

**GOVERNMENT SOCIALIST REPUBLIC OF VIETNAM**

**Independence - Freedom - Happiness**

No. 93-2005-ND-CP

Hanoi, 13 July 2005

**DECREE ON  
AMENDMENT OF AND ADDITION TO A NUMBER OF ARTICLES OF  
DECREE 105-2003-ND-CP OF THE GOVERNMENT DATED 17 SEPTEMBER  
2003 PROVIDING DETAILED REGULATIONS AND GUIDELINES ON  
IMPLEMENTATION OF A NUMBER OF ARTICLES OF THE LABOUR  
CODE WITH RESPECT TO EMPLOYMENT AND ADMINISTRATION OF  
FOREIGN EMPLOYEES WORKING IN VIETNAM**

**The Government**

Pursuant to the *Law on the Organization of the Government* dated 25 December 2001;  
Pursuant to the *Labour Code* dated 23 June 1994 and the *Law on Amendment of and  
Addition to the Labour Code* dated 2 April 2002;  
On the proposal of the Minister of Labour, War Invalids and Social Affairs;

**Decrees:**

**Article 1**

To make the following amendments and additions to a number of articles of Decree 105-2003-ND-CP of the Government dated 17 September 2003 providing detailed regulations and guidelines on implementation of a number of articles of the *Labour Code* with respect to employment and administration of foreign employees working in Vietnam:

1. Article 1 shall be amended as follows:

**"Article 1**

Pursuant to article 132 of the *Labour Code*, the following enterprises, bodies and organizations in Vietnam which are established and operate in accordance with the laws of Vietnam shall be permitted to employ foreign employees:

Enterprises operating pursuant to the *Law on State Owned Enterprises*, the *Law on Enterprises*, and the *Law on Foreign Investment in Vietnam*.

Foreign contractors (head contractors and sub-contractors) awarded with a contract in Vietnam.

Representative offices and branches of economic, trade, financial, banking, insurance, scientific and technological, cultural, sporting, educational, and medical health organizations.

Socio-occupational organizations.

State professional entities.

Medical health, cultural, educational, training, and sporting establishments (including establishments which are set up pursuant to the Law on State Owned Enterprises, the Law on Enterprises, and the Law on Foreign Investment in Vietnam).

Offices of foreign or international projects in Vietnam.

Operating offices of foreign business co-operation parties on the basis of business co-operation contracts in Vietnam.

Organizations engaged in legal consultancy practice in Vietnam.

Co-operatives

The above enterprises, bodies and organizations shall hereinafter be referred to as employers. "

2. Article 3 shall be amended as follows:

### **"Article 3**

1. Employers prescribed in article 1.1 of this Decree shall be permitted to employ foreign employees at a ratio not in excess of three per cent of the number of current employees in the enterprise; a minimum of one person may be recruited.

With respect to enterprises operating in special sectors and minimally using labour or being in the period of commencement of the investment so that their production is not yet stable but they need to employ foreign employees at a ratio in excess of three per cent, such enterprises shall make a submission to the chairman of the people's committee of the province or city under central authority for consideration and approval in writing on the basis of the actual requirements of each enterprise.

2. The regulation on the ratio of foreign employees who may be employed shall not apply to employers prescribed in clauses 2 to 10 inclusive of article 1 of this Decree, but if such employers wish to employ a foreigner(s), they must obtain approval from the chairman of the people's committee of the province or city under central authority.

3. Where enterprises or organizations prescribed in article 1 of this Decree have obtained a decision on approval of a project or an operating licence issued by a Vietnamese authorized State body in which a number of foreign employees employed

is specified, the approval from the chairman of the people's committee of the province or city under central authority shall not be required.

3. Clauses 3 and 4 of article 4 shall be amended as follows:

"3. Must have highly technical skills or highly professional qualifications (including: engineers and persons of a standard similar to or higher than engineers; traditional trade artisans), and be very experienced and be senior professionally in the direction of production or business operation, or in management work which Vietnamese employees are not yet able to perform.

With respect to foreign employees engaged in private medical or pharmaceutical practices or directly carrying out disease examination and treatment in Vietnam, they must satisfy all conditions stipulated by the Vietnamese laws in relation to private medical or pharmaceutical practice.

4. Must have no previous conviction or criminal record; and must not currently be subject to criminal prosecution or any criminal sentence in accordance with Vietnamese and foreign laws;"

4. Clause 1 of article 6 shall be amended as follows:

"1. Any foreign employee working for an enterprise, body or organization in Vietnam must have a work permit, except for the following cases:

Foreign employees entering Vietnam to work for a period of less than three months and to resolve an emergency situation such as a breakdown or a technically or technologically complex situation which suddenly arises and which affects, or has the risk of affecting, production or business and which Vietnamese or foreign experts currently in Vietnam are not able to resolve;

A foreigner who is a member of the board of management or members' council (in the case of a limited liability company established in accordance with the Law on Enterprises) of an enterprise established in accordance with the laws of Vietnam;

A foreigner who is the head of a representative office or a branch in Vietnam;

A foreign lawyer to whom the Ministry of Justice has issued a certificate to practise as a lawyer in Vietnam in accordance with law."

5. Clause 4 of Article 6 shall be amended as follows:

"4. A work permit shall be issued for the same duration as the duration of the proposed labour contract to be signed or as set out in the decision of the foreign party on appointment to come to work in Vietnam, but shall not exceed thirty six (36) months."

6. Clause 5 of article 6 shall be amended as follows:

"5. With respect to persons who do not require a work permit as prescribed in clause 1 of this article, an employer shall be responsible to provide a report to the local Department of Labour, War Invalids and Social Affairs (in the locality of the head office of the enterprise, body or organization) seven (7) days prior to the date on which the foreign employees commence work, namely a list with the following contents: their names, age, nationality, passport numbers, dates of commencement and termination of work, and work undertaken.

With respect to foreigners who enter Vietnam to perform various types of contracts (but not labour contracts) between an enterprise, body or organization in Vietnam with an enterprise, body or organization overseas, such foreigners shall not be required to obtain a work permit but must satisfy the conditions prescribed in clauses 1 to 4 of article 4 of this Decree and the enterprise, body or organization in Vietnam must also provide a report in the same manner as it would be required to

do for a foreigner coming to work for it for a period of less than three months and enclose the documents of the foreigner set out in paragraphs (b), (c), (d) and (dd) of clause 1 of article 5 of this Decree."

7. Clause 3 of article 7 shall be amended as follows:

"3. Duration of an extension of a work permit:

An employer shall prepare an application for extension of a work permit in the form prescribed by the Ministry of Labour, War Invalids and Social Affairs within thirty (30) working days prior to expiry of the duration of the work permit.

The duration of an extension of a work permit shall depend on the additional period for which the foreign employee will continue to work for the employer as fixed in a labour contract or in the letter of the foreign party appointing the foreign employee to continue working in Vietnam, but the maximum duration of an extension shall be thirty six (36) months. In cases of expiry of the duration of the first extension where a Vietnamese worker has not yet been trained to replace the foreign employee, a work permit may continue to be extended if there is approval from the chairman of the people's committee of the province or city under central authority where the enterprise, body or organization has its head office."

## **Article 2**

The Ministry of Labour, War Invalids and Social Affairs and the relevant ministries and branches shall, within the scope of their respective functions, duties and powers, be responsible to provide guidelines for implementation of this Decree.

### **Article 3**

This Decree shall be of full force and effect after fifteen (15) days from the date of its publication in the Official Gazette. All previous provisions which are inconsistent with this Decree are hereby repealed.

### **Article 4**

Ministers, heads of ministerial equivalent bodies, heads of Government bodies, and chairmen of people's committees of provinces and cities under central authority shall be responsible for implementation of this Decree.

On behalf of the Government  
Prime Minister  
PHAN VAN KHAI

