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THE GOVERNMENT

No: 46/2011/ND-CP

SOCIALIST REPUBLIC OF VIET NAM

Independence - Freedom - Happiness

Ha Noi, 17th Jun 2011

DECREE

Decree No. 46/2011/ND-CP of June 17, 2011, amending and supplementing a number of articles of the Government's Decree No. 34/2008/ND-CP of March 25, 2008, on recruitment and management of foreign employees in Vietnam

THE GOVERNMENT

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

Pursuant to the June 23, 1994 Labor Code; the April 2, 2002 Law Amending and Supplementing a Number of Articles of the Labor Code; the June 29, 2006 Law Amending and Supplementing a Number of Articles of the Labor Code;

At the proposal of the Minister of Labor, War Invalids and Social Affairs,

DECREES:

Article 1. To amend and supplement a number of articles of the Government's Decree No. 34/2008/ND-CP of March 25, 2008, on recruitment and management of foreign employees in Vietnam as follows:

1. To add the following Points k and l to Clause 2 of Article 1:

“k) Business societies and associations established under Vietnamese law;

l) Households and persons licensed for business operations by competent authorities under Vietnamese law.”

2. To amend and supplement Clauses 2 and 3 of Article 4 as follows:

“2. Recruitment application dossiers of foreigners: A foreigner shall submit 2 (two) dossier sets to the employer, one for the employer's management and the other for the employer's application for a work permit for the employee. A dossier comprises:

a) A written registration for recruitment, made by the foreigner according to a form provided by the Ministry of Labor, War Invalids and Social Affairs;

b) A judicial record card issued by a competent agency of the country in which the foreigner resides before entering Vietnam. For a foreigner who has been residing in Vietnam for full 6 (six) months or more, only a judicial record card issued by the provincial-level Justice Department of the locality in which he/she is residing is required;

c) A health certificate granted overseas or in Vietnam according to regulations of the Ministry of Health;

d) A certificate of the foreigner's advanced professional or technical expertise.

For some trades and occupations, the certificate of the foreigner's advanced professional or technical expertise may be substituted with the following papers:

- Certificate of artisan of a traditional trade issued by a competent foreign authority, for foreign artisans of traditional trades.
- Written certification of or work permits or labor contracts proving the foreigner's experience of at least 5 (five) years in his/her profession or in production administration and management relevant to the post he/she is expected to hold. Certification of experience shall be made by the employers for which the foreigner has worked.
- List of soccer clubs the football player has joined with certification by the last club the player has joined, for football players.
- License for flying airplanes issued by a competent Vietnamese authority, for foreign pilots.
- Airplane maintenance license issued by a competent Vietnamese authority, for foreigners maintaining airplanes.
- Other cases as prescribed by the Prime Minister.

f) Three 3cm x 4cm color photos (showing bare head, straight-looking and clear face with two ears and without glasses against white background), which were taken within 6 months before the time of application.

3. The papers specified at Points b, c and d, Clause 2 of this Article which are written in a foreign language must be translated into Vietnamese and notarized under Vietnamese law."

3. To amend and supplement Point a, Clause 4 of Article 4 as follows:

"a) At least 30 (thirty) days before recruiting foreigners, an employer shall announce its need for recruitment of Vietnamese to the posts planned for foreigners on at least 1 (one) central and 1 (one) local press of print, radio, television or electronic form with the following details: number of employees to be recruited, posts, professional qualifications, salary levels and other incomes, working conditions and other requirements of the employer.

For an employer recruiting foreigners through an employment service agency or a foreigner working for an international school in Vietnam which is managed by a foreign diplomatic mission or an intergovernmental international organization in Vietnam, notification of the recruitment need on the central and local press is not required."

4. To amend and supplement Clause 4 of Article 5 as follows:

"4. Foreigners shall prepare the papers specified at Points b, c, d and e, Clause 2, Article 4 of this Decree."

5. To amend and supplement Clause 3 of Article 6 as follows:

"3. Foreigners shall prepare the papers specified at Points b, c, d and e, Clause 2, Article 4 of this Decree."

6. To add the following 6a below Article 6:

"Article 6a. Foreigners entering Vietnam to implement bid packages or projects won by foreign contractors in Vietnam

1. An investor shall indicate the recruitment of Vietnamese and foreign employees under law in its bidding dossier or dossier of request, prioritizing employment of Vietnamese for jobs which can be performed by Vietnamese. For a bid package requiring foreigners with relevant expertise, the bidding

dossier or dossier of request must require foreign contractors to plan their recruitment of foreigners, specifying posts, number of jobs, required professional qualifications and experience and employment duration.

2. A foreign contractor's bid dossier or dossier of proposal must contain its plan on employment of Vietnamese and foreigners as required by the investor.

3. When performing the contract, a foreign contractor shall follow its proposal on employment of Vietnamese and foreigners as stated in its bid dossier or dossier of proposal. The foreign contractor shall report and make a written request to the chairperson of the People's Committee of the locality in which it will implement the won bid package or project for its recruitment of Vietnamese employees, specifying posts, number of jobs, required professional qualifications and experience and employment duration.

The foreign contractor's request for recruitment of Vietnamese employees must be enclosed with the investor's certification that the contractor's recruitment plan has been indicated in the bid dossier or dossier of proposal. If a foreign contractor wishes to adjust or increase the number of expected employees stated in the bid dossier or dossier of proposal, the investor shall certify the contractor's plan to adjust or increase the number of expected employees.

4. Chairpersons of provincial-level People's Committees shall direct concerned agencies and organizations in recommending and supplying Vietnamese laborers for foreign contractors. If failing to recommend or supply Vietnamese employees within 60 (sixty) days, for recruitment of 500 employees or more, and 30 (thirty) days, for recruitment of less than 500 employees, chairpersons of provincial-level People's Committees shall consider and allow foreign contractors to recruit foreigners to the vacant posts.

5. A foreigner contractor shall carry out procedures to apply for work permits for their foreign employees in Vietnam under law before these employees work in Vietnam.

6. An investor shall guide, urge and inspect foreign contractors in observing regulations on recruitment and employment of foreigners working for contractors under Vietnamese law; monitor and manage foreigners in observing Vietnamese law when working for foreign contractors; quarterly report to the provincial-level Labor, War Invalids and Social Affairs Department on recruitment and management of foreign employees by foreign contractors under the investor's management according to regulations of the Ministry of Labor, War Invalids and Social Affairs.

7. Provincial-level Labor, War Invalids and Social Affairs Departments shall quarterly coordinate with public security agencies and concerned agencies in inspecting the observance of Vietnamese law by foreigners working at projects and bid packages won by foreign contractors in their localities."

7. To amend and supplement Clause 3 of Article 8 as follows:

"3. Foreigners shall prepare the papers specified at Points b, c, d and e, Clause 2, Article 4 of this Decree."

8. To add the following Points h, i, j, k and l to Clause 1 of Article 9:

"h) Foreigners being chiefs of representative offices or project offices or foreigners authorized by foreign non-governmental organizations to represent the organizations' operations in Vietnam;

i) Foreigners moving within enterprises which operate in 11 service sectors under Vietnam's service commitments to the World Trade Organization, namely business; communications; construction;

distribution; education; environment; finance; health; tourism; recreational culture; and transport services;

j) Foreigners entering Vietnam to provide professional or technical consultancy or perform other jobs for the study, formulation, appraisal, supervision, evaluation, management and implementation of official development assistance (ODA)-funded programs or projects under regulations or ODA treaties signed between competent Vietnamese and foreign authorities;

k) Foreigners licensed for communication and journalistic operations in Vietnam under law by the Ministry of Foreign Affairs;

l) Other cases provided by the Prime Minister.”

9. To amend and supplement Clause 3, Article 9 as follows:

“3. Dossiers of work permit application:

a) For a foreigner applying for a work permit for the first time, a dossier comprises:

- A written request for grant of a work permit, made by the employer, the Vietnamese party or the representative of the foreign non-governmental organization according to a form provided by the Ministry of Labor, War Invalids and Social Affairs;

- The foreigner’s papers and related documents:

- + For a foreigner recruited under a labor contract, the papers specified in Clause 2, Article 4 of this Decree and the document proving the employer’s notification of its need for recruitment of Vietnamese employees to posts planned for foreigners under Point a, Clause 4, Article 4 of this Decree.

- + For a foreigner moving within an enterprise, the papers specified at Points b, c, d and e, Clause 2, Article 4 of this Decree together with the foreign enterprise’s written assignment of the foreigner to work at its commercial presence in the territory of Vietnam.

- + For a foreigner specified at Point c or d, Clause 1, Article 1 of this Decree, the papers specified at Points b, c, d and e, Clause 2, Article 4 of this Decree together with the contract signed between Vietnamese and foreign parties.

- + For a foreigner specified at Point f, Clause 1, Article 1 of this Decree, the papers specified at Points b, c, d and e, Clause 2, Article 4 of this Decree and the certificate of the foreign non-governmental organization’s eligibility for operations under Vietnamese law.

- + For a foreigner entering Vietnam to implement a bid package or project won by a foreign contractor in Vietnam under Article 6a of this Decree, the papers specified at Points b, c, d and e, Clause 2, Article 4 of this Decree; and additionally the written registration for recruitment under Point a, Clause 2, Article 4 of this Decree and the provincial-level People’s Committee chairperson’s written approval under Clause 4, Article 6a of this Decree, for a foreigner recruited by the contractor after winning the bid.

b) For a foreigner having obtained a work permit, a dossier comprises:

- A written request for grant of a work permit, made by the employer, the Vietnamese party or the representative of the foreign non-governmental organization according to a form provided by the Ministry of Labor, War Invalids and Social Affairs;

- The foreigner’s papers and related documents:

- + For a foreigner with a valid work permit who wishes to work for another employer in the same post

indicated in his)her work permit, 3 (three) color photos as required at Point e, Clause 2, Article 4 of this Decree and the original or a copy of the granted work permit.

+ For a foreigner with a valid work permit who wishes to work in a post other than that indicated in his)her work permit, the papers specified at Points c, d, and e, Clause 2, Article 4 of this Decree and the original or a copy of the granted work permit.

+ For a foreigner with an invalid work permit who wishes to work for another employer in the same post indicated in his)her work permit, the papers specified at Points c and e, Clause 2, Article 4 of this Decree and the original or a copy of the granted work permit.”

10. To amend Point b, Clause 5 of Article 9 as follows:

“b) Within 10 (ten) working days after receiving a valid dossier of work permit application, a provincial-level Labor, War Invalids and Social Affairs Department shall grant a permit to the foreigner. In case of refusal, it shall issue a written reply clearly stating the reason.”

11. To annul Point c, Clause 5 of Article 9.

12. To amend and supplement Clause 6 of Article 9 as follows:

“6. For a foreigner working in Vietnam under Clause 1 of this Article, the employer, the Vietnamese party or the representative of the foreign non-governmental organization shall, 7 (seven) days before the foreigner starts working, report on the foreigner’s full name, age, citizenship, passport number, dates of starting and completing work and post to the provincial-level Labor, War Invalids and Social Affairs Department of the locality in which the foreigner will regularly work.

For persons specified at Point a, b, c or d, Clause 1 of this Article, the foreigner’s papers specified at Points b, c, d and e, Clause 2, Article 4 of this Decree must be enclosed and all the conditions specified at Clauses 1, 2, 3 and 4, Article 3 of this Decree must be satisfied.

For persons specified at Points e, f, g, h, i, j, k and l, Clause 1 of this Article, the time limit for reporting on such information of foreigners is 7 (seven) days before a foreigner starts working.”

13. To amend and supplement Point a, Clause 2 of Article 10 as follows:

“a) For a foreigner working under a labor contract, a dossier comprises:

- The employer’s written request for extension of the work permit, made according to a form provided by the Ministry of Labor, War Invalids and Social Affairs;
- A copy of the apprenticeship contract signed by between the employer and the Vietnamese employee who will work in the post currently held by a foreigner under regulations of the Ministry of Labor, War Invalids and Social Affairs;
- A copy of the labor contract;
- The granted work permit”.

14. To amend and supplement Clause 4 of Article 10 as follows:

“4. Order of work permit extension:

a) At least 10 (ten) days but not more than 30 (thirty) days before a work permit expires, the employer or the Vietnamese party shall submit a dossier of application for extension of that work permit to the provincial-level Labor, War Invalids and Social Affairs Department which has granted the work permit;

b) Within 10 (ten) working days after receiving a complete and valid dossier of application for an extended work permit, a provincial-level Labor, War Invalids and Social Affairs Department shall extend the work permit. In case of refusal, it shall issue a written reply clearly stating the reason.”

15. To amend and supplement Article 11 as follows:

“**Article 11.** Renewal of work permits

1. Cases eligible for work permit renewal:

- a) The work permit is lost;
- b) The work permit is damaged;
- c) There is a change in the passport number or workplace indicated in the granted work permit.

2. A dossier of application for a renewed work permit comprises:

- a) The foreigner’s application for a renewed work permit, made according to a form provided by the Ministry of Labor, War Invalids and Social Affairs, clearly stating the reason for loss or damage or change in passport number or workplace with certification by the employer or Vietnamese party;
- b) The granted work permit for the cases specified at Points b and c, Clause 1 of this Article.

3. The validity duration of a renewed work permit is the validity duration of the granted work permit minus the duration the foreigner has worked till application for a renewed work permit.

4. Order of work permit renewal:

a) Within 03 (three) working days after a foreigner detects that his)her work permit is lost or damaged or has a change in the passport number or workplace indicated in the granted work permit, he)she shall report such to the employer, the Vietnamese party or the representative of the foreign non-governmental organization for notification to the provincial-level Labor, War Invalids and Social Affairs Department which has granted the work permit. Within 30 (thirty) days after such loss, damage or change, the employer, the Vietnamese party or the representative of the foreign non-governmental organization shall submit a dossier of application for a renewed work permit to the provincial-level Labor, War Invalids and Social Affairs Department which has granted the work permit;

b) Within 3 (three) working days after receiving a complete and valid dossier of application for a renewed work permit, a provincial-level Labor, War Invalids and Social Affairs Department shall renew the work permit. In case of refusal, it shall issue a written reply clearly stating the reason.”

16. To amend and supplement Clause 3 of Article 14 as follows:

“3. Foreigners other than those provided in Clause 1, Article 9 of this Decree who are working in Vietnam without a work permit shall carry out procedures to apply for a work permit under this Decree. Provincial-level Labor, War Invalids and Social Affairs Departments shall propose police offices to force to leave or expel from Vietnam in accordance with law foreign employees who, six months after the effective date of this Decree, work in Vietnam without a work permit or fail to submit a dossier of work permit application under regulations.”

17. To add the following Article 15a below Article 15:

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

1. To direct and guide competent public security agencies in:

- a) Granting visas to foreigners after they have obtained a new, extended or renewed work permit;
- b) Not granting visas to foreign employees in Vietnam without a work permit or with an invalid work permit, except the persons specified in Clause 1, Article 9 of this Decree.

Not extending temporary residence for, forcing to leave or expelling foreign employees from Vietnam who have no work permit or have invalid work permits, except the persons specified in Clause 1, Article 9 of this Decree.

2. To assume the prime responsibility for, and coordinate with the Ministry of Labor, War Invalids and Social Affairs in, guiding the order and procedures for sending lists of foreigners having obtained new, extended or renewed work permits from provincial-level Labor, War Invalids and Social Affairs Departments to immigration management agencies under Clause 2, Article 18 of this Decree.

3. To guide on competence, order and application grounds and dossiers of request for forced leave or expulsion of foreign employees who have no work permit after receiving requests from provincial-level Labor, War Invalids and Social Affairs Departments.”

18. To add the following Article 16a below Article 16:

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

To guide grounds, order and procedures for identifying foreigners moving within enterprises in 11 service sectors under Vietnam’s service commitments to the World Trade Organization specified at Point i, Clause 1, Article 9 of this Decree.”

19. To amend and supplement Clause 2 of Article 18 as follows:

“2. To grant, extend and renew work permits under this Decree and send lists of foreigners having obtained new, extended or renewed work permits to immigration management agencies for inspection and carrying out entry procedures and granting temporary residence cards to foreign employees in Vietnam.”

20. To add the following Clause 7 to Article 19:

“7. Annually, employers shall register in writing their needs for recruitment and employment of foreigners, specifying the number of needed employees, required professional qualifications and experience, salary levels and employment duration (starting and ending time) of each post with provincial-level Labor, War Invalids and Social Affairs Departments under regulations of the Ministry of Labor, War Invalids and Social Affairs. When changing their needs for employment of foreigners, employers shall make additional written registration for such needs 30 (thirty) days before they notify their recruitment of foreigners.

Provincial-level Labor, War Invalids and Social Affairs Departments shall summarize and report on needs for recruitment and employment of foreigners under regulations of the Ministry of Labor, War Invalids and Social Affairs.”

21. To amend and supplement Clause 1 of Article 20 as follows:

“1. For a foreigner being the spouse of a person entitled to diplomatic immunities or consular who works for an enterprise or organization in Vietnam, there must be agreement between Vietnam and the concerned country and this person must have a work permit, unless otherwise provided by a treaty or agreement which Vietnam has signed.

The dossier, order and procedures for granting a work permit to such person comply with regulations of the Ministry of Labor, War Invalids and Social Affairs and the Ministry of Foreign Affairs.

For a foreign pupil or student of a foreign school or training institution who comes to Vietnam for apprenticeship at an enterprise, agency or organization, that enterprise, agency or organization shall report on such student under regulations of the Ministry of Labor, War Invalids and Social Affairs.”

Article 2. Effect

1. This Decree takes effect on August 1, 2011.
2. Ministers, heads of ministerial-level agencies, heads of government-attached agencies and chairpersons of provincial-level People’s Committees shall implement this Decree.

THE GOVERNMENT**PRIME MINISTER**

(signed)

Nguyen Tan Dung

