

Alert on immigration

June 2021

In the recent months, following the request of the Ministry of Labours, War Invalids and Social Affairs (“MOLISA”) to provincial People Committees to review all organisations and enterprises in the provinces which are using foreign workers (i) to enhance provincial People Committees’ supervision and management of all foreign workers who enter Vietnam and are working at the organisations/enterprises and (ii) to avoid cases of foreign workers entering Vietnam illegally and working at organization/enterprises, many labour audits on foreign workers have been carried out nation-wide. Following the audits, businesses may face challenges from provincial competent authorities on the ability to deploy foreign workers across Vietnam for the same job position and working form, with a single work permit issued by the Department of Labours, War Invalids and Social Affairs (“DOLISA”) of the province where the businesses register their offices.

Challenges from provincial competent authorities

When a foreign expert who has a work permit issued in one province is deployed for a period to another province in the same job position and working form, there is a request from certain provincial authorities that another work permit is required in order to work in that province rather than using the current work permit given that the working place in the current work permit does not align with the new working place of the expert.

This may not be possible where the employer is not otherwise required to have a registered presence in the province and will cause significant disruption to the deployment of foreign workers in critical industries, for example the energy sector.

Reason for the challenges

According to article 18 of the Circular No. 40¹ giving guidance on some articles of the Decree No.11² on implementation of some articles of Labour codes of Vietnam on foreign employees working in Vietnam, when a foreign expert holding a valid work permit is relocated to the province different from the province where the employee is working (and is granted a work permit) for 10 consecutive days or more, s/he is not required to apply for a new work permit. Instead, the employer is required to report to the DOLISA of the province where the employee is relocated in writing, on the relocation, including: name of business, new work location, job position, job title, work duration; together with the notarized copy of the current work permit of the foreign employee.

Following the issuance of Decree 152³, Decree No.11 and Circular No.40 are superseded. Decree No.152 is silent on guidance on the requirements when a foreign expert, who has a work permit issued in one province, is relocated for a period to another province in the same job position and working form. Accordingly, different provincial competent authorities currently have a different interpretation on the requirements under Decree 152 when businesses deploy foreign employees around Vietnam.

¹ Circular No.40/2016/TT-BLDTBXH dated 25 October 2016

² Decree No.11/2016/ND-CP dated 03 February 2016

³ Decree 152/2020/ND-CP dated 30 December 2020

KPMG's opinion

In the absence of detailed guidance on the procedures and requirements for deploying foreign employees to province other than the province where the work permit is granted, we are of the opinion that businesses should notify the local DOLISA in advance of the deployment to determine if there are any further specific requirements at the provincial authority. Further, businesses should always notify local DOLISA in writing on the deployment, to make sure the competent authorities are aware of such deployment, to avoid future challenge on non-reporting.

Please contact KPMG for further advice on the above.

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