

Human Rights and Gender Equality

Comparative Study on Laws and Policies in the Management of Migrant Workers in ASEAN

National Report: Viet Nam



Enhanced Regional EU-ASEAN Dialogue Instrument
E-READI

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About the Report

This national report was one of ten national ASEAN Member State reports produced to feed into a regional **Comparative Study on Laws and Policies in the Management of Migrant Workers in ASEAN**. The regional study offers a comprehensive analysis on how ASEAN Member States have dealt with the movement of migrant workers into their labour markets, covering all skill levels and including occupations under the 8 ASEAN Mutual Recognition Arrangements (MRAs), and providing recommendations as feedback for ASEAN policymakers and practitioners in improving policies and measures pertaining to the mobility of migrant workers.

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LAWS AND POLICIES ON THE MANAGEMENT OF FOREIGN WORKERS IN VIET NAM NATIONAL REPORT

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Ha Noi, Viet Nam, 2020

Summary

The report on “Laws and policies on the management of foreign workers” done by Viet Nam consultant provides inputs to the regional comparative study on the laws and policies on the management of migrant workers in the ASEAN region.

Based on the results of legal review, relevant research reports and a combined analysis of expert opinions, the report: (i) provides a preliminary picture of the achievements and challenges of Viet Nam’s laws and policies on management of foreign workers in four areas including: entry and stay measures, incorporation measures, exit measures and enforcement measures; (ii) proposes measures to promote labor mobility in the region as well as strengthen the management of foreign workers; (iii) identify opportunities to learn from each other's experience on labor mobility to promote skilled labor mobility and minimize irregular labor migration and acts of migration abuse in the ASEAN region.

Regarding policies and laws, the research has shown that the legal system and policies for management of foreign workers cover all aspects of labor management, which is an important legal basis for competent agencies to manage foreign workers. The implementation of policies and laws on foreign workers has been basically implemented by the competent agencies in the localities. Especially, the management of foreign workers in Vietnam also includes the management of work permit exempted workers. However, there are still some challenges regarding the uniformity in the policy system, the implementation difficulties in practice; low sanctions affecting the severity of the law.

The results of this study shows that management of migrant workers is being implemented and promoted at both national and ASEAN levels. Accordingly, at regional level, activities have been implemented towards improving regional environment for promoting migrant labor mobility; promoting mutual understanding and sharing among nations to address migration issues; encouraging social and economic development through migration; enhancing the dignity and health of migrant workers. At the national level, the management of migrant workers should work towards the development of a system of laws and policies on the management of foreign workers in line with international regulations.

The report has made a number of recommendations that need to be implemented at the national and regional levels. Accordingly, at the national level, it is necessary to continue improving the legal framework on labor management including immigration policies, labor market policies and trade and investment policies; improve the efficiency of the implementation of laws and policies on management of skilled foreign workers; enhance propaganda and facilitate work permit granting. At the regional level, it is necessary to enhance regional cooperation, information sharing, building and harmonizing the legal system to accelerate the process of international economic integration.

I. INTRODUCTION

1. Background

Along with the socio-economic development and the participation in world trade organizations/free trade agreements such as the WTO, the Asia-Pacific Comprehensive Partnership Agreement (CPTPP) and the Free Trade Agreements (FTAs)...., Viet Nam's labor market is increasingly integrated with the global market. Accordingly, foreigners entering Viet Nam tend to increase over the years (in 2010 there were 65,000 foreign workers, in 2016 there were 81,359 foreign workers). This reflects the direction that Viet Nam always encourages the employment of skilled foreign workers to work in positions with requirements/qualifications that Vietnamese workers have not yet met with.

Viet Nam has issued the Labor Code and many Decrees guiding the implementation of the law on the management of foreign workers as well as reviewed and supplemented amendments to policies and laws to meet the requirements of each stage of socio-economic development in line with international laws and the practical situation of Viet Nam, contributing to promoting labor mobility as well as job security for native workers.

2. The specific targets and purposes of the study

This report provides an analysis of Viet Nam's legal and policy system on labor mobility, including occupations under the 8 Mutual Recognition Agreements (MRAs) in ASEAN on foreign labor management in Viet Nam with the aim to providing inputs to the regional comparative study on the laws and policies on the management of migrant workers in the ASEAN region. Specific purposes include: (i) to provide and analyze information on Viet Nam's labor migration laws and policies in terms of exit and stay measures, incorporation measures, exit measures and enforcement measures; (ii) to recommend measures to promote labor migration in the region as well as strengthen the management of foreign workers; (iii) to learn from each other's experience on labor mobility to promote skilled labor mobility and minimize irregular labor migration and acts of migration abuse in the ASEAN region.

The report was developed based on the review of Viet Nam's current legal documents (laws, decrees, circulars, and labor cooperation agreements) on labour management and interviews with officials in charge of managing foreigners and foreign workers in government relevant agencies, representatives from employers' and employees' organizations and related experts and MRAs national focal points with the focus on 4 areas including: entry and stay measures; incorporation measures, exit measures and enforcement measures. A list of legal documents reviewed and the list of interviewees and research methodology are attached in the appendix of this report.

II. MIGRATION LAWS AND POLICIES

A. ENTRY AND STAY MEASURES

Foreign workers working in Viet Nam, except for a number of cases that are exempt from work permit as prescribed by law, must have a work permit. A work permit is a document permitting a foreigner to work legally in Viet Nam. The information on the work permit contains all employee information; name and address of organization of employment, the position of employment. Foreigners are required to do the job exactly as stated in their work permits, otherwise, it will be illegal. Foreigners working in Viet Nam without a work permit will be expelled from the territory of Viet Nam. In addition, a work permit is valid for a specified period of time on the permit. If expired, it must be extended. The entry and stay measures of foreign workers working in Viet Nam are governed by two main laws: The Labor Code 2012: and the Law on Entry, Exit, Transit, and Residence of Foreigners in Viet Nam 2014 (amended and supplemented in 2019) and its under-law documents.

Work permit is the official name of Viet Nam's current work permit.¹ Work permits are issued to foreign nationals who come to work as managers, executives, experts and technical workers that Vietnamese workers have not yet met with the production and business demands. Low-skilled workers are not eligible for work permits. Work permits are applicable to the majority of foreign workers working in Viet Nam who are eligible for work permits (See table 1), except for some special cases as stipulated in the law.

In order to encourage and attract foreigners who are to the scientific and technological activities in Viet Nam as well as strengthen cooperation with international partners, Viet Nam also issues work permit for foreign experts engaged in scientific and technological activities in Viet Nam.²

In addition, there is another type of work permit that foreign workers working associated with vacation (vacation working programme) - exclusively for Australian³ and New Zealand citizens⁴ on the basis of cooperation agreements between the two sides.

However, the number of cases issued with this type of work permits is very little. According to data from the Bureau of Employment under the Ministry of Labor, Invalids and Social Affairs, after 8 years of implementation, only 5 foreign workers applied for this work permit. There has not been a specific survey on the root causes of this situation. However, the small number of foreign workers working in Viet Nam in this type of work permit shows a low demand. The reason may be due to the difference and priorities in the administrative procedures applied for this work permit are not much more attractive and convenient than those in other normal type of work.

¹ Circular No. 40/2016/TT-BLĐTBXH dated on October 25, 2016 of the Ministry of Labor, Invalids and Social Affairs (hereinafter referred to as Circular No. 40/2016/TT-BLĐTBXH) guiding the implementation of a number of articles of Decree No.11/2016/ND-CP dated on February 3, 2016 on detailing the implementation of a number of articles of the Labor Code on Foreign workers working in Viet Nam (hereinafter referred to as Decree No.11/2016/ND-CP).

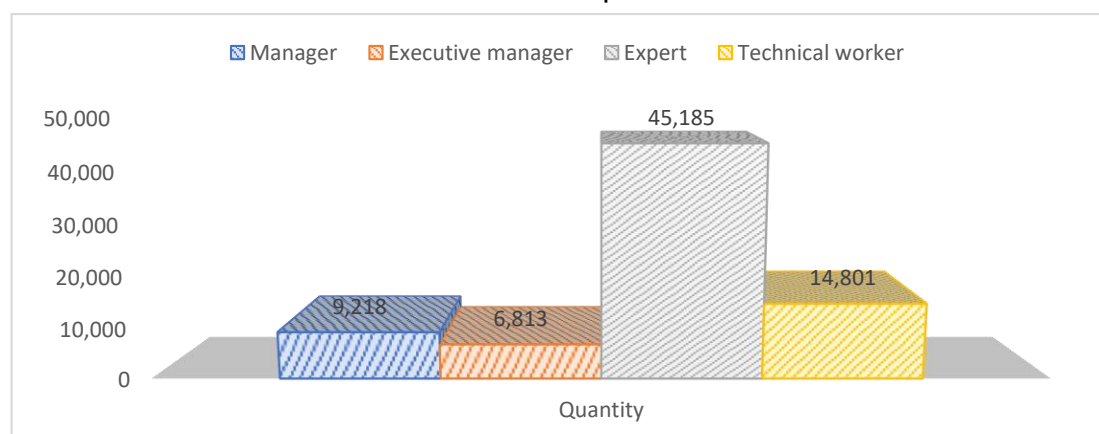
² Circular No. 24/2015/TT-BLĐTBXH dated on 13/7/2015 of the Ministry of Labor, Invalids and Social Affairs on detailing the implementation of Clause 6, Article 14 of Decree No. 87/2014 / ND-CP of May 22, 2015 9 2014.

³ Joint Circular No. 21/2016/TTLT-BLĐTBXH-BCA-BNG dated on June 29, 2016 on vacation working program with the Australian Government.

⁴ Joint Circular No.15/2012/TTLT-BLĐTBXH-BCA-BNG dated on June 6, 2012 on issuing holiday work permits for New Zealand citizens.

Chart 1: Work permits by employment position

Unit: person



Bureau of Employment, Ministry of Labour, Invalids and Social Affairs – Number of work permits accumulated up to December 2019.

For foreign citizens working in Viet Nam who are exempt from work permit, when engaged in the employment, they still have to submit the relevant documents to the labor management agency to get an official document confirming their exemption from work permit⁵. The number of employees who are not in the category of work permits is also recorded and managed by the state management agency in charge of labor

According to the current legislation, there are 8 groups of categories exempted from work permit which include⁶: (i) Capital-contributing members or owners of limited liability companies; (ii) Members of the Board of Directors of joint-stock companies; (iii) Chiefs of representative offices and directors of projects of international organizations or non-governmental organizations in Viet Nam; (iv) Those who stay in Viet Nam for under 3 months to offer services for sale; (v) Those who stay in Viet Nam for under 3 months to deal with complicated technical or technological problems that adversely impact or are at risk of exerting adverse impacts on production and business activities and these problems cannot be handled by Vietnamese and foreign experts who are currently in Viet Nam; (vi) Foreign lawyers possessing a professional practice license in Viet Nam in accordance with the Law on Lawyers; (vii) It is in accordance with a treaty to which Viet Nam is a contracting party; (viii) Those who are studying and working in Viet Nam, provided that the employer shall notify their employment to the provincial-level state management agency of labor 7 days in advance;

In addition to the 8 above-mentioned groups, Viet Nam also stipulates 10 other cases of foreign workers exempted from work permits thanks to the nature and requirements of their work,⁷ including:

- a) Foreign workers who are internally transferred within an enterprise operating in the 11 service sectors in the list of Viet Nam's commitments on services to the World Trade Organization, including: business, communication, construction, distribution, education, environment, finance, healthcare, tourism, cultural entertainment and transport;

⁵ Circular No. 40/2016/TT-BLDTBXH dated October 25, 2016, guidance on implementation of a number of articles of Decree No. 11/2016/ND-CP detailing a number of articles of the Labor Code in respect of foreign workers in Vietnam

⁶Article 172 of the Labor Code No.10/2012/QH13

⁷Article 7 Decree No.11/2016/ND-CP regulating other cases are exempt from work permit

- b) Foreign workers entering Viet Nam to provide advisory services and technical expertise or perform other tasks serving research, construction, appraisal, monitoring and evaluation, management and implementation of programs/projects funded with official development assistance (ODA) as specified and agreed in international agreements on ODA between competent authorities of Viet Nam and other countries;
- c) Foreign workers who are issued with a license for the practice of journalism in Viet Nam by the Ministry of Foreign Affairs in accordance with the law;
- d) Foreign workers who are teachers of foreign organizations that are sent to Viet Nam by such organizations to teach and research in international schools under the management of foreign diplomatic missions or international organizations in Viet Nam or permitted by the Ministry of Education and Training to teach and research in Viet Nam's education and training institutions;
- e) Volunteers certified by foreign diplomatic missions or international organizations in Viet Nam;
- f) Foreign workers coming to Viet Nam to work as experts, managers, executive directors or technical employees with a period of less than 30 days and no more than 90 cumulative days in 01 years;
- g) Foreign workers entering Viet Nam to implement international agreements to which central and local state agencies are signatories as prescribed by the law;
- h) Students studying in foreign schools and institutions having agreements on an internship in agencies, organizations, and enterprises in Viet Nam;
- i) Family members of diplomatic agents of foreign diplomatic missions in Viet Nam permitted for working by the Ministry of Foreign Affairs, except where international treaties to which the Socialist Republic of Viet Nam is a signatory that contains provisions different from this;
- j) Foreign workers who have official passports to work for state agencies, social organizations and socio-political organizations;

Viet Nam also stipulates specific cases exempted from work permit decided by the Prime Minister at the proposal of the Ministry of Labor - Invalids and Social Affairs. The regulations were issued but not yet applied in practice. Notwithstanding, this is a comparatively flexible regulation in Viet Nam's legal system to ensure practical implementation as well as to meet the fast-changing requirements of jobs and occupations in the labor market.

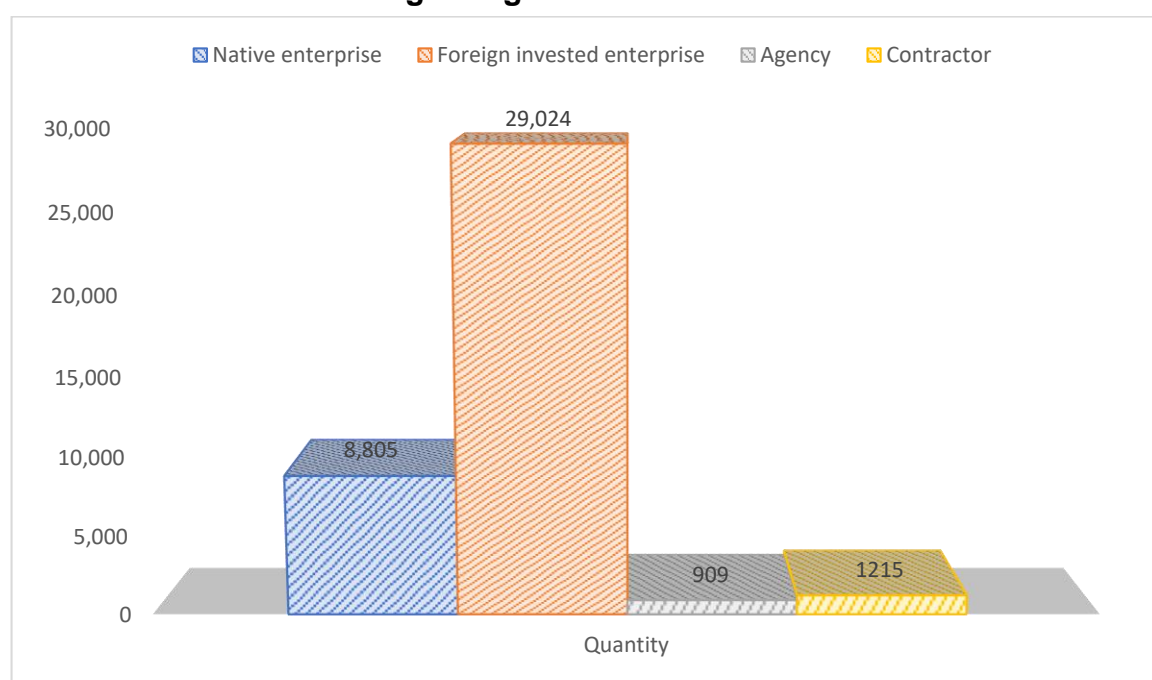
For skilled labour mobility in 8 occupations of MRA (accountants, engineering, architect, surveyor, nurse, medical professionals, dentistry and tourism workers), Viet Nam has made great efforts to promote the implementation of this agreement. Specifically, with engineering, the Ministry of Construction issued Decision No. 820 and 821/QĐ-BXD of August 6, 2009, establishing the Viet Nam Supervisory Committee and the Regulation on Assessment of Professional Engineer. To support ASEAN's Mutual Recognition Agreements, the ASEAN Qualifications Reference Framework (AQRF) has been developed so that qualifications can be compared among member countries by providing a coherent standard for the National Qualification Frameworks (NQF). AQRF was approved by the Ministers of Economy in August 2014 and followed by the Ministers of Education in September 2014. In Viet Nam, on October 18, 2016, the Prime Minister of Viet Nam issued the Viet Nam National Qualifications Framework (VNQF). Viet Nam is in the process of establishing the AQRF

National Committee, which is the focal point connecting national policy-making agencies, national qualifications/qualifications management agencies and the AQR Committee.⁸

According to the provisions of Vietnamese law, foreign workers in 8 occupations specified in the ASEAN Mutual Recognition Agreements (MRAs) do not fall into the cases that are not subject to getting the work permit, this means that foreign workers in the 8 occupations of the MRA must have a work permit. However, foreign workers working in medical professionals and tourism may not be required to obtain the work permit if they are intra-corporate transferees.

In Viet Nam, a work permit is only applicable to highly skilled workers. According to the current legislation, domestic enterprises, agencies, organizations, individuals, and contractors shall be entitled employing foreign citizens only in the positions of managers, executive directors, experts, and technical workers, in which Vietnamese workers cannot meet the demands of production and trade.⁹

Chart 3: Current situation of application for work permit of enterprises recruiting foreign workers in Viet Nam



Source: Bureau of Employment, MoLISA – work permits granted up to December 2019

The legislation clearly stipulates conditions/qualification to be recognized as foreign workers who are internally transferring within an enterprise, volunteers, managers, executive directors, experts and technical,¹⁰ specifically as follows:

1. Foreign workers internally transferring within an enterprise as managers, executive directors, experts and technical workers of a foreign enterprise which has already established a commercial presence within the territory of Viet Nam,

⁸ Mutual Recognition Framework in ASEAN – Mechanism and Progress of Implementation <http://truong1bqp.edu.vn/thoa-thuan-cong-nhan-lan-nhau-ve-nghe-nghiep-trong-asean-co-che-va-tien-trinh-thuc-hien/>

⁹Article 170 of the 2012 Labor Code

¹⁰Article 3 Decree No.11/2016/NĐ-CP

temporarily move within the enterprise to the representative office within the territory of Viet Nam and have been employed for at least 12 months prior to such transfer by the foreign enterprise.

2. Foreign volunteers in Viet Nam voluntarily and unpaid pursuant to international treaties to which the Socialist Republic of Viet Nam is a signatory.
3. 3. Foreign experts in one of the following cases: a) Having a written document proving him/her as an expert of a foreign agency, organization or enterprise; b) Having a college degree or equivalent or higher qualifications and have at least 03-year working experience in the field consistent with the position that the foreign workers are expected to work in Viet Nam; special cases shall be considered and decided by the Prime Minister.
4. Foreign managers and executive directors in one of the following cases: a) Managers of an enterprise as stipulated in Clause 18 of Article 4 of the Law on Enterprises¹¹ or heads and deputy heads of an agency or an organization; b) Chief Executive Officers who lead and directly operate subsidiary units under agencies, organizations, and enterprises.
5. Technical workers who had received technical or other specialized training for at least 01 year and worked at least 03 years in the sector of specialized training.

Therefore, it can be seen that a work permit is granted to skilled workers working in the positions that Vietnamese workers cannot meet the demands of such employment. Vietnamese law also clearly stipulates that foreign enterprises, agencies, organizations, individuals and contractors before employing foreign citizens to work in the territory of Viet Nam are required to provide an explanation of their labor demands to employ foreign workers and to obtain written approval from competent state agencies.¹²

With regard to the competent agency for issuing the work permit, according to the Vietnamese legislation, the work permit – granting agencies include the Department of Labour – Invalids and Social Affairs (MOLISA),¹³ Management Boards of Industrial, export processing, Economic and high technological Zones (Industrial Zones).¹⁴ MOLISA has authority to approve the demand to employ foreign workers; to certify cases of foreign workers exempt from work permit; grant and re-update work permits; revocation of a work permit and confirmation of revocation of a work permit; to request the police officer to deport workers working in Viet Nam without work permits and to work for employers, including: a) Central state agencies; Central agencies of political organizations, socio-political organizations, socio-political-professional organizations, social organizations, socio-professional organizations; b) Foreign non-governmental organizations and international organizations in Viet Nam; c) Non-business organizations attached to: Ministries, ministerial-level agencies and government-attached agencies; Hanoi National University, Ho Chi Minh City National University; d) Offices of foreign projects or international organizations in Viet Nam; đ) Business associations and business associations established in accordance with the law.

¹¹Clause 18 of Article 4 of the Law on Enterprises (Law No. 68/2014/QH dated 26/11/2014) stipulates that Enterprise managers is the manager of the company or manager of sole proprietorship, who is either an owner of a sole proprietorship, a general partner, the Chairpersons of the Board of members, a member of the Board of members, the company's President, the Chairperson of the Board of Directors, a member of the Board of Directors, the Director/General Director, or a person holding another managerial position who is entitled to enter into the company's transactions on behalf of the company according to the company's charter.

¹²Article 170 of the 2012 Labor Code

¹³Article 3 of Circular No. 40/2016/TT-BLĐTBXH

¹⁴Article 7 of Circular No. 32/2014 / TT-BLĐTBXH dated December 1, 2014 guiding the authorization to perform a number of state management tasks on labor in industrial Zones

Department of Labor - Invalids and Social Affairs confirms the cases where foreign workers are not subject to work permits; grant and re-update work permits; revocation of a work permit and confirmation of revocation of a work permit; Requesting the police to deport workers who work in Viet Nam without a work permit and work for employers, including: (a) Employers at: (i) Enterprises operating in accordance with the Enterprise Law, the Investment Law or the international treaties to which the Socialist Republic of Viet Nam is a signatory; (ii) Foreign or domestic contractors participating in tendering and contract performance; (iii) Representative offices, branches of enterprises, agencies and organizations licensed by competent authorities; (iv) Executive offices of foreign investors in business cooperation contracts or foreign contractors registered to operate under the provisions of law; (v) Lawyer organizations in Viet Nam in accordance with the law; (vi) Cooperatives and unions of cooperatives established and operating under the Law on Cooperatives; (vii) Business households and individuals are allowed to do business in accordance with the law; b) Local state agencies; c) Political organizations, socio-political organizations, socio-political-professional organizations, social organizations, socio-professional organizations in localities; d) Non-business organizations, including public non-business units attached to: Provincial-level People's Committees; specialized agencies under the provincial-level People's Committees; People's Committees of districts, towns and provincial cities.

For Management Board of Industrial/Processing Zones, with regard to the management of foreign workers, Department of Labour and Social Affairs authorizes the Management Board of industrial zones to issue (i) grant, re-issue, revoke work permits to foreigners working for enterprises in industrial parks; (ii) Certify that foreign workers working for enterprises in industrial zones are subject to exemption from work permit.

At the time of issuance of a work permit, in principle, a work permit must be issued before a worker enters Viet Nam. The Labor Code 2012 stipulates: ¹⁵ (i) A foreign employee shall produce his/her work permit when carrying out immigration procedures and upon request of a competent state agency; (ii) Any foreign citizen working in Viet Nam without a work permit shall be deported from Viet Nam according to the Government's regulations; (iii) Any employer employing foreign citizens without work permits shall be handled in accordance with the law. This means that before entering Viet Nam, foreign workers must have a work permit.

On procedure for issuance of a work permit, according to Article 12 Decree 11 stipulates:

- At least 15 working days before the date the foreign worker is expected to begin working for the employer, the employer must file an application for issuance of a work permit to the Department Labor - Invalids and Social Affairs where the foreign worker is expected to work;
- Within 07 working days from the date of receipt of an application for issuance of a work permit, the Department of Labor - Invalids and Social Affairs must issue a work permit for the foreign worker using forms the prescribed by the Ministry of Labor - Invalids and Social Affairs. In case a work permit is not granted, it must issue a written reply clearly stating the reason.
- For foreign workers stipulated in Point a, Clause 1 of Article 2 of this Decree, after issuance of a work permit, the employer and the foreign worker must sign a written labor contract in accordance with the labor law of Viet Nam before the expected date he or she starts working for the employer.

¹⁵Article 171 of the 2012 Labor Code

Within 05 working days from the date of signing the labor contract, the employer must send a copy of the signed labor contract to the Department of Labor - Invalids and Social Affairs which has issued the work permit.

Viet Nam Trade Union, operating under Trade Union Law and Labor Code 2012, is an organization representing, taking care of and protecting the legitimate rights and interests of union members and employees; carrying out the inspection, examination and supervision of activities of State agencies and enterprises on the implementation of legal provisions related to workers' rights and interests. However, according to Vietnamese law, the Trade Union does not participate in the process of applying for work permits of foreign workers in Viet Nam.

Besides the labour management agencies, *Provincial People's Committee will act as the agency approving the demands for employment of foreign workers proposal by employers*. the Chairman of the provincial/city People's Committee shall direct local agencies and organizations to introduce and supply Vietnamese workers to contractors. In case of failure to introduce and supply Vietnamese workers, the President of the provincial People's Committee shall decide on the contractor's recruitment of foreign workers into job positions which cannot recruit Vietnamese workers¹⁶

With regard to visa, foreign workers using this Work permit (WP) are required to acquire an entry visa in order to enter Viet Nam. According to Article 8, Clause 16 of the Law on Entry, Exit, Transit, and Residence of Foreigners in Viet Nam 2014,¹⁷ foreign worker who is in the category of work permit must apply for entry visa and must have a work permit under the Labor Code to prove the purpose of entry when applying for a visa.¹⁸ There are 02 visa labels for foreign workers who come to work in Viet Nam, including "LD1" and "LD2". In particular, "LD1" label is issued to foreigners working in Vietnam and certified of eligibility for work permit exemption, unless otherwise specified by international agreements to which Vietnam is a signatory, whereas "LD2" is issued to foreigners working in Vietnam requiring work permit.

Conditions for granting visas, foreign workers include: (i) Has a passport or laissez-passer; (ii) Is invited or sponsored by an organization or individual in Viet Nam; (iii) Not suspended from entry in the cases stated in this Law and (iv) Proof of entry purposes must be provided when applying for a visa .¹⁹

Procedures for inviting, sponsoring foreigners to enter Viet Nam are stipulated in Article 16 of Law No. 47 as follows: (i) Foreigners must follow the procedures at the immigration authority via the inviting entities. The inviting entity shall directly submit the application for the visa at the immigration authority; (ii) Before following the procedures for inviting or sponsoring a foreigner to enter Viet Nam, the social organization, company, or another organization having a legal status as prescribed by Viet Nam's law, the branch of a foreign trader, the representative office of a foreign economic, cultural, and professional organization in Viet Nam must send a written notifications to the immigration authority together with a dossier that consists of: a) A certified true copy of the license or decision of the competent authority on the establishment of the organization. b) A document introducing the seal and signature of a competent person of the organization. The notification shall only be sent once. If the contents of the dossier are changed, an additional notice shall be sent; (iii) Within 05 working days from the receipt of the application for the visa, the immigration

¹⁶Article 4 and Article 5 of the Circular 40/2016/TT-BLĐTBXH; Article 5 of Circular 40/2016 / TT-BLĐTBXH

¹⁷Clause 16, Article 8 of the Law on Entry, Exit, Transit, and Residence of Foreigners in Viet Nam

¹⁸Article 10 of the 2014 Law on Entry, Exit, Transit, and Residence of Foreigners in Viet Nam

¹⁹Article 10 of the 2014 Law on Entry, Exit, Transit, and Residence of Foreigners in Viet Nam

authority shall consider granting it, send a response to the inviting entity, and notify the overseas visa-issuing authority of Viet Nam; (iv) After receiving the written response from the immigration authority, the inviting entity shall notify the foreigner to follow the procedures for receiving the visa at the overseas visa-issuing authority of Viet Nam; (v) In case the visa is applied for at a border checkpoint, the immigration authority shall consider the application within 03 working days from the receipt of sufficient documents in the cases mentioned in Points a, b, c, and d Clause 1 Article 18 of this Law; and within 12 working hours from the receipt of sufficient documents in the cases mentioned in Point dd and Point e Clause 1 Article 18 of this Law; (vi) Any entity that applies for a visa for a foreigner at an overseas visa-issuing authority of Viet Nam must pay the fee for notification of visa issuance to the immigration authority.

After being granted the LD1 or LD2 (issued to employees) visa, foreign workers will carry out the procedure to apply for a temporary residence card according to the issued visa symbol. Procedures for grant of temporary residence cards²⁰ includes: (i) Written requests of agencies, organizations, individuals carrying out procedures for invitation and guarantee; (ii) Declaration of temporary residence card with photo; (iii) Passport; (iv) Papers evidencing the cases according to the Law. Within 5 working days after receiving a complete dossier, the immigration management agency or the competent agency of the Ministry of Foreign Affairs shall consider granting a temporary residence card.

Application file needs to be submitted to the Consulate of Immigration.²¹

On the Skills and Qualifications certification, migrant workers using this employment permit required to have their skills and qualifications certified, accredited and/or recognized at the country of origin. Clause 3 and Clause 5 Article 3 of Decree 11/2016/ND-CP stipulates that foreign workers who are managers, executive directors, experts and technical workers must meet qualifications, and work experience, to be specific:

- Foreign experts in one of the following cases:
 - (i) Having a written document proving him/her as an expert of an overseas agency, organization or enterprise, including: full name of expert, date of birth, nationality and occupation of the expert in line with the job that the foreign worker is expected to work in Viet Nam; relevant documents as regulated in point b, Item 3, Article 3, Decree No 11/2016/ND-CP, namely:
 - (ii) Having a written document proving him/her as an expert of overseas agency, organization, enterprise; Having a college degree or equivalent or higher qualifications and have at least 03 year-working experience in the field consistent with the position that the foreign workers are expected to work in Viet Nam.²²
- Foreign managers and executive directors in one of the following cases: (i) Having a written document proving him/her as a managers and executive directors of a foreign agency, organization or enterprise; (ii) Has a bachelor's degree or equivalent or higher qualifications provided that he/she has worked at least 03 years in his/her training field in corresponding with the job position that he/she shall be appointed in Viet Nam.²³
- Technical workers: (i) Documents proving or confirmation of overseas agencies, organizations or enterprises that they have been trained in technical disciplines or

²⁰Article 37 of the Law on Entry, Exit, Transit, and Residence of Foreigners in Viet Nam in 2014

²¹ Clause 4 Article 38 Law on Entry, Exit, Transit, and Residence of Foreigners in Viet Nam in 2014

²² Clause 2 Article 6 of the Circular 40/2016/TT-BLĐTBXH

²³ Circular 40/2016/TT-BLĐTBXH, form 7

other specialties for at least 01 year suitable to the job position that foreign workers are expected to work in Viet Nam;(ii) who had received technical or other specialized training for least 01 year and worked at least 03 years in the sector of specialized training.

- Technical workers need to have the following documents as proof: (i) Documents proving or confirmation of overseas agencies, organizations or enterprises that they have been trained in technical disciplines or other specialties for at least 01 year suitable to the expected job position in Viet Nam;(ii) who had received technical or other specialized training for least 01 year and worked at least 03 years in the sector of specialized training.²⁴

Work permits are applicable to all foreign workers regardless of nationality and ethnicity. Clause 1, Article 8 of the Labor Code 2012 prohibits discrimination on gender, ethnicity, social status, marital status, religion, religion, HIV infection, disability or for reasons of establishment, join and union activity.

The employment permit applies for all industries. According to Article 170 of the Labor Code 2012, domestic enterprises, agencies, organizations, individuals and contractors may only employ foreign citizens in such positions as manager, managing director, expert and technical worker which Vietnamese employees are still unable to fill to meet production and business requirements. When foreign workers enter Viet Nam to work, except they are under the work permit free category, work permit is required for all occupations/industries.

On a quota (numerical limits) on the number of foreign workers yearly admitted and exited using this employment permit, there is no document in the Labor law regarding foreign labor quotas. However, the 2012 Labor Code requires that foreign enterprises, agencies, organizations, individuals and contractors shall, before employing foreign citizens to work in the territory of Viet Nam, explain their labor demands and obtain written approval from competent state agencies.²⁵ Submitting the explanation of the labour demands for consideration by the competent authority is one way of controlling the use of foreign workers based on the practical needs of the enterprises instead of issuing quota and lack of explanation.

With regard to the fee of work permit application and granting, employers using foreign workers will not need to pay any fees except the administrative fees paid during the application for WP process. The fee for granting a work permit is stipulated in Section b.2, Point b, Clause 2, Article 3 of Circular No. 02/2014/TT-BTC on the fee for granting a work permit to foreigners working in Viet Nam under the deciding competence of the People's Councils of provinces and cities under central authority. Accordingly, the maximum charge level for each work permit as follows: (i) Newly granted work permits: not exceeding VND 600,000/work permit and (ii) Reissuance of a work permit: not exceeding VND 450,000/work permit.

With regard to the age limit for granting work permits, Vietnamese legislation stipulates the age to be granted with a work permit for foreign workers is 18 years of age or above. This matter is stipulated in Labor Code 2012 và the Civil Code 2015. Article 169 of the Labor Code stipulate that foreign citizen wishing to work in Viet Nam shall possess full civil act capacity. According to Article 19, 20 of the Civil Code 2015 stipulates: a person who possesses full legal capacity is 18 years of age or older, except cases of lack of legal capacity

²⁴ Clause 3 Article 6 of the Circular 40/2016/TT-BLĐTBXH

²⁵ Article 170 of the 2012 Labor Code

(including: limited cognition or behavior control, persons with limited legal capacity according to the Civil law)

With regard to the proof of financial support by foreign workers themselves, according to the legislation, foreign workers admitted via this work permit are not required to prove to financially support themselves. Article 169 of the Labor Code và Article 9 of Decree 11/2016/ND-CP stipulate conditions for a foreign citizen to work in Viet Nam: a)) *possessing full civil act capacity; b) possessing technical and professional qualifications and skills and health appropriate to the work requirement; c) not being a criminal or subject to penal liability examination according to Vietnamese and foreign laws; d) possessing a work permit granted by a competent Vietnamese state agency, except the cases in which a work permit is exempted.* Article 9 of Decree 11/2016/ND-CP stipulates conditions for issuance of a work permit: (i) There is capacity for civil acts fully in accordance with the law; (ii) There is health fit with the job requirements; (iii) Being a manager, executive director, expert or technician; (iv) Not offenders or being prosecuted for criminal liability in accordance with the law of Viet Nam and foreign law; (v) Being approved in writing by the competent State agencies on the use of foreign workers. *Both above mentioned* do not require foreign workers admitted via this employment permit need to prove the ability to support themselves financially or to have a financial source at a certain level.

With regard to the understanding of national language of the host country by the foreign workers, Vietnamese law (Article 169 of the Labor Code and Article 9 of Decree 11/2016/ND-CP) does not require foreign workers to know Vietnamese in order to be granted a work permit. In fact, in some cases, knowing Vietnamese may be an advantage in recruitment for workers but it is not required by law.

With regard to the application fee, current legislation stipulates that the foreign workers via this work permit do not need to pay application fee for the WP. Section b.2, Point b, Clause 2, Article 3 of Circular No.02/2014/TT-BTC stipulates that the fee for granting a work permit to foreigners working in Vietnam is the amount that employers must pay when carrying out procedures to be granted a work permit by the Vietnamese State management agency, extend a work permit and re-issue a work permit to foreign workers working in enterprises, agencies and organizations operate on the territory of Vietnam.

With regard to the necessity to have acceptance letter, a formal invitation or a contract signed in advance of the issuance of the WP: in principle, current legislation stipulates that labour contract can only be signed after work permit granted. This means the grant of WP does not require acceptance letter, a formal invitation or a contract signed as a compulsory document. However, the dossier requires a written request for a work permit from the employer. This means that there must be employer guarantee and employer consent in the process. Specifically, according to the current legislation, regulations (Clause 1, Article 10 of Decree No. 11/2016/ND-CP) and Circular 40/2016/TT-BLDTBXH on guiding Decree 11/2016/ND-CP guiding the Labor Code on labor for foreign workers working in Vietnam, supporting document for work permit includes: the application for a work permit includes: (i) An application for a work permit by the employer is specified in the provided Form; (ii) A health certificate or a medical examination certificate issued by a competent foreign or Vietnamese medical agency or organization is valid for 12 months from the date of signing the health conclusion to the date of submission; (iii). Judicial record card or document certifying that the foreign worker is not an offender or is subject to the expiration of the foreign criminal liabilities. If a foreign worker has resided in Vietnam, only a criminal record issued by Vietnam is required; (iv); Documents proving to be a manager, executive director, expert or technical labor; (v). 02 color photos (size 4cm x 6cm, white background, straight face, bare

head, no colored glasses), photographs taken within 06 months before the date of submission; (vi). Certified copy of passport or valuable papers in lieu of passports or valid international travel documents as prescribed by law; (vii) Papers related to foreign workers

Regarding work conditions, foreign workers using this work permit are offered information on work conditions (e.g. wage, working hours, and benefits). Articles 12 and 15 of Decree No. 11/2016/ND-CP of 03/02/2016 regulates that: after the foreigner is granted a work permit, the employer and the foreign worker must sign a written - labor contract in accordance with Vietnamese labor laws. Additionally, Clause 2, Article 17 of Circular 40/2016/TT-BLDTBXH stipulates that employers are responsible for guiding and providing foreign workers with Vietnamese laws on foreign workers.

From January 1, 2018, foreign workers who have been granted a work permit, a practising certificate or a practising license by a Vietnamese competent authority are also subject to compulsory social insurance as stipulated in the Law on Social Insurance 2014. This provision is stipulated in Decree No. 143/2018/ND-CP dated October 15, 2018 elaborating on Law on Social Insurance and Law on Occupational Safety and Hygiene regarding compulsory social insurance for employees who are foreign nationals working in Vietnam.

The Labour Code 2012 only stipulates minimum working conditions. The employment policies of Viet Nam encourage agreements to ensure workers have more favorable conditions than stipulated by labor law (Clause 1, Article 4 of the Labor Code). There is no provision in the laws of Viet Nam that stipulates that the offers work conditions for foreign workers are equal to or higher than that of native workers. Therefore, two parties in a labor contract may negotiate and agree on better terms. In fact, in term of the offers and benefits, especially wages, there are cases where foreign workers are paid higher than that for native workers and vice versa.

Regarding gender and marital status, the admission via this work permit does not involve with gender or marital requirements. Clause 1, Article 8 of the Labor Code 2012 strictly prohibits discrimination on **gender**, ethnicity, social status, **marital status**, religion, religion, HIV infection, disability or for reasons of establishment, join and union activity. According to Decree No. 28/2020/ND-CP dated March 1, 2020 on administrative penalties for violations arising from labor, social insurance and sending Vietnamese workers abroad under contracts, a fine of between VND 5,000,000 and VND 10,000,000 shall be imposed on acts of discrimination on gender, ethnicity, color, social status, marital status, beliefs, religion, HIV infection, disability in employment, employment and labor management.

With regard to health requirements for admission via this employment permit, according to Vietnamese labor laws, foreign workers must be physically fit in accordance with job requirements²⁶. Results of health checks are amongst the important factors to decide whether a foreign worker can get a work permit or not. Health certificates issued by competent foreign or Vietnamese health agencies or organizations are valid for 12 months from the date of signing a health conclusion to the date of submission.²⁷

For maternity status, the grant of a work permit for female foreign workers does not take into account maternity status. Article 169 of the Labor Code and Article 9 of Decree 11/2016/ND-CP stipulating conditions for foreign workers working in Viet Nam also do not raise health issues related to maternity status.

²⁶Clause 2, Article 9 of Decree 11/2016 / ND-CP

²⁷Clause 2, Article 10 and Point c, Clause 3, Article 14 of Decree 11/2016 / ND-CP

Regarding the requirement of a labor market test, the grant of work permit requires labour market test through administrative procedures during the recruitment process in order to make sure that the recruitment of foreign workers for specific job can only be done when no Vietnamese workers meet the job requirements.

According to Clause 1, Article 4 of Decree 11/2016/ND-CP of February 3, 2016, the employer (excluding contractors) is responsible for identifying the demand to use foreign workers for each job position that Vietnamese workers could not meet its requirements and report to Chairman of provincial-level People's Committee (hereinafter referred to as the provincial People's Committee) where the foreign worker is expected to work. During the employment period, should there is a change in the demand to use foreign workers, the employer must report to the Chairman of provincial People's Committee.

According to Article 5 of Circular 40/2016/TT-BLĐTBXH, for the case of contractors, the President of the People's Committee of the province/city directs local agencies and organizations to introduce and supply Vietnamese workers to contractors. In case of failure to introduce and supply Vietnamese workers, the President of the provincial People's Committee shall decide on the contractor's recruitment of foreign workers into job positions which cannot recruit Vietnamese workers.

Concerning the length of the work permit for foreign workers entering via this work permit, the validity period of a work permit is a maximum of 02 years.²⁸ The laws of Viet Nam does not provide for a limit on the total number of years a foreign worker entering via this work permit.

Regarding the renew (reissuance) of a work permit, foreign workers accepted to work under this work permit can apply for a renew of work permit without leaving from (exiting) Viet Nam. Conditions for re-issuance of work permits are specified in Article 13 of Decree 11/2016 / ND-CP. Accordingly, cases of re-granting work permits include:

- (i) Work permit within validity period is lost, damaged or content of the work permit was changed;
- (ii) Work permit valid for at least 05 days but not more than 45 days;
- (iii) The application for the work permit in a certain special cases includes²⁹:
 - a) the foreign worker who is the holder of an unexpired work permit wants to enter into the employment contract with another employer at the job position which is the same with that defined in his work permit in accordance with the law; (b) the foreign worker who is the holder of an unexpired work permit wants to hold another job position which is different from that defined in his work permit in accordance with the law but the employer is unchanged; c) the foreign worker whose work permit expires as regulated in the Labor Code (The work permit expires; The labor contract terminates; The content of the labor contract is not consistent with the content of the granted work permit; The contract in the field of business, trade, finance, banking, insurance, science and technology, culture, sports, education or medicine expires or terminates; There is a written notice of the foreign side of the termination of sending of foreign citizens to work in Viet Nam; The work permit is revoked; The enterprise, organization or partner in Viet Nam or the foreign non-governmental organization in Viet Nam ceases operation) wants to continue his

²⁸Article 173, Labor Code No. 10/2012/ QH13

²⁹Clause 8, Article 10 of Decree No. 11/2016/ND-CP detailing Regulations On Implementing anumber of Articles of The Labor Code regarding Foreign Workers in Viet Nam

employment at the job position which is the same with that defined in his work permit in accordance with the law.

In addition, Article 15 of Decree 11/2016/NĐ-CP on the procedure for reissuance of a work permit also specifies: (i) Where the work permit is reissued as stipulated under Clause 2 of Article 13 of this Decree, within at least 05 days but not more than 45 days before the work permit expires, the employer must file an application for reissuance of a work permit to the Department of Labor - Invalids and Social Affairs which has issued the work permit; (ii) Within 03 working days from the date of receipt of an application for reissuance of a work permit, the Department of Labor - Invalids and Social Affairs shall reissue a work permit. In case of refusal for reissuance of a work permit, a written reply clearly stating the reasons shall be issued; (iii) For foreign workers stipulated under Point a Clause 1 of Article 2 of this Decree, after reissuance of the work permit, the employer and the foreign worker must sign a written labor contract in accordance with labor law of Viet Nam prior to the expected working date for the employer; (iv) Within 05 working days from the date of signing the labor contract, the employer must send a signed copy of the labor contract to the Department of Labor - Invalids and Social Affairs which has issued the work permit.

Thus, an employee is re-granted a work permit without being required to enter/exit when applying for a permit again because the procedure does not contain this clause

Regarding the possibility of migrant workers using this work permit to switch employers, in principle, foreigners are required to do the job exactly as stated in the work permit, otherwise it will be illegal. Clause 3, Article 171 of the Labor Code 2012 stipulates that any employer employing foreign citizens without work permits shall be handled in accordance with law.

For foreign workers who have been granted work permits which are still valid working for other employers at the same job position stated in the work permit as prescribed by law, they must make a dossier of application for re-issue of work permit in accordance with the regulations of labor laws and a work permit or a certified copy of an issued work permit. This matter is regulated by the provisions of Point a, Clause 8, Article 10 of the Government's Decree No. 11/2016/NĐ-CP of February 3, 2016 detailing a number of articles of the Labor Code on Foreign Labor Working in Viet Nam, amended and supplemented in Decree No. 140/2018 / ND-CP of October 8, 2018.

In regard to the handling of migrant workers' residence permit due to loss of employment, under the current laws of Viet Nam, migrant workers admitted via this work permit losing their employment shall have their residence permit withdrawn after some specific times. According to the provisions of Point b, Clause 2, Article 44 of the Law on Exit, Entry, Transit and Residence of Foreigners in Viet Nam in 2014, foreigners entering Viet Nam to operate in Viet Nam must comply with section destination entry. In case of violations, they will be withdrawn or canceled valuable papers of entry, exit and residence in Viet Nam³⁰.

For foreigners who entered Viet Nam to work but terminate their labor contracts ahead of time, while the temporary residence cards are still valid, they will have their temporary residence cards withdrawn or canceled.

Regarding the responsibilities of employers of foreign workers: the employers of foreign workers will be responsible for carrying out procedures for inviting, guaranteeing entry for foreign workers wishing to enter Viet Nam to work under labor contracts.

³⁰Article 6 of Law on Exit, Entry, Transit and Residence of Foreigners in Viet Nam in 2014

Pursuant to Article 45 of the 2014 Law on Exit, Entry, Transit and Residence of Foreigners in Viet Nam, agencies, organizations and individuals that invite or guarantee have the following responsibilities: a) To carry out procedures for inviting or providing guarantee for foreigners to enter, exit or reside in Viet Nam in accordance with this Law; b) To provide guidance and explanation to foreigners for them to comply with law and respect Viet Nam's cultural traditions and customs; c) To fulfill their guarantee responsibility as prescribed by law and coordinate with Vietnamese competent agencies in settling arising problems related to the invited or guaranteed foreigners; d) To coordinate with functional agencies in managing foreigners' activities in accordance with their entry purposes during their temporary residence in Viet Nam; to coordinate with accommodation establishments in making temporary residence declaration for foreigners; đ) To carry out procedures at state management agencies in charge of sectors or fields which require the application for permission before inviting or providing guarantee for foreigners to enter Viet Nam to operate in such sectors or fields; e) To notify in writing the immigration management agency of the cases in which foreigners' granted entry, exit or residence papers have not yet expired but inviting or guaranteeing agencies, organizations and individuals no longer wish to provide guarantee for such foreigners during their temporary residence in Viet Nam, and coordinate with functional agencies in requesting such foreigners to leave Viet Nam.

Therefore, it can be seen that in the case of foreigners entering Viet Nam to work under labor contracts and having been granted temporary residence cards but terminating labor contracts ahead of time, the guaranteeing agency/individual shall notify documents to the immigration management agency about no longer need to guarantee foreigners during their temporary stay in Viet Nam. At the same time, the guarantee agency is responsible for coordinating with the competent authority to revoke the temporary residence card of the employee to return it to the immigration management agency and apply for a 15-day visa to give the employee adequate time preparing to leave Viet Nam.

B: INCORPORATION MEASURES

The right to join trade unions of migrant workers admitted via this work permit shall comply with the Law on Trade Union. Article 5 of Trade Union Law No.12/2012/QH13 does not provide for foreign employees working in Viet Nam to establish, join and operate trade unions. Consequently, the coverage of the Law on Trade Union only include Vietnamese workers. The Law on Trade Union does not stipulate that migrant workers working in Viet Nam could participate in the establishment or join the trade union. In addition, according to the provisions of the Viet Nam Trade Union Statute 2020 and Directive 03/2020/ND-TLD dated February 20, 2020 identify subjects not admitted to Trade Union organization including: (i) Workers with foreign nationality are working in Viet Nam; (ii) Enterprise owner, chairman of the board of management, chairman of the members' council, general director, director; persons authorized to manage enterprises or sign labor contracts with laborers in enterprises in non-state or foreign-invested areas, including: vice-chairman of the board of directors, deputy general director, deputy director, personnel director; (iii) Principals and directors; vice principals and deputy directors authorized to manage the units or sign labor contracts in non-state non-business units; (iv) Persons serving imprisonment sentences as decided by a court.

The protection of migrant workers' identity documents, migrant workers admitted via this employment permit protected against having their identity documents confiscated. Article 20 of the Labor Code 2012 stipulates that keeping the employees' original identity cards, diplomas and certificates of employees is a prohibited act of employers when entering into and performing labor contract.

Regarding the right to equal treatment and protections (with citizens) before criminal courts, migrant workers admitted via this employment permit have the right to equal treatment and protections with citizens before criminal courts. Article 5, Article 6 and Article 37 of the 2015 Penal Code (amended in 2017) stipulates that foreigners committing crimes in the territory of Viet Nam will also be subject to criminal liability as Vietnamese citizens, except for some cases of settlement under the provisions of treaties to which the Socialist Republic of Viet Nam is a member or according to international practices, unless such treaties have no provisions on this issues or none international practices, it will be settled through diplomatic channels

Regarding sanctions, Decree 88/2015/ND-CP amended and supplemented a number of articles of Decree 95/2013/ND-CP stipulating sanctions against administrative violations in the field of labor, social insurance and sending Vietnamese people to work abroad under contracts have a regulation: A fine of between VND 20 - 25 million shall be imposed on employers who keep originals of personal papers, diplomas and certificates of laborers. Thus, if the enterprise has kept the original document of the employee, the employee himself can protect himself by applying to the labor inspection agency of the district to request the intervention. cards, handling violations of this company.

In addition, Article 20 of the 2012 Labor Law also stipulates that employers must not require employees to take security measures with money or other assets for the performance of labor contracts.

Regarding migrant workers' access to social security and other benefits, migrant workers admitted via this employment permit have access to social security, as well as other benefits in accordance with the laws of Viet Nam. Specifically, according to Article 15 of Decree No. 11/2016/ND-CP dated 03/02/2016, after issuance of a work permit, the employer and the foreign worker must sign a written labor contract in accordance with the labor law of Viet Nam.

Foreign employees working in Viet Nam under Point a, Clause 1, Article 2 of Decree 11/2016/ND-CP must sign written labor contracts in accordance with Vietnamese labor laws after being granted work permits (Article 12, Article 15 of this Decree). Accordingly, the Labor Contract is stipulated in Article 23, Chapter III of the Labor Code (Law No. 10/2012/QH13 of June 18, 2012) that labor contract must have the following principal contents: a) Name and address of the employer or the lawful representative of the employer; b) Full name, date of birth, gender, residence address, identity card number or other lawful documents of the employee; c) Job and workplace; d) Term of the labor contract; e) Wage, form of wage payment, deadline for wage payment, wage-based allowances and other additional payments; f) Regimes for promotion and wage raise; g) Working time, rest time; h) Labor protection equipment for the employee; i) Social insurance and health insurance; j) Training, retraining and occupational skill improvement.

Decree 143/2018/ND-CP dated October 15, 2018 of the Government details the Law on Social Insurance and the Law on Occupational Safety and Health regarding Compulsory Social Insurance for Employees who are foreign nationals working in Viet Nam. Employees who are foreign nationals working in Viet Nam are obliged to participate in the compulsory SI program if they obtain work permits or practising certificates or practising licenses granted in Viet Nam and have indefinite-term employment contracts or employment contracts valid for at least one year with employers in Viet Nam (Clause 1, Article 2, i.d.).

Foreign workers are not under the coverage of unemployment insurance. According to Clause 1, Article 43 of the 2013 Law on Employment, workers are obliged to participate in unemployment insurance when working under labor contracts or working

contracts below: labor contracts or working contracts of indefinite time; labor contracts or working contracts of definite time; seasonal or job-based working contracts with a term of between full 3 months and under 12 months. However, Clause 1, Article 3 of the Law on Employment stipulates: “ *Worker means a Vietnamese citizen who is full 15 years or older, has the ability to work and seeks employment*”. Accordingly, only workers who are full 15 years or older, Vietnamese nationals and working under labor contracts or working contracts are eligible to participate in unemployment insurance. Foreign workers who are not Vietnamese citizens though working in Viet Nam are not eligible for unemployment insurance. Hence, when terminating labor contracts, foreign workers are not entitled to the schemes of unemployment insurance as well as unemployment benefits.

Regarding severance allowance for migrant workers:

Pursuant to Article 14 of Decree 05/2015/ND-CP guiding the implementation of a number of contents of the Labor Code, it is stipulated that: the employer shall pay employment severance allowance as prescribed in Article 48 of the Labor Code to employees regularly working for 12 months or more if employment contracts are terminated as specified in Clauses 1, 2, 3, 5, 6, 7, 9 of Article 36 and the employers shall unilaterally terminate the employment contract in accordance with the provisions of Article 38 of the Labor Code.

Pursuant to Article 14 of Decree 05/2015/ND-CP guiding the implementation of a number of contents of the Labor Code, Accordingly, employers are responsible for paying severance allowances to employees who have worked for themselves for 12 months or more when the labor contract terminates in the following cases: (i) The labor contract expires; (ii) Work under a labor contract is completed; (iii) The two sides agree to terminate the labor contract; (iv) The employee is sentenced to imprisonment, death, or is prohibited from doing the job stated in the labor contract according to the legally effective judgment or decision of the Court; (v) The employee dies, is declared dead by civil court, is missing or dead; (vi) An employer who is an individual dies, is declared dead by the court, incapable of civil acts, missing or dead; The employer is not an individual who ceases operation; (vii) The employee unilaterally terminates the employment contract in accordance with Article 38 of the Labor Code.

Therefore, if in the case that the employer and the foreign worker legally terminate the contract rather than the case of dismissal or severance due to structural, technological changes or economic reasons, or mergers, acquisitions or partial/total divisions of the enterprises, the employer must pay severance allowances to the employee. The level of severance pay is in accordance with the current law and legislation.

Migrant workers’ eligibility to apply to access public education institutions and services (degree level courses and vocational training: foreign workers admitted via this employment permit who meet all the requirements shall have access to educational institutions without any restrictions. Clause 10, Article 4 of Decree 05/2015/ND-CP stipulating the content of training, retraining and improving occupational skills of workers during contract performance: Rights and obligations of employers and employees in ensuring the time and funds for training, retraining and raising occupational skills qualifications when entering into labor contracts, applicable to foreign laborers working in Viet Nam.

Accommodation for migrant workers admitted via this employment permit Employers are not obliged to provide adequate or reasonable accommodation for migrant workers admitted via this employment permit. The Labor Code and related Decrees do not provide any provision for this issue, even for domestic workers. The provision of accommodation for workers may be negotiated and agreed on by both parties. The 2012 Labor Code encourages

agreements to ensure workers have more favorable conditions than the labor law (Clause 1, Article 4 of the Labor Code).

Access to public health services

Foreign workers admitted via this employment permit are eligible to access public health services with no restrictions. Clause 2, Article 1 of the Law on Health Insurance No. 01/VBHN-VPQH stipulates the scope of application of the Law is to include individuals and organizations in Viet Nam, regardless of Vietnamese or foreign nationals.

Besides, according to the provisions of Point a, Clause 1, Article 12 of the Law on Health Insurance 2014, the group of members in health insurance both paid by employees and employers, including: Workers working under indefinite-term labor contracts, labor contracts with terms of full 3 months or more; employees who are managers of enterprises enjoying wages; officials and civil servants.

Therefore, according to the above provisions, the law on health insurance does not discriminate against employees who are Vietnamese citizens or foreign citizens. That is, foreign workers are also under the coverage of the current Health Insurance Law and must participate in health insurance if working under indefinite-term labor contracts, contracts with a term of 03 months or more.

Regarding discrimination against migrant workers:

Foreign workers working in Viet Nam have full human rights in general and workers' rights in particular as stipulated in the Viet Nam Labor Code 2012 (Law No.10/2012/QH13 dated 18/6/2012). Clause 1 of Article 8 specifies prohibited behaviors including: "Discrimination on gender, ethnicity, social status, marital status, beliefs, religion, HIV infection, disabled or because of union establishment, joining and union activity ". Accordingly, foreign workers have also participated in social insurance and health insurance as stipulated. In addition, Viet Nam has ratified ILO Convention 111 against discrimination in employment and occupation; Convention No. 100 on Equal Remuneration which can provide more legal foundation to ensure fair treatment for migrant workers

Decree No. 28/2020/ND-CP stipulates a fine of from VND 5,000,000 to VND 10,000,000 for discriminating against gender, ethnicity, social status, marital status, belief, religion, HIV infection, disability in employment, employment, and labor management.

Regarding conditions to apply for permanent residence, migrant workers admitted via this employment permit are eligible to apply for permanent residence, but only after meeting certain conditions. Article 39 and 40 of the Law on Entry, Exit, Transit, and Residence of Foreigners in Viet Nam No. 47/2014/QH13 stipulates conditions for foreign workers who have been granted a work permit for permanent registration as follows: (i) Foreigners who have made meritorious services and contributions to the national construction and defense of Viet Nam and awarded medals or state honorary titles by the Vietnamese Government; (ii) Foreigners who are scientists or experts temporarily residing in Viet Nam; (iii) Being proposed by the Minister, Head of ministerial-level agencies or Government-attached agencies in the state management of his/her professional field; (iv) Having temporarily resided in Viet Nam for 3 years or more.

As such, foreign workers work under a work permit if they fall into the cases specified in Article 39 of Law No. 47/2014/QH13 and meet the conditions specified in Article 40 of Law No. 47/2014/QH13 will be considered for permanent residence if requested.

Regarding application for citizenship, migrant workers admitted via this employment permit are eligible to apply for citizenship, but only after meeting certain

conditions Article 20 of the Law on Vietnamese Nationality No.07/1998/QH10 stipulates the conditions for naturalization Vietnamese nationality as follows:

- i. Foreign nationality and stateless persons who are residing in Viet Nam and apply for the Vietnamese nationality, may be granted Vietnamese nationality if they fully meet the following conditions: a) Having full capacity for civil acts as prescribed by Vietnamese laws; b) Abiding by the Constitution and laws of Viet Nam; respecting the traditions, customs and practices of the Vietnamese people; c) Knowing the Vietnamese language sufficiently enough to integrate themselves into the social community of Viet Nam; d) Having resided in Viet Nam for five years or more; e) Being capable of ensuring their living in Viet Nam.
- ii. Foreign nationals and stateless persons may be granted Vietnamese nationality without having to fully meet the conditions prescribed in Points c, d and e, Clause 1 of this Article, if they fall into one of the following cases: a) Being spouses, offspring or parents of Vietnamese citizens; b) Having made meritorious contributions to the cause of building and defending the Vietnamese fatherland; c) Being helpful to the State of the Socialist Republic of Viet Nam.
- iii. Foreign nationals naturalized in Viet Nam shall not retain their foreign nationality, except for special cases which shall be decided by the State President.
- iv. Persons applying for Vietnamese nationality shall not be granted Vietnamese nationality, if such naturalization is detrimental to Viet Nam's national interests.

As such, foreign workers may be granted with Vietnamese nationality if foreign workers using this work permit meet the conditions for naturalization of Viet Nam under Article 19 of the 2008 Nationality Law (effective July 1, 2009) and Decree No.16/2020/ND-CP of February 3, 2020 (effective from March 20, 2020) (except some cases exempted from some conditions of naturalization) and apply for admission to Vietnamese nationality, enclosed with a complete dossier as required,

On application for family reunion for migrant workers admitted via this employment permit, the current laws of Viet Nam does not have specific conditions for family reunion registration of migrant workers working under a work permit. Vietnamese law does not stipulate the conditions for family reunion registration of foreign workers working under a work permit. However, Law No. 47/2014/QH13 cover the requirements for the issuance of visas (TT) for foreigners who are spouses, children under 18 years of age of the foreigners granted visas to work.

Regarding application to marry citizens, migrant workers admitted under this employment permit are eligible to apply to marry citizens with no restrictions. Clause 2, Article 2 of the Law on Marriage and Family No.52/2014/QH13 stipulates that marriage between Vietnamese citizens of different ethnicities and religions, between religious and non-religious people, between religious people to those who do not have faith, between Vietnamese citizens and foreigners are respected and protected by law.

The spouse/partner of the principal migrant worker admitted via this employment permit **has to apply for work permit** in order to work in Viet Nam. According to Article 172 of the Labor Code No.10/2012/QH13, foreign citizens working in Viet Nam who are exempt from work permit includings: (i)Capital-contributing members or owners of limited liability companies; (ii)Members of the Board of Directors of joint-stock companies; (iii) Those who stay in Viet Nam for under 3 months to offer services for sale; (iv) Those who stay in Viet Nam for under 3 months to offer services for sale; (v)Those who stay in Viet Nam for under 3 months to deal with complicated technical or technological problems that adversely impact or are at risk of exerting adverse impacts on production and business activities and these

problems cannot be handled by Vietnamese and foreign experts who are currently in Viet Nam; (vi) Foreign lawyers possessing a professional practice license in Viet Nam in accordance with the Law on Lawyers; (vii) It is in accordance with a treaty to which Viet Nam is a contracting party; (viii) Those who are studying and working in Viet Nam, provided that the employer shall notify their employment to the provincial-level state management agency of labor 7 days in advance;

Therefore, the spouse/partner of the principal migrant worker admitted via this employment permit is not eligible for a work permit exemption in accordance with the current law.

PART C: EXIT MEASURES

Regarding the exit of migrant workers, migrant workers who entered via this employment permit could return to their country of origin without prior approval, in the form of exit visa or permit but they must fully meet the exit conditions prescribed by law. According to Article 27 of Law No. 47/2014/QH13, exit conditions include: (i) Having a passport or an international travel document; (ii) Having a valid temporary residence certificate, temporary residence card or permanent residence card; (iii) Not falling into one of the following suspension from exit cases. Cases of exit suspension include: a) Being the accused, a defendant or person with related obligations in a criminal case; or being a defendant or person with related obligations in a civil, business, commercial, labor, administrative or marriage and family case; b) Being obliged to serve a court judgment or decision or a decision of the Competition Settlement Council; c) Having not yet fulfilled his/her tax obligations; d) Being obliged to execute a decision on sanctioning of administrative violation; đ) For the reason of national defense and security

Regarding the liability of employers of migrant workers who entered via this employment permit returning to their country of origin before their contract expires, the employers are **not penalized** if foreign workers who entered via this employment permit return to their country of origin before their contract expires. According to Article 22 of Decree No. 95/2013/ND-CP dated on August 20, 2013, stipulating sanctioning of administrative violations in the field of labor and social insurance, acts of which employers are fined related to the employment of foreign workers which include: employers employing foreign workers who work in Viet Nam without a work permit (except for cases exempted from a work permit) or using an expired work permit. Therefore, if the foreign worker entering via this work permit returns to his/her home country before the expiry of the employment contract, the employer will not be penalized.

Regarding entry for deported workers, deported workers who entered via this work permit are subject to an entry ban. Clause 5, Article 21 of the Law on Entry, Exit, Transit, and Residence of Foreigners in Viet Nam No.47/2014/QH13 stipulates that foreigners are expelled from Viet Nam within the last 3 years, counted from the effective date of the expulsion decisions will not be allowed for entry.

Regarding a reintegration program for workers when they return to their country of origin, to this date, Viet Nam has no reintegration program for foreign workers who have entered via this work permit and return to their country of origin, including the provision of assistance to return and subsequent measures to foster their reintegration in their country of origin. As mentioned above, foreign workers working in Viet Nam under a work permit are skilled workers who are only recruited for the positions of manager, executive, expert and professionals that Vietnamese workers can not meet the needs of production and business.

Therefore, there is no reintegration program for foreign workers when they return to their countries of origin.

D. ENFORCEMENT MEASURES

Law enforcement is done through measures regulating on sanctions for acts of violations and on functions and tasks of state management agencies in the supervision of implementation, the inspection and examination and organization of communication activities to raise awareness of laws, details can be found below:

For sanctions against violations

Vietnamese laws have specific provisions on sanctions against acts of violations related to regulations on the management of foreign workers by foreign workers and employers using foreign workers.

Identified acts of violations include: working without a work permit as prescribed by laws; using expired work permits; failing to notify to the state management agency in charge of labor of the situation of foreigners employed or reporting but failing to ensure the contents and time limits as prescribed by laws; employing foreign workers to work in Viet Nam but without a work permit or without a certificate of non-work permit category or employing a foreign worker who has a work permit which has expired.³¹

With regard to sanctions, depending on the nature and severity of violation acts, violating individuals and organizations will be disciplined, administratively sanctioned or examined for penal liability; If causing damage, they must pay compensations therefor according to the provisions of laws.³² Criminal prosecution is applied to individuals who violate labor laws that are dangerous to the society, constituting crimes and are prescribed in the Criminal Code. For example, foreign workers and employers may be prosecuted for their cheatings, appropriation of other people's property (workers/or employers) or humiliating foreign workers, they may be compensated for damage. These are measures applied to organizations and individuals that violate the provisions of the Labor Code related to causing damage to others. Example: foreign workers have the responsibility to pay their employers when they commit violations against labor discipline that cause damage to or loss of properties or excessive consumption of the inputs compared to permitted levels; employers are responsible for compensating workers or their families for damages in case of work accidents where workers are victims... the areas of compensation is governed by the Civil Law.

With regard to the handling of administrative violations, the sanctioning levels are based on the seriousness and acts of violations, details are as follows:

The expelling of foreign workers working in Viet Nam is done when they commit one of the following acts of violations: (i) Working without a work permit as prescribed by laws, except for cases not subject to work permit granting; (ii) Use an expired work permit.

A fine of different levels for employers ranging from VND 1 million to VND 75 million and additional sanctions, specifically: (i) A fine of from VND 1,000,000 to VND 2,000,000 VND for employers who fail to notify labor authorities of their situation of using foreign workers or report but fail to ensure the contents and time limits as prescribed by the laws; (ii) Applying fines on employers who employ foreign workers to work in Viet Nam without a work permit or without a certification that the worker is not subject to a work permit or employing a foreign

³¹Decree 95 on handling of administrative violations

³² Article 239 Labour Code 2012

worker having an expired work permit at one of the levels (i) From VND 30,000,000 to VND 45,000,000 with a violation of between 01 person and 10 people; (ii) From VND 45,000,000 to VND 60,000,000 with violations of 11 to 20 people; and (iii) From VND 60,000,000 to VND 75,000,000 with a violation of 21 people or more; (iii) Additional sanctions: Suspension of operation from 01 month to 03 months for employers who commit the violations mentioned in Section ii above.

Thus, in terms of forms of sanctions, the forms may be administrative, criminal, and loss/damage compensation in the Vietnamese legal system, depending on the seriousness of the violation. Foreign workers working in Viet Nam, who are not under the work permit free category, or use an expired work permit, will be deported while working in Viet Nam without a work permit as prescribed by laws.

One of the peculiarities of Viet Nam's foreign workers management is that people who are under the work permit free category are not automatically exempted from a work permit, they still have to take steps (simpler than applying for a work permit) to obtain a certificate that they are under the work permit free category. These employers are still under foreign worker management. If employers use these workers but he/she does not have a certificate that they are eligible for a non-work permit, the employers will be administratively sanctioned.

Management and coordination mechanism for foreign workers

The machine to perform the state management of foreign worker management is formed from the central to local levels. At the central level, it includes Ministry of Labor, Invalids and Social Affairs; Ministry of Public Security; Ministry of Finance; Ministry of Industry and Trade and Ministers, heads of ministerial-level agencies, heads of government agencies, and Chairmen of provincial/municipal People's Committees.

Accordingly, at the central level:

Ministry of Labor, Invalids and Social Affairs is responsible for: providing overall guidance on the process of work permit granting procedures for foreign workers in Viet Nam; Approving the demand of using foreign workers; certification that someone is not subject to a work permit; granting and re-granting work permits; revocation of a work permit; confirming the revocation of a work permit; request Ministry of Public Security departments to expel foreign workers working in Viet Nam without a work permit for the one working for employers who are State agencies, political organizations, socio-political organizations, socio-political-professional organizations, social organizations, socio-professional organizations; foreign non-governmental organizations, international organizations in Viet Nam; non-business organizations established under the provisions of laws; Business associations and associations established under the provisions of laws; directing, monitoring, inspecting and examining the implementation of law provisions on foreign workers working in Viet Nam.

Bureau of Employment - Ministry of Labor, Invalids and Social Affairs is assigned to carry out (i) information dissemination activities, training courses on legal provisions about foreign workers working in Viet Nam; (ii) Receiving information about foreign workers who are granted visas to work for agencies, organizations and enterprises; (iii) Managing, guiding and supervising the implementation of law provisions on foreign workers working in Viet Nam; (iv) compiling and reporting on the situation of foreign workers working in Viet Nam.³³

Bureau of Employment - Ministry of Labor, Invalids and Social Affairs is authorized to carry out the Ministry's responsibility of approving the demand of using foreign workers; certification that someone is not subject to a work permit; granting and re-granting work permits; revocation of a work permit; confirming the revocation of a work permit and request

³³Article 14 Circular 40

Ministry of Public Security to expel foreign workers working in Viet Nam without a work permit and issue work permits. ³⁴

Ministry of Public Security shall: Provide guidelines on the competence and procedures for the deportation of foreign workers working in Viet Nam without work permits; Guide the issuance of visas to foreign workers related to the granting, re-granting work permits; certify that someone is not subject to work permits; Quarterly provide information about foreign workers who are granted visas to work for agencies, organizations and enterprises to the Ministry of Labor, Invalids and Social Affairs.³⁵

Ministry of Finance is responsible for providing guidance on fees for granting, regranting of work permits, and certifying that someone is under the work permit free category, with regard to foreign workers working for employers who are state agencies, political organizations, socio-political organizations, socio-political-professional organizations, social organizations, socio-professional organizations; foreign non-governmental organizations, international organizations in Viet Nam; Non-business organizations established under the provisions of laws; Business associations and associations established under the provisions of laws;³⁶

Ministry of Industry and Trade shall provide guidance on the bases and procedures for identifying foreign intra-corporate transferees under the scope of 11 service branches in Viet Nam's service commitment schedule to the World Trade Organization.

Ministers, heads of ministerial-level agencies, heads of governmental agencies, and presidents of provincial/municipal People's Committees shall, within the scope of their functions, carry out the requirements related to the issuance of a work permit.³⁷

With regard to the coordination mechanism: Periodically, the Immigration Department (Ministry of Public Security) sends documents on the status of visa and temporary residence cards issued to the Employment Department (Ministry of Labor, Invalids and Social Affairs).

The Ministry of Labor, Invalids and Social Affairs has submitted a report to the Government on the development of a regulation on coordination among ministries and branches in the management of foreign workers in order to clarify the responsibilities of the ministries and branches involved in the management of foreign workers working in Viet Nam.

At the provincial level

Chairmen of provincial/municipal People's Committees shall direct local authorities to organize information dissemination activities on laws; to examine, inspect and handle violations in accordance with the laws on recruiting and managing foreign workers working in the locality; direct local agencies and organizations to introduce and supply Vietnamese workers to contractors; decide to allow contractors to recruit foreign workers into each job position which does not recruit Vietnamese workers in the locality; Approve job positions that allow foreign workers in their localities or assign the authorized agencies to issue the approval

Department of Labor, Invalids and Social Affairs organize information dissemination activities on the provisions of Vietnamese labor laws to businesses and organizations in the locality; Receiving, summarizing, appraising, approving and notifying the need to use foreign workers as authorized by Chairman of the provincial People's Committee; introducing and supplying Vietnamese workers to contractors in their localities according to the provisions of

³⁴Article 14 Circular 40

³⁵Article 14 Circular 40

³⁶Article 14 Circular 40

³⁷Article 14 Circular 40

law; Examining, inspecting and reporting on the implementation of law provisions on recruitment and management of foreign workers working in the locality; Application of information technology to the management, re-issuance, reissuance of work permits, certifying that someone is not subject to work permits for foreign workers working in the area.

Regarding the coordination mechanism, most localities have developed and implemented the coordination regulations in the management of foreign workers,³⁸ including the Hanoi Industrial and Export Processing Zone Management Board; Provincial/City Public Security Department; Department of Planning and Investment; Department of Industry and Trade; Department of Justice; Department of Foreign Affairs; Department of Health; Department of Education and Training; Department of Culture and Sports; Department of Construction; the People's Committees of districts, towns.

Regarding the inspection and examination

Inspection, examination, settlement of complaints, denunciation and handling of violations of laws are important areas in the state management of labor in general and the management of foreign workers in particular. Under the provisions of Article 237 of the Labor Code, the Labour Inspectorate of the Ministry of Labor, Invalids and Social Affairs, inspectors of the provincial Departments of Labor, Invalids and Social Affairs are responsible for inspecting the observance of law provisions on labor; settling labor complaints and denunciations according to the provisions of laws; handling them according to their competence and proposing to competent agencies to handle the violations in labor.

According to data from the Bureau of Employment - Ministry of Labor, Invalids and Social Affairs, at the central level, in 2018, the Ministry of Labor - Invalids and Social Affairs and the Ministry of Public Security organized inspections on foreign workers in 4 cities of Da Nang, Binh Duong, Quang Ninh, Hanoi. In Binh Duong, they discovered and handled 04 cases at the enterprise where foreign workers had not been granted a work permit. At the local level: the provincial People's Committee has directed the local functional agencies to strengthen inspection and examination performance. In 2017, there were many provinces and cities such as Tuyen Quang, Quang Ninh, Hau Giang, Phu Tho, Ho Chi Minh City, Hai Duong, Cao Bang, Binh Thuan, Lam Dong ... which conducted thematic examinations and inspections in the field of foreign labor management.

Results of inspections and examinations related to the implementation of regulations on approving the demand for foreign workers show that: According to regulations, employers may recruit and employ foreign workers only for job positions that Vietnamese workers cannot meet with the requirements and report to Chairman of the provincial People's Committee. Currently, localities are proactive in developing the evaluation criteria. Therefore, sometimes this leads to the situation that localities for the purpose of attracting investment will consider and appraise the job positions for foreign employees differently. The authority to decide whether or not to accept the position is to recruit foreigners to work belongs to the Chairman of the relevant Provincial People's Committee, considering the local labor market.

For granting work permits: according to the current regulations, the issuance, reissuance of work permits and certification that someone is under work permit free category are performed at different competent agencies. For example, Ministry of Labor, Invalids and Social Affairs mainly deal with central agencies and NGOs; Department of Labor, Invalids and Social Affairs deal with local agencies, organizations and businesses; the management

³⁸See Decision No. 24/2018/QQĐ-UBND dated 15/5/2018 on the Regulation on Coordination in foreign workers management in Nghe An; Decision No. 22/2019/QQĐ-UBND dated 23/10/2019 on the Regulation on coordination among state management agencies in the recruitment and management of foreign workers in Ha Noi.

board in industrial zones deal with enterprises. The issuance of work permits partly ensures the responsibility in the management, reducing administrative procedures to meet the requirements of employers.

For the employment of foreign workers in Viet Nam, according to current regulations, a work permit is only granted for skilled workers, data collected and consulted by state management agencies and scientific research agencies³⁹ shows that foreign workers have significantly supplemented human resources with technical expertise, executive management experience, and professional working skills. This fact has supported Vietnamese workers to approach, learn and share experiences and working skills of foreign workers, gradually receiving the transfer of new technology.

Regarding the implementation of the legal provisions on contracting and intra-corporate transferee, it shows that foreign workers working in Viet Nam enter in many forms (10 forms) but mainly focus on: labor contracts; intra-corporate transferee; implementing economic or commercial contracts or agreements. The compliance with the laws and regulations on labor contracts for foreign workers is basically good. However, in reality, there are still cases where the employer do not send the signed labor contract to the work permit issuing authority after being granted a work permit; Many businesses have signed labor contracts with foreign workers before applying for a work permit.

For cases of foreign workers working for a long time and being granted a work permit for the third time or more, according to the provisions at Clause 2, Article 22 of the Labor Code, he or she must sign an indefinite-term contract but the license is only granted for 2 years, which causes problems in the implementation process. The Labor Code and Decree 11 clearly state that a foreigner must be granted a work permit before coming to Vietnam. The signing of a contract must not be incompatible with the work permit granted, so the term of the labor contract shall not exceed 24 months under the work permit. This problem is mainly related to the fact that if the migrant worker extends his/her contract for the second time, the contract then shall have indefinite term (This is incompatible with the regulated term for the work permit, which shall not exceed 02 years). Note that the Labor Code 2019, effective from January 2021, shall solve this problem. Intra-corporate transferee cases are mainly working in positions of managers and experts. Most of them are from the holding companies in sectors/industries such as business, information, construction, distribution, education, environment, finance, health care, tourism, culture and transport.

Communication programs to raise awareness about the laws

Information dissemination activities to raise awareness and responsibility of enterprises employing foreign workers working in Viet Nam, are implemented at the central and local levels. This is considered an important activity to promote the implementation and compliance with labor laws and regulations on management of foreign workers of the State.

Under the current laws, employers are responsible for: Strictly complying with the provisions of Vietnamese law on foreign workers working in Viet Nam; Guiding and providing foreign workers with Vietnamese law provisions on foreign workers working in Viet Nam; Carrying out procedures for applying for a work permit, re-granting a work permit, certifying that someone is under the work permit free category for foreign workers working in Viet Nam; Fulfilling labor contracts signed with foreign workers working in enterprises and organizations in accordance with the laws; sending a notice of labor contract signed with a copy of the signed labor contract to the work permit issuing body; Managing documents and regularly

³⁹Department of Employment – Ministry of Labour, Invalids and Social Affairs- Institute of Labour and Social Affairs
<https://tapchigiaoduc.moet.gov.vn/vi/dao-tao-viec-lam/dao-tao-viec-lam/giai-phap-quan-ly-hieu-qua-lao-dong-nuoc-ngoi-lam-viec-tai-viet-nam-30.html>

updating and supplementing documents related to foreign workers working in enterprises and organizations; Reporting on the employment of foreign workers as required by state agencies.

The implementation of information and communication activities to raise awareness and knowledge of the provisions of the laws, to fulfill the responsibilities of enterprises when employing foreign workers, on one hand, enhances the awareness and compliance with laws of employers while on the other hand, remove difficulties in practice of implementing the laws to support businesses and also gradually improves the legal system. Regarding the dissemination of policies at the central level, every year, the Ministry of Labor, Invalids and Social Affairs collaborate with the concerned ministries and sectors to promote information dissemination activities in different provinces, especially in those where many foreign workers are employed; Organizing training sessions for professional staff who are directly involved in the receiving and processing of local work permit applications. At the local level, the provincial People's Committee directs the functional agencies to promote information activities. Every year, the Department of Labor, Invalids and Social Affairs conduct information activities for agencies and organizations and businesses in the province.

III. ACHIEVEMENTS AND CHALLENGES

A. ACHIEVEMENTS

Achievements of management of foreign workers include promulgation of laws and policies, organization and examining, inspecting to ensure effective implementation.

1. *The adequate legal system of Viet Nam*

The legal documents of Viet Nam have been issued and gradually improved towards strengthening the management of foreign workers in Viet Nam and in compliance with international standards with laws, decrees and circulars, particularly:

The National Assembly has promulgated related laws: The Labor Code 2012 passed on June 18, 2012, by the XIIIth National Assembly of the Socialist Republic of Viet Nam and takes effect from May 1, 2013. (regulations on foreign workers working in Viet Nam include Articles 169 to Articles 175); Law No. 47/2014/QH13 on Entry, Exit, Transit, and Residence of Foreigners in Viet Nam (Article 8 on Visa symbols, specifying visa categories for foreigners entering Viet Nam); Law No. 15/2012/QH13 on Handling Administrative Violations adopted on June 20, 2012, by the XIIIth National Assembly of the Socialist Republic of Viet Nam and takes effect on July 01, 2013.

The Government has issued different legal documents guiding the implementation of relevant laws, including: Decree No. 11/2016/ND-CP of February 3, 2016 detailing the implementation of a number of articles of the Labor Code on foreign workers in Viet Nam (effective from April 01, 2016); Decree No. 140/2018/ND-CP dated October 8, 2018 on amendments and supplements to decrees related to conditions of business investment and administrative procedures under the scope of state management of Ministry of Labor, Invalids and Social Affairs; Decree No. 63/2014/ND-CP dated June 26, detailing the implementation of several provisions of the law on bidding regarding the selection of contractors; Decree No. 86/2018/ND-CP dated June 06, 2018 on foreign cooperation and investment in education; Decree No. 15/2019/ND-CP dated February 01, 2019 providing guidelines and implementation of the Law on Vocational Education; Decree No. 95/2013/ND-CP dated August 20, 2013 on penalties for administrative violations in the field of labor and social insurance; Decree No. 28/2020/ND-CP dated March 1, 2020 on administrative penalties for violations arising from labor, social insurance and sending Vietnamese workers abroad under contracts; Resolution No. 47/NQ-CP of July 8, 2014, of the Cabinet's regular meeting of June 2014, stipulating the conditions for foreign workers entering Viet Nam to work.

The Prime Minister has issued: Directive No. 734/CT-TTg of May 17, 2011, on rectification of the management of EPC bid packages; Directive No. 1792/CT-TTg of October 15, 2011, on rectification of the bidding using fund from the state budget and enhancing the efficiency of bidding.

Relevant ministries and sectors have issued circulars including: Circular No. 40/2016/TT-BLDTBXH dated October 25, 2016 guiding the implementation of a number of articles of Decree No. 11/2016/ND-CP detailing a number of articles of the Labor Code in respect of foreign workers in Viet Nam; Joint Circular No. 01/2012/TTLT-BCA-BNG of January 03, 2012, amending and supplementing Joint Circulars No. 04/2002/TTLT-BCA-BNG of January 29, 2002, and No. 05/2009/TTLT-BCA-BNG of May 12, 2009 on immigration (jointly issued by the Ministry of Public Security and the Ministry of Foreign Affairs); Joint circular No. 04/2012/TTLT/BTP-TANDTC-VKSNDTC-BCA-BQP dated of 10th May, 2012 jointly issued by the Ministry of Justice, Supreme Court, Supreme Procuracy, Ministry of

Public Security, Ministry of National Defense guiding the procedures, protocols for searching, identifying, exchanging and provision of judicial records.

2. *Abidance and compliance with the laws on foreign workers in Viet Nam*

According to a report of Bureau of Employment under Ministry of Labor, Invalids and Social Affairs, it can be said that overall, most businesses, agencies and organizations employing foreign workers strictly abide by the laws on foreign workers working in Viet Nam. Enterprises, agencies and organizations wishing to employ foreign laborers basically comply with the processes and procedures for applying for work permits or certifications of work permit exemption for foreign workers.

Agencies authorized to grant the work permit or certifying the exemption of work permit simplify administrative procedures and facilitate access to application through the implementation of digital (online) portals so the percentage of workers working legally and comply with the law is quite high. Nearly 100% of the persons who are exempted from work permits have completed the procedures for certification of exemption; more than 95% of the non-exempt have been granted permits and about 5% are completing applications for work permits.

In addition, according to the Law on Housing, foreign institutions, organizations and individuals are eligible for housing ownership. Local reports show that foreign organizations and individuals, including migrant workers who own houses in Viet Nam, strictly comply to Viet Nam's laws on entry, exit and residence, housing ownership, buying and selling houses, fulfilling tax liabilities.

3. *State management, inspection, examination and handling of violations of the law on management of foreign workers in Viet Nam*

The Government shall direct ministries, sectors and provincial/city People's Committees on a periodical and irregular basis to conduct inspections on the situation of compliance with laws on foreign labor management. The central ministries/sectors shall annually implement a coordinating program or inspection and examination program of the ministries and sectors in the field assigned to them, including: (i) *Develop sectoral and intersectoral inspection programs*: The Ministry of Labor, Invalids and Social Affairs, the Ministry of Public Security and other related ministries and agencies have carried out the sectoral inspection and examination programs as well as intersectoral inspection programs; (ii) *Focus also on inspecting and examining individuals exempted from a work permit in addition to those subject to get work permit*. (iii) *At the local level, the provincial/city People's Committees have directed the local functional agencies to intensify the inspection and examination of the compliance with the law on foreign workers management by enterprises, contractors, especially in industrial zones and export processing zones; promptly detect and strictly handle violations; disseminate and guide enterprises, organizations and contractors to strictly comply with the laws on labor*.

4. *Propagandize to raise awareness and responsibility of enterprises employing foreign workers in Viet Nam*

The Government directs the Ministry of Labor, Invalids and Social Affairs in coordination with the Ministry of Public Security and relevant ministries and provincial/city People's Committees to promote information and communication activities to raise awareness, understanding of the laws and fulfill the responsibilities of enterprises when employing foreign workers, including organizing propaganda sessions for enterprises and organizations on foreign labor management locally; organizing policy dialogues,

disseminating labor legislation, improving labor law compliance for businesses; Organizing training on employment policies, including regulations on foreign workers management for professional staff of the Bureau of Labor, Invalids and Social Affairs and the Management Boards of industrial zones, export processing zones and high-tech zones, who are responsible of receiving and processing dossiers of application for work permits of migrant workers to ensure consistent and synchronized implementation. Software for managing, granting, renewing permits for migrant workers are also utilized synchronously across the country, not only helping to closely and synchronously manage workers but also creating favorable conditions for businesses and workers to access this level-4 online public service, whereby improving compliance with the procedures relating to foreign workers in Viet Nam.

The provincial/city People's Committees shall regularly direct the local functional agencies to promote the propagation and dissemination of the provisions of the law on recruitment and management of foreigners working locally. Departments of Labor, Invalids and Social Affairs shall carry out activities of inspecting, examining, explaining and guiding enterprises and employees to comply with regulations on foreign workers in Viet Nam.

5. Periodically reviewed, supplemented and amended mechanisms and policies to support organizations, enterprises and individuals receiving and employing foreign workers in Viet Nam

In the context of international economic integration and enhanced foreign investment attraction, the creation of favorable conditions for enterprises to recruit foreign workers in the employment positions that native workers have not been qualified to is always paid attention to and directed by the Government. The management of foreign workers must be closely monitored and controlled to ensure giving priority to the Vietnamese workers to be recruited to the positions they can be qualified. However, the management need also to create a favorable and open environment for organizations, businesses and individuals to recruit necessary human resources to meet production and business requirements. Therefore, the study and proposal of amendments and supplements to the provisions of the law to enhance the management, simplify administrative procedures and access to public services for processing the work permits have been promoted by the Government.

The Government has directed the reform of administrative procedures, facilitating while ensuring the full compliance of the processing of work permits online through online application process which supports businesses to reduce processing time and fees as well as increase compliance. From 2012 to 2018, there were 291,485 cases of foreigners granted work permits in Viet Nam.

6. Signing and implementation of international treaties and agreements related to the management and employment of migrant workers in Viet Nam

Viet Nam has negotiated and signed many bilateral labor agreements with its partners, including:

- *Agreement between the Government of the Socialist Republic of Viet Nam and the Government of New Zealand on the Working Holiday Scheme and Viet Nam – Australia Work and Holiday Visa Agreement.* The Government assigned the Ministry of Labor, Invalids and Social Affairs in coordination with the Ministry of Public Security and the Ministry of Foreign Affairs to promulgate Joint circular No. 15/2012/TTLT-BLĐTBXH-BCA-BNG of June 6, 2012, và Joint circular No. 21/2016/TTLT-BLĐTBXH-BCA-BNG of June 29, 2016 guiding a number of articles in the agreement between the Government of The Socialist Republic of Viet Nam

and the Government of New Zealand and Australia on the working holiday scheme.

- *Implementing commitments on the movement of natural persons when joining the WTO, the Government directed the Ministry of Industry and Trade to develop and issue Circular No. 35/2016/TT-BCT dated December 28, 2016, on the identification of foreign workers who are internally transferring within enterprises in eleven service sectors specified in Viet Nam's WTO Commitments on services who are eligible for work permit exemption.*
- *The Government directs the Ministry of Labor, Invalids and Social Affairs, in coordination with the related ministries/sectors to negotiate and sign Bilateral Social Security Agreements to support the access to social protection system by foreign workers in Viet Nam, through which their participation in social security in Viet Nam can be accumulated to their total time of contribution to enable them to be eligible for the pension scheme in their country of origin. At the moment, Viet Nam has concluded the negotiation with the Federal Republic of Germany and the Republic of Korea, and is now in the process of internal consultations for signing.*

B. CHALLENGES

Difficulties and challenges in managing foreign workers in Viet Nam include the uniformity of legal documents, inspection and examination activities.

1. Lack of uniformity and consistency in policies and laws to meet the requirements in the management of foreign workers working in Viet Nam

a) The management of foreigners who enter, exit and reside, invest, work in Viet Nam are regulated in many different laws and thus there are overlaps and lack of uniformity, leading to difficulties and gaps in the laws, in particular:

- Regarding the management of foreign workers in the Labor Code 2012: no specific regulations on foreign workers working for foreign contractors; the validity of the work permit is not consistent with the duration of the contract (work permit validity is only maximum 2 years while employment contract can be much longer), no clear regulations on the probation period of foreign workers (the probation period as stipulated in the Article 2 of the Labour Code make it difficult or impossible for applying to foreign workers: (i) employers can only sign labour contract with worker once work permit granted while once the contract signed, probation conditions can not be applied; (ii) probation can not be done without a work permit as it is regulated that all foreign workers need to have work permit), leading to the breaking of laws by some enterprises (let the foreigners working during 30 days of tourism visa and sign contract after that); lack of provision son extension of a work permit.
- Regarding visa issuance for foreigners: Law on Entry, Exit, Transit, and Residence of Foreigners in Viet Nam (Article 8) (amended and supplemented by Article 1, Clause 3 of Law No.51/2019/QH14) stipulates 27 different types of visa symbols for foreigners entering Viet Nam, amongst which, foreign workers in Viet Nam can use one of the visa symbols including: "LD1" and "LD2" - granted to people who come to work; "DN1" and "DN2" - issued to people who come to work with companies in Viet Nam; "LV1" and "LV2" - issued to people who come to work for some central Government Agencies or Organizations; "DT1", "DT2", "DT3", and "DT4" - issued to foreign investors in Viet Nam.

Article 10 of this Law stipulates that only the LD1 and LD2 visa requires conditions to have a work permit before visa issuance, other types of visas such as “DN1”, “DN2”, “LV1”, “LV2”, “DT1”, “DT2”, “DT3”, or “DT4” do not have such requirements. Therefore, in many localities, over the past years, foreign workers working in enterprises have been granted visas with the “DN” symbol by the immigration authorities which has a term of up to 3 months of working without a work permit. Within 3 months of working, the enterprise will complete the dossiers and the workers will apply for a work permit to be granted an “LD” visa. While in Clause 1, Article 7 of this Law does not allow change of visa purpose upon entry. This will result in the number of foreign workers who work for a short period without a work permit and make it difficult to manage and issue a work permit to workers if they change their work purpose.

With regard to the cases that are exempted from work permits who are the capital contributor regulated Labor Code and Law on Investment: Clauses 1, 2, Article 172 of the Labour Code stipulated that capital-contributing members or owners of limited liability companies; members of the Board of Directors of joint-stock are exempt from work permits while according to Clause 1, Article 24 of Law on Investment 2014 Investors are entitled to contribute capital, buy shares, or buy capital contributions of business organizations. At the same time, the Law on Investment does not have specific provisions on the minimum capital contribution to be considered as an investor. Therefore, there are some cases of capital contribution where workers contribute just a few million to companies and be considered as capital contributing members and be certified exempted from a work permit.

b) Regarding foreign workers in specific fields such as medical check and treatment, education and construction activities, there are still many limitations:

Currently, there are specific regulations for foreign workers in a number of specific fields such as medical examination and treatment, education, construction, etc., in which migrant workers must have a work permit before being considered for granting of a practising certificate or practising license. However, there is the possibility that a foreign worker may be granted a work permit (be allowed to work in Viet Nam) but not eligible for a practicing certificate or a practice license, causing difficulties, risks and costs for foreign workers and employers.

c) Regarding foreign workers in sectors under 8 MRAs

There are no specific guidelines and regulations for work permits in order to implement the Agreement on Movement of Natural Persons and 8 Mutual Recognition Agreements (MRAs) for 8 sectors in ASEAN including dentistry, nursing, engineering, construction, accounting, architecture, surveying and tourism. Up to now, the recognition of the ASEAN Qualifications Reference Framework among ASEAN countries still faces many difficulties due to differences in training and educational systems. There are many disparities between AMS which need much more time for harmonization. Each sector has its own specific requirements for practicing certificates and professional qualifications. Therefore, in order to be granted a work permit, a worker must also meet specialized requirements. Before applying for a work permit, foreign workers and employers must carefully study Vietnamese regulations on procedures for applying for work permits and practicing certificates. In the future, Vietnam will work on this issue to ensure the rights of relevant stakeholders.

2. The poor compliance with laws of the parties:

a) For employers

Many enterprises and organizations recruiting foreign workers have not strictly complied with the laws of Viet Nam: e.g. not advertising the vacancies in newspapers; failing

to fully provide the provisions of Vietnamese law on the rights and responsibilities of workers and employers for foreign workers to understand and implement; recruiting foreign workers who do not meet the conditions on qualifications and certifications prescribed by Vietnamese law, especially workers without technical and professional qualifications; failing to strictly follow the order of labor recruitment procedures, especially foreign contractors winning bids in Viet Nam; failing to fully and promptly report the employment of foreign workers to the competent agencies as required by laws of Viet Nam.

b) For foreign workers

Foreign workers have not fully understood the provisions of Vietnamese labor law. This is partly due to the fact that the employers have not yet/fully provided them. In addition, there are many workers who do not strictly comply with the requirements for work permits. There are many cases of violation of the law, showing signals of breaking the laws, for example: not involved in the work permit procedures before entry; the insufficiency of necessary documents upon entry leading to many administrative difficulties; not studying and understanding Vietnamese labor laws; paying little attention to understanding labor contracts, or applying for only one work permit but work for many companies at the same time or work in the positions different from the one specified in the work permit...

c) For the local and central state management agencies

The weak implementation of the laws on foreign workers of localities; monitoring and management of foreign laborers not carried out on a regular, timely basis and lacked the coordination and support of sectors and units in localities; many gaps between coordinating agencies. The implementation of the reporting regime is incomplete and not in accordance with the regulations; The inspection, examination and handling of violations still face adversities; lack of proactiveness in local inspection and examination of foreign workers as they only participate in inspection with task forces formed by ministerial level; the limited detection and handling of violations of labor law on foreign workers; few proposals on the solutions to manage foreign workers submitted to the People's Committees, the Ministry of Labor, Invalids and Social Affairs and the related agencies.

- Limited number of cadres working on management of foreign workers, no specialized staff in charge of the management of foreign workers at the local level (provincial, district and commune levels). Therefore the monitoring, managing and developing data files is not updated regularly.
- The limited coordination with state agencies in the management of foreign workers. Foreigners who come to the locality not only to work but also to live and therefore need to be involved in declaration of temporary residence, security, culture... Thus, the management of foreign workers is not only of the responsibility of the Department of Labor but also of other local government agencies. At the local level, the Department of Labor cooperates with relevant agencies in labor management. However, the lack of specific regulations regarding this matter results in overlap and inconsistency. Recently, local authorities have issued regulations on the responsibility in coordination between agencies at all levels in state management. Meanwhile, in the locality, no coordination regulation on management for foreign labor management developed, leading to overlaps in examination and inspection, causing trouble and inhibition for enterprises and foreign workers.
- Although many legal documents on the management of foreign workers have been issued, in general, the documents is still inconsistent and not closed to reality, some regulations are difficult to implement, thus, cause difficulties for

regulatory agencies and for employers. Administrative penalties have not done or not high enough, which affects the transparency of the law.

3) Inspection and sanctioning

a) The regulations on handling foreign workers are not strictly implemented and enforced. There are facts that administrative penalties were made in the form of deportation but without measures to supervise the exit and entry, so the individuals could still return or move to other localities and continue to violate the laws; administrative penalties against violations of the law on management of foreign workers are not sufficient to deter and compel employers and foreign workers to comply.

b) The inspection, supervision and follow-ups of the observance of regulations on management of foreign workers have not been strictly implemented. The procedures for establishing businesses and representative offices of foreign businesses in Viet Nam are quick and simple, but the post-establishment management has not been focused, leading to the facts that many businesses and representative offices have shut down or have not carried out any real activities, no tax incurred... which have not been detected in time, so that wrongdoers can take advantage of the legal position to sponsor many foreign workers without being detected and handled.

c) There are still a number of foreigner-related civil judgment cases that have not yet been fully executed, making it difficult to ensure and protect the legitimate rights and interests of some involved persons; the verification of the address of judgment executors faces many difficulties; There are also limitations of information of the judgment executors provided by the immigration management agency.

d) The collaboration, mutual support among localities and specialized agencies in recruiting, providing Vietnamese workers for positions requiring professional and technical labor is not good, ineffective. This leads to a partial lack of technical human resources in the locality and forces the locality to agree with businesses recruiting and using foreign workers while local areas can fully provide that kind of manpower.

e) There is a limitation in the capacity of professional staffs on recruitment and manpower supply such as they do not exchange, discuss and reject unreasonable requirements on specific job titles, leading to being forced to agree to recruit foreign workers solely because of these unreasonable requirements.

f) Unbalancing between investment attraction and labor laws compliance: paying much attention to attracting investment while overlooking labor, employment issues and the compliance with foreign workers - related laws, leading to the violation of agencies, organizations, individuals and foreign workers such as being illegal tourism guide, illegal teaching, illegal investing...

IV. LESSONS LEARNT

The Government of Viet Nam has been consistently working towards the goal of international integration in all areas. In this context, it is forecasted that the flow of foreign investment into Viet Nam, international trade will continue to increase... together with the increasing flows of foreign workers into Viet Nam, both in terms of quantity and quality. In order to meet the requirements, the Government of Viet Nam needs to continue improving the legal system, policies and management system of foreign workers, in order to best protect the legitimate rights and interests of foreign workers and their families as well as ensure strict implementation and enforcement of national and international laws.

International labor mobility in the region is an inevitable trend consistent with the rule of labor division in the world. Labor from abroad and from countries in the region to Viet Nam is increasing. This fact requires the reform of foreign labor management towards greater efficiency, in-depth integration of legal standards, compliance with/ratification/reference of international standards, international commitments and of the requirements in regional commitments to better protect the rights of migrants as well as the rights of sending and receiving countries in the process of participation in global labor division.

This background requires joint efforts at both national and regional levels to reform the management of foreign workers in Viet Nam, including: continuing to improve awareness of position and roles of skilled foreign workers in the development of Viet Nam's labor market in the coming period; formulating strategies and programs for state management of skilled worker in accordance with the country's human resource development strategy in different periods; continuing to synchronously complete the system of laws and policies for managing skilled foreign workers in accordance with international regulations; improving the effectiveness of the implementation of targeted strategies, laws and policies on the management of skilled foreign workers; improving conditions for management implementation; strengthening international cooperation in the field of managing foreign workers.

1. Labour migration brings lots of opportunities, benefits for both sending and receiving countries. However, international labour migration also causes challenges related to the labor market, public security issues, and legal compliance. No country is outside of migration and no country can solve it on its own.

2. Management of foreign workers is being implemented and promoted at the national and ASEAN level. At the regional level, ASEAN has had many activities in collaboration with partners and member countries to coordinate actions to: (i) support the improvement of the regional environment on promoting migrant labor mobility; (ii) promote mutual understanding and sharing among countries, to address the issues of migration; (iii) encourage social and economic development through migration; (iv) improve the dignity and health of migrants.

Nationally, the management of overseas Vietnamese workers and foreign workers within the country is the two-sided aspects of managing migrant workers in each country. The management of foreign workers includes: (i) formulating goals and strategies for state management of foreign workers; (ii) promulgating a system of laws and policies for managing foreign workers in accordance with international regulations; (iii) organizing the implementation of targeted strategies, laws and policies for managing foreign laborers; (iv) organizing inspection and supervision of the management of foreign workers.

3. International law and regional commitments related to international labor migration are increasingly strengthened globally and regionally, including: the system of

conventions and international standards of UN, International Labor Organization (ILO), International Organization for Migration (IOM), International Trade Organization (WTO)...; multilateral agreements; Memorandums of understanding (MOUs) and bilateral agreements at national level have been referenced and should be integrated into the national legal system. In particular, within ASEAN, two important documents are the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers (2007) and the ASEAN Consensus on the Protection and Promotion of the Rights of Migrant Workers (2017). These documents play an important role in promoting regional cooperation in migrant workers management and protection in sending and receiving countries in the region.

4. The increasing number of foreign workers in Viet Nam in the context of integration leads to the need for strengthening the management of foreign workers.

The Vietnamese Government advocates greater integration with other countries in the region and around the world. Important achievements have been made in recent years, such as joining the United Nations, Association of Southeast Asian Nations (ASEAN), International Trade Organization (WTO), etc. Besides economic integration, Vietnamese labor market is also developing and integrating with the international labor market. Viet Nam's labor market policy system has encouraged and supported foreign workers with highly technical expertise and experts to work in Viet Nam, to fill the gaps of labour of Vietnamese labor force. During the period from 2012 to now, the number of foreign workers working in Viet Nam has continuously increased every year. Therefore, there is a need to strengthen labor management to promote labour flow.

5. The system of laws and policies of Viet Nam aims at protecting foreign workers in accordance with international practice. Accordingly, Vietnamese policies and laws: (i) recognize that the employment of foreign workers in Viet Nam an inevitable trend; (ii) consider foreign workers working in Viet Nam be an important component of labor force; (iii) creating favorable conditions to attract foreign workers and selectively promoting the strengths/advantage of foreign workers while at the same time protecting native workers, specifically: allowing only high-skilled workers and professionals in the related fields to work in Viet Nam; (iv) respect the human rights of foreign workers in Viet Nam.

6. Foreign workers play an important role in the labor force in Viet Nam's labor market. The yearly increasing numbers of foreign workers have shown the high demand of foreign workers amongst the labour force in Viet Nam during integration and development process. In fact, the foreign workers with high management and technical expertise will fill the gap of the national labor force, increasing the quality of human resources. On the other hand, foreign workers will contribute to changing skills and working styles of Vietnamese workers towards professionalism and modernity. In addition, the use of foreign workers will promote investment in high-tech fields, increase the efficiency of investment capital, increase exports, and promote economic growth and international economic integration. In addition, it brings cultural diversity to promote international integration of culture and society.

7. There are not many advantages in mobilizing skilled labor in sectors under MRAS. The implementation and legal regulations in Viet Nam and even ASEAN have not created favorable conditions for individuals to register in the list of experts registered for RES. All regulations on work permit also apply to those who follow MRAs without any priority with regard to proof of qualifications or work experience. Until now, only 3 agreements in Viet Nam have developed a specific movement process for employees, except for the field of technical consultancy that has been set up by a separate supervisory committee while the rest has no progress. There is no difference in work permit granting process for foreign workers working in Viet Nam in these 8 occupations. There is regulation for in medical, tourism sector where

WP is exempted provided that they are intra-corporate transferee. In fact, the implementation of intra-corporate mobility is also difficult. In addition, specific requirements such as certificates, languages are also issues to be prepared for those workers.

8. There are also many challenges in the management of foreign workers in Viet Nam.

The legal and policy system has basically covered all aspects of foreign workers management, which is an important foundation for agencies to organize and manage foreign workers. The policies and laws on foreign workers has been implemented by the competent authorities in the localities. However, there are still a number of challenges in this area regarding the system of policies and management mechanism of foreign workers in Viet Nam, including: Firstly, some policies are inconsistent, inadequate and difficult to implement in the reality. Regulations on sanctions are too low, affecting the severity of the law. Secondly, a number of enterprises and employers have not complied with Vietnamese laws on recruitment, employment and management of foreign workers. Thirdly, a part of the foreign workers did not fully understand the laws of Viet Nam, the sense of compliance with the law was not good, especially the phenomenon of illegal foreign workers. Fourthly, the system of the foreign worker management agencies has not yet coordinated synchronously with limited cadres and no specialized units; the management of records and data is still loosened with out of date and insufficient data.

V. RECOMMENDATIONS

A. RECOMMENDATIONS AT NATIONAL LEVEL

1. Consolidating legal framework in labour management

Legal framework in immigration policies, labour market policies and trade policies has been improved towards promoting movement and mobility of migrant workers, specifically:

a) Immigration policy

Viet Nam's immigration policy needs to be more open in terms of coverage, but more stringent about the conditions and procedures, with specific recommendations.

Regarding the immigration policy, it is necessary to amend the law on immigration to meet the needs of international integration, create favorable conditions for foreigners to exercise the right of entry and exit in the territory of Viet Nam while at the same time ensure the national sovereignty; it is necessary to classify VISA according to specific purposes (according to VISA types), especially distinguishing the visa exemption regulations for foreigners who have entered Viet Nam (not for the purpose of working or entering Viet Nam for other purpose); the temporary residence of foreign experts must ensure the following conditions: to meet the needs of production and business of enterprises; without family members and relatives; strictly declare to the police to carry out temporary procedures for entry and exit as required by law; separate accommodation for experts arranged by enterprises; ensure public security and order...

Promote transparent and quick immigration procedures, including: developing documents, procedures, processes, manuals, legal guidelines and policies for foreign workers; increasing transparency, accountability and affordability in transparent and simplified recruitment process; setting up fee ceilings, including costs that employers and employees should pay; strengthening close coordination and dialogue between the Ministry of Labor, Invalids and Social Affairs and other relevant agencies towards the development of coherent and concrete procedures, review to reduce time and costs for foreign workers. Provisions on procedures and costs for recruitment and simplification of migration procedures should be included in bilateral agreement between the sending and receiving countries and publicly available and accessible to the people, recruitment agencies and other stakeholders.

- Studying and amending and supplementing the provisions of the Law on Entry, Exit, Transit, and Residence of Foreigners in Viet Nam towards: (1) supplementing the regulations on administrative sanctions against agencies, organizations and businesses that violate the provisions of the law, especially in the case of declaring information for visa applications for foreigners different from entry purposes such as application for "DL", "DN" visas ... but entered for the purpose of finding a job; (2) supplementing the regulation that foreigners who have an industrial relationship (hiring, employing and paying wages between employees and employers) must apply for a work permit as prescribed in Labor Code before involving in procedures related to exit and entry.

b) Labor market policy

Continue to improve the legal framework to create fair competition between foreign workers and native workers on the labor market; enhance the role of the state in supporting labor supply-demand continuity: establish employment service center for foreign workers; create an equal footing in legal environment among economic sectors through the legal system, policies and regulations related to the foreigners-related labor market development; consolidate policies on social insurance, health insurance, unemployment... to enable foreigners to participate during employment and on recognition of the accumulated number of years of participation/contribution upon returning home; enhance industrial relations at the

enterprise level through the development of social enterprise programs, strengthening corporate social responsibility; develop and implement the National Program on Decent Work, business development associated with promoting the environment and the demand for skilled foreign workers; organizing the implementation and nationalization of ratified ILO Conventions related to the Labor Market (Convention 122 on Employment Policy, Convention 98 on the Rights to Organize and Collective Bargaining, Convention 88 on Employment Services; Convention 44 on Tripartite Consultation...);

- To study with reference to Convention 142 on Human Resource Development in terms of career guidance and vocational training in human resource development. Gradually improve the quality of Viet Nam's human resources through promoting skills training, practising capacity, developing the education and training system to build up human resources that meet the needs of the national labor market and capable of competing with foreign workers. Standardize training quality according to international standards; ensure the distribution of labor to meet the needs of economic development; promote the process of free employment choice and labor mobility (vertical movement along levels, horizontal movement between business ownership types by area, region and in the word) to meet needs of economic transition towards industrialization and international economic integration; develop synchronously infrastructure of labor market (vocational orientation, employment service, labor market information) and arrange effective provision of public services.

Regarding policies on the management of foreign workers, it is necessary to continue amending and supplementing and perfecting the system of state legal framework. In the Employment Law, it is necessary to supplement regulations related to foreign workers such as: Providing and supporting information for foreign workers; Policies for foreign workers; Organizing and managing foreign workers; Assistance Fund for foreign workers; Stipulating responsibilities of agencies related to foreign workers; Continuing to review policies, reduce procedures for granting, re-granting of work permit, shortening the time for consular legalization; Regulations on "follow-up inspection" in work permit process should be tight in order to reduce the phenomenon of foreign workers who bypass law, work in Viet Nam in contrary to the contents of the work permit (different from workplace, job, qualification level...); The regulations on the management of foreign workers must be accompanied with sanctions against agencies in the implementation of the regulations on the management of foreign workers, strictly comply with the regime of in-time, accurate and adequate reporting on foreign workers.

- To amend and supplement the contents in the Labor Code 2012 related to foreign workers working in Viet Nam in a manner to strengthening the management of foreign workers, simplifying administrative procedures to fit with labor market needs and create conditions for enterprises and organizations to recruit foreign workers into job positions that Vietnamese workers cannot meet. Study and supplement regulations on funding allocations for handling violations by expulsion, and issue regulations on exchanging information and connecting data related to foreign workers working in enterprises and organizations among relevant ministries, industries and localities such as the Ministry of Labor, Invalids and Social Affairs, the Ministry of Planning and Investment and the Ministry of Public Security.
- To amend and supplement the Enterprise Law and the Investment Law, which contain the content of labor management, such as: there must be a plan to employ

Vietnamese and foreign workers approved by competent authorities when establishing an enterprise and in operation; it is necessary to have specific regulations on the appropriate level of capital contribution by foreign investors or business owners in order to be qualified for being exempted from work permit, and in accordance with international practice. Develop criteria to assess national security and social order and safety of foreign-related investment projects in strategic areas of national defense and security.

- To study and develop policies to attract talents, improve the quality of the national labor force. Studying and negotiating bilaterally in order to recognize the occupational skills level of Vietnamese workers equivalent to workers in ASEAN. Striving to implement the plan of mutual recognition agreement (MRAs) for 8 occupations in ASEAN by 2025 to facilitate the movement of skilled workers and entrepreneurs.
- To overcome the shortage of skilled workers through developing and implementing a vocational education and training strategy suitable to the development and needs of the economy, improving the quality of Vietnamese human resources, gradually placing Vietnamese workers in positions that are currently employing foreign workers.
- To strengthen the coordination and mutual support among employment service providers, job placement and recruitment agencies to meet the requirements of investors and enterprises to address the issue of local mismatch and ensure that there will be Vietnamese workers to fill in the vacancies if appropriate.
- To reform and simplify processes, procedures and approaches in explaining needs, assessing and accepting the need of recruiting foreign workers, the order and procedures for granting, re-granting and renewing work permits to facilitate businesses and employees in these procedures.
- To strengthen policy dialogue, propagandism and dissemination of legislation to enterprises and workers for compliance.
- To enhance the capacity of State management officials on the employment and management of foreign workers so that they can guide enterprises to avoid violations and improve law compliance.
- To strengthen cooperation programs among ministries, industries and localities in managing foreign workers.
- To continue improving institutions, promulgating appropriate and flexible policies to ensure harmonized benefits and interests of the state - businesses - foreign workers.

c) Trade and investment policies

- To promote international economic relations, the Government continues to negotiate and sign bilateral and multilateral trade agreements with countries and territories, joining regional and international trade organizations; continue to amend the current legislative system and policies towards opening up the market economy to meet WTO requirements.
- To develop high-quality human resources to be able to capture the knowledge and working attitudes of foreign workers and replace foreign workers in the future.
- To continue improving capital markets and input: financial market, land and housing markets, etc.
- To renovate financial policies: The tax system needs to be renewed in line with the trend of creating equal tax payment obligations among FDI enterprises as well as

other businesses; restructuring and renovating state fiscal policies under the direction of combining state financial sources with the socialized resources economic development.

2. Improve the efficiency of the implementation of the law and policies on the management of skilled foreign workers

Promote inspection, examination and handling of violations, strengthen economic, administrative and criminal sanctions and penalties for person in breach of laws, and at the same time provide guidance, urge and examination of the compliance with current regulations on recruitment and employment of foreigners working in Viet Nam by employers; especially interdisciplinary inspection, examination in the field of entry, exit, transit and residence of foreign workers working in Viet Nam. Strictly handling cases of intentional violations of Vietnamese law relating to foreign workers; Prevent the situation of easily accepting foreigners to work without following regulations on WP granting processes and procedures for investment attraction reasons; Cooperate in checking and verifying the legal status, practical operational capacity, and clearly defining the management responsibilities of agencies, enterprises and individuals to apply for new WP and sponsor for foreigners to enter into Viet Nam.

At the local level, the People's Committees of the provinces and cities directly under the Central Government request the local functional agencies to intensify the inspection and examination of the implementation of the provisions of the law on foreign workers in enterprises, contractors, especially in industrial zones and export processing zones; promptly detect and strictly handle violations; disseminate and guide enterprises, organizations and contractors to strictly comply with the labor legislation.

- To strengthen the coordination between the Ministry of Public Security and the Ministry of Labor, Invalids and Social Affairs, periodically exchanging information on foreign workers who are granted visas to work for agencies, organizations and enterprises, foreign workers are granted work permit in Viet Nam. Closely guiding the issuance of visas suitable to the purposes of entry according to the Law on Entry, Exit, Transit and Residence of Foreigners in Viet Nam.
- The ministries and industries actively coordinate with localities to firmly grasp the situation of investment activities of foreign workers in Viet Nam, promptly discovering investment conspiracy and tricks to obscure and bypass laws to make profit and cause economic instability, social order and safety or national security.
- To strengthen the responsibilities of ministries and industries in the management of foreigners. Accordingly, the provincial/city People's Committees will continue to direct the concerned Departments and related agencies to implement a number of solutions to strengthen management of foreign workers working locally for reviewing and perfecting the coordination programs on the management of foreign workers working in local enterprises and organizations.
- To improve the conditions for foreign labor management by increasing facilities and working conditions for officials in charge of state management of foreign workers; improve the guidance of procedures: Visa, licensing, recruiting in different languages and building databases, websites on foreign workers in Viet Nam. Building a database system of foreign workers in Viet Nam.
- To improve the system of organization and management of foreign workers at all levels, regularly reviewing, supplementing and consolidating personnel in charge of state management at all levels according to practical needs of each locality in

- each stage; improve the professional capacity and foreign language skills for managers at all levels to meet requirements of their working positions.
- To review, consolidate, build and train a contingent of legislative reporters, law propagandists, grassroots conciliators, to guide employers of foreign workers implement regulations on recruitment and employment of foreigners working in Viet Nam;
 - To strengthen the role of mass organizations such as trade union, youth union, women's union, etc. in propaganda, advocacy, management, so that workers can quickly integrate into the environment and working condition in Viet Nam, helping them comply with laws and regulations in Viet Nam, ensuring workers' legitimate rights while keeping national interests.
 - To raise the awareness of foreign workers, through many channels, in many forms, propagating Vietnamese laws and culture to help foreign workers quickly adapt to working and living conditions in Viet Nam; strengthen prevention and coordination functions with social partners; promulgate regulations on coordination between labor, police and trade sectors in the management of foreign workers locally.

3. Strengthen propaganda and facilitation in issuing work permit

- To continue promoting the propagation and dissemination of the provisions of the law on recruiting and managing foreign workers in Viet Nam in many appropriate forms such as leaflets, manuals, etc. periodically organize professional/technical training courses for relevant officials in localities on issuing work permits to foreign workers to ensure uniformed and synchronized implementation.
- To organize the consistent implementation of work permit granting for foreign workers through the electronic portal at: <http://dvc.vieclamvietnam.gov.vn>.

B. RECOMMENDATION AT REGIONAL LEVEL

To strengthen regional cooperation, information sharing, building and harmonizing the legal systems to promote international economic integration. At the same time, there is a need for more active participation of Member States in international agreements, commitments, efforts to harmonize international rules and norms, and regional commitments.

To strengthen labor market information sharing in the region and better protection services for male and female foreign workers, ensuring decent and productive work. Towards eliminating barriers to labor movement, especially of skilled workers through strengthening the organization of and participation in regional/international seminars, workshops and exchange of experience with countries on management foreign workers, aiming at broadly sharing information about the forum's activities as well as experience, initiatives of different countries/parties at national and regional levels.

To promote linkages with trans-national/multi-national communities/organizations and facilitate the transfer of capital, skills and technology. To build strong commitment among the Government, workers and employers, recruiting units, civil society organizations.

To encourage member states to refer to and use the core conventions on human rights, ILO's workplace rights, migrant workers and their families (IOM) rights, etc. in the process of consolidating and the implementation of legal provisions related to

foreign workers.

To continue studying, exchanging and conducting surveys to share policies and models in managing and supporting foreign workers to ensure social protection and national security of Member States.

VI. APPENDIX

APPENDIX A. Research methodology

The research methodology followed the guidelines and the methodology agreed and presented in the inception report and the discussion results at the expert meeting on 18th February, 2020. Accordingly, the national consultant has conducted the collection of information from: (i) official documents currently in effect at the national level to provide a legal framework for the management of migrant workers' mobility; (ii) a qualitative survey with AMS officials on the management of migrant workers at the national level with contents on 4 areas including: entry and stay, incorporate measures, exit measures and enforcement measures designed by international consultants.

APPENDIX B. List of consultation and interviews

- I.** Ministry of Labour, Invalids and Social Affairs (Bureau of Employment, Legislation Department, Social Insurance Department, Inspectorate Department)
- II.** Ministry of Foreign Affairs (Consular Department)
- III.** Ministry of Public Security (Immigration Department)
- IV.** Social organizations (Bureau of Employers' Activities – VCCI; Policy Board – Viet Nam General Confederation of Labour)
- V.** MRAs representatives
Ministry of Finance
Ministry of Transportation
Ministry of Health
Ministry of Public Security
Ministry of Foreign Affairs
Ministry of Construction
Ministry of Culture
Viet Nam National Administration of Tourism.

APPENDIX C. Legal Documents

Laws

1. Labour Code 2012
2. Labour Code 2019
3. Law on Entry, exit, transit, and residence of foreigners in Viet Nam No. 47/2014/QH13
4. Law No. 51/2019/QH14 on amendments to a number of Articles of Law on entry, exit, transit and residence of foreigners in Vietnam
5. Law on Trade Union No. 12/2012/QH13
6. Criminal Code 2015 (amended and supplemented in 2017)
7. Health Insurance Law No. 01/VBHN-VPQH (answers question 36)
8. Law on Vietnamese Nationality No. 07/1998 / QH10 (40)

Decrees

1. Decree No. 11/2016/ND-CP of February 3, 2016 detailing the implementation of a number of articles of the Labor Code on foreign laborers working in Viet Nam.
2. Decree No. 140/2018/ND-CP dated October 8, 2018 on amendments and supplements to Yes decrees related to conditions of business investment and administrative procedures under the scope of state management of Ministry of Labor, Invalids and Social Affairs
3. Decree No. 87/2014/ND-CP dated September 22, 2014 of the Government on attracting individuals who are scientific and technological activities being Vietnamese living abroad and foreign experts participating in scientific activities learning and technology in Viet Nam.
4. Decree No. 95/2013/ND-CP dated August 20, 2013 on penalties for administrative violations in the field of labor and social insurance
5. Decree No. 88/2015/ND-CP dated October 07, 2015, amendments Decree No. 95/2013/ND-CP on penalties for administrative violations against regulations on employment, social insurance, social insurance, and Vietnamese guest workers.
6. Decree No. 28/2020/ND-CP dated March 1, 2020 on administrative penalties for violations arising from labor, social insurance and sending Vietnamese workers abroad under contracts

Circulars

1. Circular No. 40/2016 / TT-BLĐTBXH October 25, 2016 of the Ministry of Labor - Invalids and Social Affairs guiding the implementation of a number of articles of Decree No. 11/2016 / ND-CP
2. Circular No. 24/2015 / TT-BLĐTBXH dated 13/7/2015 of the Ministry of Labor - Invalids and Social Affairs detailing the implementation of Clause 6 Article 14 of Decree No. 87/2014 / ND-CP dated September 22, 2014 by the Government on attracting individuals who are Vietnamese people living abroad and foreign experts to participate in science and technology activities in Viet Nam.
3. Joint Circular No. 15/2012 / TTLT-BLĐTBXH-BCA-BNG dated June 6, 2012 Issuing holiday work permits for New Zealand citizens
4. Joint Circular No. 21/2016 / TTLT-BLĐTBXH-BCA-BNG dated June 29, 2016 Vacation working program with the Australian Government.
5. Circular No. 02/2014 / TT-BTC stipulating the fee of February 2, 2014 under the deciding authority of the People's Councils of provinces and cities directly under the Central Government.

Agreements

1. The agreement between the Government of the Socialist Republic of Viet Nam and the Government of Australia on the holiday combined labor program signed on March 18, 2015 and takes effect from the date of 1 March 2017⁴⁰.

⁴⁰<http://www.trungtamwto.vn/upload/files/hiep-dinh-khac/173-hiep-dinh-khac/325-viet-nam---uc/1.%20Thoa%20thuan%20chuong%20trinh%20lao%20dong%20ket%20hop%20ky%20nghe-%20Australia.pdf>

2. Agreement between the Government of the Socialist Republic of Viet Nam and the Government of New Zealand on the Working holiday program, signed in Hanoi on December 29, 2011 and takes effect as from 31 July 2012.⁴¹

⁴¹<https://thuvienphapluat.vn/van-ban/linh-vuc-khac/Thong-bao-hieu-luc-cua-Thoa-thuan-Chuong-trinh-lam-viec-trong-ky-nghi-147122.aspx>

