting full applications for obtaining WP Exemption Certificates in cases of minor changes and expiry, which supports practical labor needs.

b. Simplified application for WP Exemption Certificate

Elimination of foreign labor demand approval

The Draft Decree removes the standalone procedure for explaining about foreign labor demand [11]. As a result, an application dossier for the WP Exemption Certificate or WP will no longer require submission of prior approval on foreign labor demand [12]. This change significantly reduces the administrative burden on employers, particularly in urgent or project-based engagements.

Clarification on documents submitted for WP exemption

Decree 152/2020 lacks guidance on what documents are eligible for proving that a foreign employee falls within WP exemption cases. The Draft Decree specifies that the documents required, subject to case-by-case basis, are [13]:

- a written confirmation issued by a competent authority in accordance with the law, listing full name of the foreign employee working in Vietnam, or
- a letter of assignment issued by a foreign entity, along with the relevant international agreement or treaty to which Vietnam is a party as a basis for the employee's entry to Vietnam, or
- document(s) proving the employee qualifies as a manager, executive, expert, or technical worker, along with a letter of assignment from the foreign entity instructing the employee working at its commercial presence in Vietnam and confirming his/her prior continuous employment with such entity for at least 12 months.

Further, Draft Decree updates health certificate requirements. It regulates that the health certificate issued by the Vietnamese authority must include a confirmation that the foreign employee is not suffering from communicable diseases posing a risk of community transmission [14].

c. Licensing authority decentralization

In line with the organizational restructuring that merges the Ministry of Labor, Invalids and Social Affairs into the MHA, the Draft Decree reallocates the licensing authority for issuing, extending, re-issuing and revoking both WPs and WP Exemption Certificates. Specifically [15],

- Employers established by central authorities (i.e., the Government, Prime Minister, ministries, ministerial-level agencies, or agencies directly under the Government) may choose to submit applications either to the MHA or to the provincial-level People's Committee ("PC") where they are located.
- The MHA issues, extends, re-issues and revokes the Certificates for employees working in central authorities.
- The provincial-level PCs issues, extends, re-issues and revokes the Certificates for:
 - Employers established by the provincial-level PC, its subordinate specialized agencies or all-level PCs; and
 - Employers established by central authorities but their head offices and operation are within the jurisdiction of provinces or central-level municipalities.
- The respective local PCs or local authorities as determined and assigned by the provincial-level PCs would handle all other cases.

d. Online submission and electronic transactions

In support of the Government's policy on national breakthroughs in digital transformation, the Draft Decree introduces the legal basis for electronic transactions related to application for issuance, re-issuance, and extension of WP Exemption Certificates as well as WP [16]. It also guides for online submissions [17],

- Employers must complete an electronic form, upload clear and valid scanned copies or images of required documents, or link to data from their electronic data room. Fees may be paid via the online system or other lawful methods.
- After submission, employers will receive a code for application status tracking.
- Result will be issued in electronic form or via SMS message or via written document.

While the Draft Decree allows electronic transactions and online submission, it still refers to future instruction from MHA for detailed implementation. Thus, if the Draft Decree is passed and promulgated, employers may need to continue submitting applications offline and via public postal services until there is official guidance from MHA [18].

3. Transitional provision

To avoid disruption for ongoing WP exemption cases, according to Draft Decree, foreign employees not being subject to WP requirements may continue using their valid WP Exemption Certificates until the expiration date [19].

From available information, the public consultation period for Draft Decree ended on May 26, 2025 [20]. No detail about the next steps of approval and adoption has been publicly announced. However, employers and foreign employees should closely monitor further developments and prepare to adapt their internal processes with a consideration on new requirements under this Draft Decree.

[1] Clause 8, Article 7, Decree 152/2020.

[2] Point a, Clause 13, Article 7, Draft Decree.

[3] Point b, Clause 1, Article 11, Decree 152/2020.

[4] Clause 15, Article 7, Draft Decree.

[5] Resolution No. 57-NQ/TW on breakthroughs in the development of science, technology, innovation, and national digital transformation issued by the Central Executive Committee on December 22, 2024, and Official Telegram No. 22/CD-TTg on key tasks and solutions for streamlining administrative procedures, improving the business environment, and promoting socio-economic development issued by the Prime Minister on March 9, 2025.

[6] Article 17, Draft Decree.

[7] Clause 1, Article 16, Draft Decree.

[8] Article 11, Draft Decree.

[9] Article 14, Draft Decree.

[10] Article 12, Draft Decree.

[11] Articles 4 and 5, Decree 152/2020 as amended by Clause 2 and Point a, Clause 13, Article 1, Decree 70/2023.

[12] Articles 8, 15, 18 and 27, Draft Decree.

[13] Clause 4, Article 8, Draft Decree.

[14] Clause 2, Article 8, Draft Decree.

[15] Article 4, Draft Decree.

[16] Article 6, Draft Decree.

[17] Clauses 4, 5, and 6, Article 6, Draft Decree.

[18] Clause 8, Article 6 and Clause 3, Article 32, Draft Decree.

[19] Clause 1, Article 32, Draft Decree.

[20] MHA's website: <<https://moha.gov.vn/vanban/Pages/van-ban-du-thao.aspx?ItemID=841#parentHorizontalTab2>>

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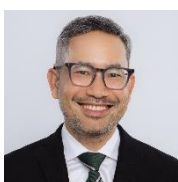
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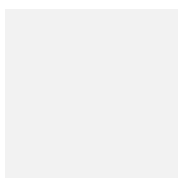
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