

**THE GOVERNMENT**

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No. 46/2011/ND-CP

**SOCIALIST REPUBLIC OF VIET NAM**

**Independence - Freedom – Happiness**

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*Hanoi, June 17, 2011*

**THE DECREE**

ON AMENDING, SUPPLEMENTING SOME ARTICLES OF THE DECREE NO. 34/2008/ND-CP DATED MARCH 25, 2008 OF THE GOVERNMENT ON EMPLOYMENT AND ADMINISTRATION OF FOREIGN EMPLOYEES WORKING IN VIETNAM

*Pursuant to the Law on Government Organization dated December 25, 2001;*

*Pursuant to the Labour Code dated June 23, 1994; Law No. 35/2002/QH10 dated April 2, 2002 amending and supplementing a number of Articles of the Labour Code; Law No. 74/2006/QH11 dated December 12, 2006 amending and supplementing a number of Articles of the Labour Code; At the proposal of the Minister of Labour, War Invalids and Social Affairs,*

**DECREE:**

**Article 1.** Amending, supplementing some Articles of the Decree No. 34/2008/ND-CP dated March 25, 2008 of the Government on employment and administration of foreign employees working in Vietnam as following:

**1. To supplement sub-clause (l) of Article 1.2 and sub-clause (m) Article 1.2 as follows:**

“l) Associations, enterprise associations are established in accordance with Vietnam legal regulations;

m) Business households and individuals who are allowed to do business according to Vietnam legal regulations by authorized agencies.”

**2. To amend, supplement Article 4.2 and 4.3 as follows:**

“2. An application file to register the proposed recruitment of a foreigner: the foreigner shall lodge two sets of an application file with the employer, the employer shall administer one set and the other set shall be retained by the employer to conduct procedures for registration for issuance of a work permit. Each set of the application file shall comprise:

a/ Registration slip regarding the proposed recruitment of the foreigner on the standard form prescribed by the Ministry of Labour, War Invalids and Social Affairs;

b/ Legal record issued by the authorized body of the country where the foreigner resided prior to coming to Vietnam. If the foreigner has currently resided in Vietnam for six (06) months or more, then there need only be a legal record issued by the Vietnamese Department of Justice of the locality where the foreigner is residing.

c/ Health certificate issued overseas or health certificate issued in Vietnam in accordance with the regulations of the Ministry of Health. d/ Certificates of specialist for highly technical qualifications of the foreigner:

For some occupations, jobs, copies of certificates of specialist for highly technical qualifications of the foreigner can be replaced by some documents as following:

- Certificate of artisan in a traditional occupation supplied by foreign authorized agencies for foreigners who are artisan in traditional occupation. - Confirmations or labour certificates or labour contracts certifying that he or she has at least (05) five years' experience in an occupation or trade, in operating production or in managerial work and suitable with the occupation positions that foreigner plans to take. Above confirmations with at least (05) five years' experience are certified by enterprises, agencies and organizations where foreigners have worked. - List of football clubs that football players have taken and certificate of previous football club that football player took are compulsory for a football player.

- License of air transport certified by Vietnam authorized agencies for foreign pilot.

- Certificate of airplane maintenance issued by Vietnam authorized agencies for foreigners who make airplane maintenance.

- Other cases under the Prime Minister's regulations.

dd) 03 (three) color photos (3cm by 4cm in size, bareheaded, frontal view, showing the face and ears clearly, without glasses, and on a white background) taken within the last six (06) months from the date on which the foreigner lodges the application file.

3. Any documents prescribed at sub-clause b, c, d, Section 2 of this Article which is in foreign language must be translated to Vietnamese and notarized in accordance with the law of Vietnam.”

**3. To amend, supplement sub-clause (a) of Article 4.4 as follows:**

a) “At least thirty (30) days prior to recruiting employees, the employer must publish its need to recruit employees in planned positions of foreigners on at least 01 (one) some central newspaper and at least 01 (one) local newspaper in one of written, oral, pictorial or electronic form with the contents: number of employees, positions, professional knowledge, salary level and other incomes, working conditions and other contents required by employees.

It shall not be necessary to publish the above-mentioned notice in a central or local newspaper if the employer recruits employees via a recruitment agency or foreigners in Vietnam are working in international schools within the management scope of foreign diplomatic representative agencies, international inter-government organizations in Vietnam.”

**4. To amend, supplement Article 5.4 as follows:**

“4. Foreigners must prepare all the documents stipulated in sub-clauses (b), (c). (d) and (dd) of Article 4.2 of this Decree.”

**5. To amend, supplement Article 6.3 as follows:**

“3. Foreigners must prepare all the documents stipulated in sub-clauses (b), (c), (d) and (dd) of Article 4.2 of this Decree.”

**6. To supplement Article 6a after Article 6 as follows:**

“Article 6a. Foreigners entering Vietnam to perform packages or projects of winning foreign contractors in Vietnam 1. In the process of making calling document, requirement document, investors have to regulate contents in using Vietnamese labours and foreigners in accordance with legal regulations, especially, Vietnamese labours must be prior in doing jobs that they have capabilities. In the case that the package need foreigners with suitable professional knowledge

with the package, ways of using foreigners including: occupation positions, quantity, professional knowledge, experience and time of implementation must be regulated in calling document and requirement document by contractors.

2. Bidding document and suggest document of foreign contractors must have ways of using Vietnamese labours and foreigners in accordance with investor's requirements.

3. On the implementation of contract, foreign contractors must comply with all the contents in bidding documents and suggest document on using Vietnamese labour and foreigners. Foreign contractors have responsibilities in reporting and suggesting in written document to the municipal President of People's Committees, where contractors are implementing packages or the above successful project in recruiting Vietnamese labour including: occupation positions, quantity, professional knowledge, experience and time of implementation.

Foreign contractor's recruitment proposal for Vietnamese labours must be attached with investor's confirmation on employment plan listed in the bidding document and suggest document. In the case that foreign contractors need to adjust, supplement labour amount in bidding documents, suggest documents, investors have to confirm ways of adjustment and supplementation on demand of using labours from foreign contractors.

4. Presidents of provincial/municipal People's Committee are responsible for directing agencies, relevant organizations to introduce, supply Vietnamese labours for foreign contractors. Within the maximum time of 60 (sixty) days, for the suggest for recruiting from 500 Vietnamese labours and above and 30 (thirty) days, for the suggest for recruiting under 500 Vietnamese labours, Vietnamese labours cannot be introduced and supplied right to above suggests, Presidents of provincial/municipal People's Committee will consider and decide on allowance for foreign contractors to recruit foreigners in the positions that no Vietnamese labour is recruited.

5. Foreign contractors have to make procedure on certificate issuance for foreigners working in Vietnam in accordance with legal regulations before they work in Vietnam.

6. Investors are responsible for instructing, supervising and speeding up, checking foreign contractors on the implementation of regulations on recruiting, using foreigners in accordance with Vietnam laws; monitoring and managing foreigners on the implementation of Vietnam legal regulations at contractors; reporting quarterly to the Department of Labour, War Invalids and Social Affairs on foreigner recruitment and management at foreign contractor under investor's responsibility in accordance with regulations of the Ministry of Labour, War Invalids and Social Affairs.

7. The Department of Labour, War Invalids and Social Affairs is responsible for coordinating quarterly with security agencies and relevant agencies to investigate the implementation on Vietnam legal regulations of foreigners who are working at successful projects and packages of contractors on regions."

**7. To amend, supplement Article 8.3 as follows:**

"3.Foreigners must prepare all the documents stipulated in sub-clauses (b), (c), (d) and (dd) of Article 4.2 of this Decree."

**8. To supplement sub-clauses (h), (i), (k), (l) and (m) of Article 9.1 as follows:**

h) A foreigner working as Head of Representative Office, Head of Project Office or a foreigner assigned to represent all activities in Vietnam by foreign non-government organization;

j) A foreigner having internal transfer within an enterprise, in the service scope in the commitment service table of Vietnam with World Trade Organization with 11 services, including: business service; information service; construction service; distribution service; education service; environmental service; financial service; health service; tourism service; service of entertainment culture and transportation service; k) A foreigner coming Vietnam to supply consulting service on professional knowledge and technique or implement other tasks serving to research, build, appraise, monitor and evaluate, manage and process programs, projects that use Official Development Assistance (ODA) in accordance with regulations or agreements in international treaty on ODA signed between authorized Vietnam agency and foreign agency; l) A foreigner licensed to operate in information and newspaper sector in Vietnam by the Ministry of Foreign Affairs in accordance with legal regulations;

m) Other cases in accordance with the Prime Minister's regulations.”

**9. To amend, supplement Article 9.3 as follows:**

“3. An application file for the issuance of a work permit shall comprise: a) For a foreigner issued of a work permit at the first time, the application file shall comprise:

- Letter from the employer, Vietnamese party or representative of the foreign non-Governmental organization requesting issuance of a work permit, on the standard form prescribed by the Ministry of Labour, War Invalids and Social Affairs;

- Foreigner's documents and other relevant documents:

+ A foreigner recruited in the form of labour contract must have documents prescribed at Article 4.2 of this Decree and other documents to prove that employers informed recruitment demand into planned positions for foreigners in accordance with regulations at sub-clause (a) of Article 4.4 of this Decree.

+ A foreigner having internal transfer within an enterprise must have documents prescribed at sub-clause (b), (c), (d) and (dd) of Article 4.2 of this Decree and attachments of foreign enterprise that appoints foreigner to work at its commercial presence in Vietnam territory.

+ A foreigner regulated at sub-clause (c) and (d) of Article 1.1 must have documents prescribed at sub-clause (b), (c), (d) and (dd) of Article 4.2 of this Decree and attachments to the contract signed between Vietnam partner and foreign partner.

+ A foreigner prescribed at sub-clause (e) of Article 1.1 must have documents prescribed at sub-clause (b), (c), (d) and (dd) of Article 4.2 of this Decree and operation permit of foreign non-government organization in accordance with Vietnam legal regulations.

+ A foreigner entering Vietnam to implementing successful packages or projects in Vietnam in accordance with Article 6a must have documents prescribed at sub-clause (b), (c), (d) and (dd) of Article 4.2 of this Decree; foreigners recruited by contractors right after succeeding the package must have Registration slip in accordance with sub-clause (a) of Article 4.2 and approval documents of Presidents of provincial/municipal People's Committee prescribed at Article 6a.4 of this Decree.

b) A foreigner licensed to work, the dossier includes:

- Letter from the employer, Vietnamese party or representative of the foreign non-Governmental organization requesting issuance of a work permit, on the standard form prescribed by the Ministry of Labour, War Invalids and Social Affairs.

- Foreigner's documents and other relevant documents:

+ In the case of a foreigner who has been issued with a work permit which is currently valid and who wishes to work for other enterprises at the same position written in the work permit must have 03 (three) color photos in accordance with sub-clause (dd) of Article 4.2 of this Decree and work permit or copy of work permit.

+ In the case of a foreigner who has been issued with a work permit which is currently valid and who wishes to work for other positions at the same position written in the work permit must have documents in accordance with sub-clauses (c), (d) and (dd) of Article 4.2 of this Decree and work permit or copy of work permit.

+ In the case of a foreigner who has been issued with a work permit which is currently invalid, annulled and who wishes to work for other enterprises at the same position written in the work permit must have documents in accordance with sub-clauses (c) and (dd) of Article 4.2 of this Decree and work permit or copy of work permit.”

**10. To amend sub-clause b of the Article 9.5 as follows:**

“The Department of Labour, War Invalids and Social Affairs shall issue the work permit for the foreigner within a time-limit of ten (10) working days from the date of receipt of a complete and valid application file In a case of a refusal, the Department shall provide a written response specifying its reasons.”

**11. To annul sub-clause c of the Article 9.5.**

**12. To amend, supplement Article 9.6 as follows:**

“6. With respect to foreigners who work in Vietnam as prescribed in clause 1 of this Article, seven (7) days prior to the date that the foreigners commence to work, the employers or Vietnamese partners, the representatives of foreign non-government organizations must send reports on the list of the foreigners with brief contents of full names, ages, nationalities and passport numbers, the dates of commencing and finishing the work, and their positions to the local Departments of Labour, War Invalids and Social Affairs where the foreigners will work regularly.

With respect to objects prescribed in sub-clause a, b, c and d of clause 1 of this Article, it must be enclosed foreigner's documents prescribed at sub-clause b, c, d and đ of Clause 2 Article 4 of this Decree and must ensure all conditions prescribed at clause 1, 2, 3, and 4 of Article 3 of this Decree.

With respect to objects prescribed in sub-clause đ, e, g, h, i, k, l and m of clause 1 of this Article, the time limit for sending reports on the list of foreign employees with brief contents must be at least 7 days prior to the working commencing date of foreigners.

**13. To amend, supplement sub-clause (a) of Article 10.2 as follows: “a/ In the case of a foreigner working pursuant to a labour contract, including:**

- Request for extension of the work permit on the standard form prescribed by the Ministry of Labour, War Invalids and Social Affairs;

- Copy of vocational contract signed between enterprise and Vietnamese labour in order to replace the position that a foreigner is taking in accordance with regulations of the Ministry of Labour, War Invalids and Social Affairs. - Copy labour contract;

- Work permit already issued.

**14. To amend, supplement Article 10.4 as follows: “4. Order for extension of a work permit:**

a/ The employer or the Vietnamese party must lodge the application file for extension of the work permit with the Department of Labour, War Invalids and Social Affairs which issued such work permit, at least ten (10) days not over thirty (30) days prior to the date of expiry of the work permit.

b/ The Department of Labour, War Invalids and Social Affairs shall extend a work permit for a foreigner within a time-limit of ten (10) working days from the date of receipt of a complete and valid application file. In a case of refusal, the Department shall provide a written response specifying its reasons.”

**15. To amend, supplement Article 11 as follows:**

“Article 11.- Re-issuance of work permits

1. A work permit may be re-issued in the following cases:

a/ The work permit was lost.

b/ The work permit was damaged.

c/ Passport number, working place written in the work permit were changed.

2. The application file for re-issuance of a work permit shall comprise:

a/ Request for re-issuance of the work permit from the foreigner on the standard form prescribed by the Ministry of Labour, War Invalids and Social Affairs, explaining how the work permit was lost or damaged, changes in passport number, working place must be confirmed by employer and Vietnamese partner;

b/ Work permit issued in the cases which are prescribed at the sub-clause (b) and (c) of clause 1 of this Article.

3. Time-limit of re-issued work permit is the time of issuing work permit after subtracting time period that foreigner worked at the time of request for re-issuance of the work permit.

4. Order for re-issuance of a work permit:

a/ An employee must notify his or her employer, or the Vietnamese party, or the representative of the foreign non-Governmental organization that the work permit was lost or damaged or changed in passport number, working place within at least three (3) days of discovering same. The employer, Vietnamese party or such representative must in turn notify the Department of Labour, War Invalids and Social Affairs which issued the work permit for foreigners when the work permit was lost or damaged or changed in passport number, working place. The employer, Vietnamese party or such representative must lodge an application filed for reissuance of the work permit with the Department of Labour, War Invalids and Social Affairs which issued such work permit, within at least thirty (30) days after the date the work permit was lost or damaged or changed in passport number, working place.

b/ The Department of Labour, War Invalids and Social Affairs shall re-issue a work permit within a time-limit of three (03) working days from the date of receipt of a complete and valid application file. In a case of refusal, the Department shall provide a written response specifying its reasons.”

**16. To amend, supplement Article 4.3 as follows:**

“3. Foreigners currently working in Vietnam except for objectives prescribed at the Article 9.1 of this Decree who have not yet obtained a work permit must carry out procedures to apply for issuance of a work permit in accordance with this Decree. If after six (6) months, from the effective date of this Decree, working in Vietnam a foreign employee still does not have a work permit or has not lodge the application file for issuance of a work permit in accordance with regulations, the Department of Labour, War Invalids and Social Affairs shall propose that the Minister of Public Security issue a decision on deportation from Vietnam in accordance with law.”

**17. To supplement Article 15a after Article 15 as follows:**

“Article 15a. Responsibilities of the Ministry of Public Security

1. To direct and provide guidelines for authorized security agencies: a/ To grant visa for foreigner after receiving the work permit, extending the work permit or reissuing the work permit.

b/ Not to grant visa for foreigner working in Vietnam without work permit or the work permit is invalid and annulled, except for objectives prescribed at the Article 9.1 of this Decree.

Not extend permanent residence and issue a decision on deportation from Vietnam to foreign employee who still does not have a work permit or his/her work permit is invalid and annulled, except for objectives prescribed at the Article 9.1 of this Decree.

2. To preside over co-ordination with the Ministry of Labour, War Invalids and Social Affairs to provide guidelines on procedure in sending list of foreigners who are issued work permits, extended work permits and reissued work permits by the Department of Labour, War Invalids and Social Affairs to management agencies of entry and exit in prescribed at Article 18.2 of this Decree.

3. To provide guidelines on authority, procedure, application foundation and file for a decision on deportation from Vietnam to foreign employees who do not have work permits after receiving proposals from the Department of Labour, War Invalids and Social Affairs.”

**18. To supplement Article 16a after Article 16 as follows:**

“16a. Responsibilities of the Ministry of Industry and Trade

Provide guidelines on foundation, process, and procedure in defining the foreigners having internal transfer within an enterprise in the scope of service sector in the service commitment of Vietnam with the World Trade Organization among 11 service sectors prescribed at sub-clause (i) of Article 9.1 of this Decree.”

**19. To amend, supplement Article 18.2 as follows:**

“2. To issue, extend and re-issue work permits in accordance with the

provisions of this Decree and send list of foreigners who are issued work permits, extended work permits and re-issued work permits to the management agency of entry and exit for checking, making entry procedure, supplying temporary residence card for foreigners working in Vietnam.”

**20. To supplement Article 19.7 as follows:**

“7. Employers must annually register demand on recruiting and employing foreign employees in written document to the Department of Labour, War Invalids and Social Affairs in accordance with regulations of the Ministry of Labour, War Invalids and Social Affairs including: quantity, professional knowledge, experience, salary level, working time duration (time of commencing and finishing) for each position. In the case that employer wants to change the demand on using foreign employees, he/she must register in written document for supplementing in demand on recruiting and using foreign employees within time limit of 30 (thirty) days after employer publish its demand to recruit foreign employees.

The Department of Labour, War Invalids and Social Affairs is responsible for collecting, reporting demands on recruiting and using foreign employees in accordance with regulations of the Ministry of Labour, War Invalids and Social Affairs.

**21. To amend, supplement Article 20.1 as follows:**

“Foreigners in Vietnam comprising spouses, husbands of the people who receive preferential treatment in diplomatic exemption, consular working for enterprises, and organizations in Vietnam must have agreement between Vietnam and relevant countries and work permits, except for the case that Vietnam signs a convention or an agreement with different regulations. Dossier, process and procedure in issuing work permit for above spouses; husbands must comply with regulations of the Ministry of Labour, War Invalids and Social Affairs and the Ministry of Foreign Affairs. Foreigners in Vietnam comprising pupils, students studying in foreign schools and training faculties for training in enterprises, agencies, organizations, above enterprises, agencies, organizations must report in accordance with regulations of the Ministry of Labour, War Invalids and Social Affairs and the Ministry of Foreign Affairs.

**Article 2. Effect for implementation**

1. This Decree takes effect on August 01, 2011.
2. Ministers, heads of ministerial-level agencies, heads of government attached agencies, and presidents of provincial/municipal Peoples Committees and organizations, individuals shall implement this Decree.

**FOR THE GOVERNMENT  
THE PRIME MINISTER**

**Nguyen Tan Dung**