



January 24, 2013

Respectfully to: Ministry of Labour, Invalids, and Social Affairs
Department of Employment

Copy to: Ministry of Planning & Investment
Ministry of Industry and Trade
Ministry of Foreign Affairs
Ambassador of the United States
Consul General of the United States
Chairman, Vietnam Chamber of Commerce and Industry

Dear Sir/Madame:

RE: Request for Comments on some Draft Implementing Regulations for the Revised Labour Code regarding Foreign Employees in Vietnam

Dự Thảo Tờ Trình Chính Phủ v.v. dự thảo Nghị định quy định chi tiết thi hành một số điều của Bộ luật Lao động về lao động nước ngoài làm việc tại Việt Nam

Dự Thảo Nghị định Quy định chi tiết thi hành một số điều của Bộ luật Lao động về lao động nước ngoài làm việc tại Việt Nam

We send greetings on behalf of the 700 companies of the American Chamber of Commerce. AmCham has been contributing to Vietnam's development since 1994. Our members have invested billions of dollars in Vietnam across many industry sectors, and have been largely responsible for much of the rapidly growing bilateral trade, which will likely reach \$24.5 billion this year, not to mention exports to global markets of higher value-added products from "modern manufacturing" U.S. FDI that has recently come to Vietnam.

Thank you very much for providing the Draft Report to the Government and the Draft Decree regarding Foreign Employees in Vietnam. We received both the Draft Report and the Draft Decree by fax on November 26, 2012.

We would like to provide comments regarding the **substance** of the Draft Decree and regarding the **procedures** of the request for comments.

Regarding the **substance** of the Draft Decree, please see the attached comments (Annex C) prepared in cooperation with AmCham companies and made at a dialogue meeting on January 11, 2013 with MOLISA and MPI arranged by the Vietnam Business Forum. We remain very concerned about several issues, including the increasingly burdensome administrative procedures of Article 5 regarding "Demand for Foreign Workers." The current regime of "registration of foreign labour demand" is already an administrative burden, and upgrading this to "approval of foreign labour demand" by the DOLISAs and People's Committees will only add to the burden. In addition to those comments, we would like to remind you of our comments in our letter of July 29, 2011 regarding foreign employees and work permits: "Article 8 "Entry, Sojourn, and Employment of Aliens," Chapter IV of the Bilateral Trade Agreement between Vietnam and the United States provides that U.S. companies have the right to engage top management personnel of their choice, regardless of nationality, and any application of Vietnam's labor law must not impair the substance of this right."

Regarding the **procedures** of the request for comments, I believe that you are aware of the comments of the representative of Vietnam that are published in the "Report of the Working Party on the Accession of Viet Nam" to the World Trade Organization, WT/ACC/VNM/48, 27 October 2006, the section on Transparency (pages 127-129) and in particular the following paragraph 518 on page 129 of the Report.

"The representative of Viet Nam confirmed that with respect to proposed laws, ordinances, decrees and other regulations and measures issued by the National Assembly and the Government pertaining to or affecting trade in goods, services, and intellectual property,

Viet Nam would provide a reasonable period, i.e., no less than 60 days, for Members, individuals, associations and enterprises to provide comments to the appropriate authorities before such measures are adopted. The Government would take into account any comments received during the period for commenting.”

Similarly, I believe you are aware of the provisions of Chapter VI, Transparency and the Right of Appeal, of the Agreement between the United States of America and the Socialist Republic of Vietnam on Trade Relations, signed July 13, 2000. To highlight just the key points relevant to the request for comments on the Draft Decree.

“**Article 1** Each Party shall publish on a regular and prompt basis all laws, regulations and administrative procedures of general application pertaining to any matter covered by this Agreement. Publication of such information and measures will be in a manner which enables governmental agencies, enterprises and persons engaged in commercial activity to become acquainted with them before they come into effect and to apply them in accordance with their terms. Each such publication shall include the effective date of the measure, the products (by tariff line) or services affected by the measure, and all authorities that must approve or be consulted in the implementation of the measure, and provide a contact point within each authority from which relevant information can be obtained.

“**Article 3** Each Party shall allow, to the extent possible, the other Party and its nationals the opportunity to comment on the formulation of laws, regulations and administrative procedures of general application that may affect the conduct of business activities covered by this Agreement.

Finally, I have attached for your reference a copy of the National Assembly Resolution 71/2006/QH11, Ratifying the Protocol of Accession of the Socialist Republic of Vietnam to the Agreement establishing the World Trade Organization, and the Annex. Please note the following excerpts, from article 2 of the Resolution 71, and item 4 of the Annex:

2. To apply directly Vietnam's commitments stated in the Annex to this Resolution and other WTO commitments that are adequately detailed and clear in the Protocol, attached annexes and the Report of the Working Party on the Accession of Vietnam to the Agreement Establishing the WTO.

If the provisions of Vietnamese law are inconsistent with the provisions of the Agreement Establishing the WTO, the Protocol and attached documents, the provisions of the Agreement, the Protocol and attached documents prevail. [emphasis added]

Item 4 of the Annex states:

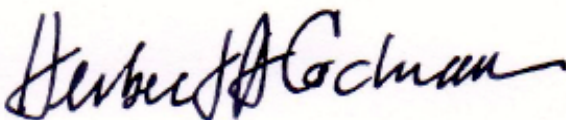
“In the process of elaboration of legal documents, concerned agencies and organizations shall create conditions for agencies, organizations and individuals to make their comments on draft legal documents; organize the collection of comments from those who are directly affected by those documents. Drafting agencies shall publish draft legal documents of the National Assembly, the National Assembly Standing Committee and the Government on the website of the Government for collecting comments of agencies, organizations and individuals on those documents **no less than 60 days from the date of publication.**”

We believe that the 14 days between the receipt of the proposed regulations on November 26 and the deadline for comment on December 10 is too short to offer a meaningful opportunity for comment.

We respectfully request the MOLISA provide 60-day comment period for this and all future “... draft laws, regulations, and administrative procedures ...” as agreed by the representative of Vietnam in the report of the Working Party on the Accession of Vietnam, and as ratified by the National Assembly.

Our members look forward to receiving your cooperation and support on this issue, and to an opportunity to discuss comments directly with MOLISA and other government officials at a dialogue meeting to be arranged by VBF/VCCI in the coming days.

Respectfully yours,



Herbert A. Cochran
Executive Director

Attachments:

- A. Excerpts regarding Transparency (Chapter VI) from the Agreement between the United States of America and the Socialist Republic of Vietnam on Trade Relations, July 13, 2000.
- B. Excerpts regarding Transparency from the “Report of the Working Party on the Accession of Viet Nam” to the World Trade Organization, WT/ACC/VNM/48, 27 October 2006, pages 127-129
- C. [Comments on the Draft Decree, as submitted at the Dialogue Meeting with MOLISA and MPI, and arranged by the Vietnam Business Forum, Jan 11, 2013.](#)
- D. National Assembly Resolution 71/2006/QH11, Ratifying the Protocol of accession of the Socialist Republic of Vietnam to the Agreement establishing the world trade Organization
<http://mic.gov.vn/vbqpppl/Lists/Vn%20bn%20QPPL/DispForm.aspx?ID=6985>
- E. ANNEX: CONTENTS OF DIRECT APPLICATION OF VIETNAM’S COMMITMENTS
(Attached to the National Assembly’s Resolution No. 71/2006/QH11 of November 29, 2006)

Attachment A
Excerpts from the Bilateral Trade Agreement between Vietnam and the United States

AGREEMENT BETWEEN
THE UNITED STATES OF AMERICA
AND THE SOCIALIST REPUBLIC OF VIETNAM
ON TRADE RELATIONS

CHAPTER VI

TRANSPARENCY-RELATED PROVISIONS AND RIGHT TO APPEAL

Article 1

Each Party shall publish on a regular and prompt basis all laws, regulations and administrative procedures of general application pertaining to any matter covered by this Agreement. Publication of such information and measures will be in a manner which enables governmental agencies, enterprises and persons engaged in commercial activity to become acquainted with them before they come into effect and to apply them in accordance with their terms. Each such publication shall include the effective date of the measure, the products (by tariff line) or services affected by the measure, and all authorities that must approve or be consulted in the implementation of the measure, and provide a contact point within each authority from which relevant information can be obtained.

Article 2

Each Party shall provide nationals and companies of the other Party with access to data on the national economy and individual sectors, including information on foreign trade. The provisions of this paragraph and the preceding paragraph do not require disclosure of confidential information which would impede law enforcement or otherwise be contrary to the public interest, or would prejudice the legitimate commercial interests of particular enterprises, public or private. For the purposes of this Agreement, confidential information that would prejudice the legitimate commercial interests of particular enterprises means specific information concerning the importation of a product that would have a significant adverse effect on the price or quantity available of such product, but shall not include information required to be disclosed under the agreements administered by the WTO.

Article 3

Each Party shall allow, to the extent possible, the other Party and its nationals the opportunity to comment on the formulation of laws, regulations and administrative procedures of general application that may affect the conduct of business activities covered by this Agreement.

Article 4

All laws, regulations and administrative procedures of general application referred to in paragraph 1 of this Article that are not published and readily available to other governments and persons engaged in commercial activities as of the date of signature of this Agreement will be made public and readily and quickly available. Only laws, regulations and administrative procedures of general application that are published and readily available to other governments and persons engaged in commercial activity will be enforced and enforceable.

Article 5

The Parties shall have or designate an official journal or journals and all measures of general application shall be published in such journals. The Parties will publish such journals on a regular basis and make copies of them readily available to the public.

Article 6

The Parties shall administer, in a uniform, impartial and reasonable manner all their respective laws, regulations and administrative procedures of general application of all the types described in paragraph 1 of this Article.

Article 7

The Parties will maintain administrative and judicial tribunals and procedures for the purpose, inter alia, of the prompt review and correction (upon the request of an affected person) of administrative action relating to matters covered by this Agreement. These procedures shall include the opportunity for appeal, without penalty, by persons affected by the relevant decision. If the initial right of appeal is to an administrative body, there shall also be the opportunity for appeal of the decision to a judicial body. Notice of the decision on appeal shall be given to the appellant and the reasons for such decision shall be provided in writing. The appellant shall also be informed of the right to any further appeal.

Article 8

The Parties shall ensure that all import licensing procedures, both automatic and non-automatic, are implemented in a transparent and predictable manner, and in accordance with the standards of the WTO Agreement on Import Licensing Procedures.

Attachment B
Excerpts from the Report of the Working Party on the Accession of Vietnam

ACCESSION OF VIET NAM TO THE WORLD TRADE ORGANIZATION

Report of the Working Party on the Accession of Viet Nam

WT/ACC/VNM/48
27 OCTOBER 2006

TRANSPARENCY [PAGES 127-129]

509. Some Members requested information on Viet Nam's implementation of the transparency requirements prescribed in Article X of the GATT 1994, Article III of the GATS and other provisions of the WTO Agreement. These Members asked whether a legal obligation existed in Viet Nam to publish in an official journal all laws, regulations, decrees, judicial decisions and administrative orders or rulings of general application or other measures having similar effect relating to trade or economic policy "in such a manner as to enable governments and traders to become acquainted with them". These Members further inquired as to what extent publication occurred prior to entry into force, and whether any such measures could enter into force without being published in the Official Gazette.

510. The representative of Viet Nam said that provisions on publication of legal acts and the opportunity for public comment had been included in the Law on the Enactment of Legal Normative Documents of 12 November 1996 together with its amendment approved by the National Assembly on 16 December 2002. Detailed rules and procedures had been established through Government Decree No. 161/2005/ND-CP of 27 December 2005 implementing the Law on the Enactment of Legal Normative Documents, Government Decree No. 104/2004/ND-CP on the Official Gazette, Circular No. 04/2005/TT-VPCP guiding the implementation of Decree No. 104/2004/ND-CP, and the Prime Minister's Directive No. 28/2001/CT-TTg of 28 November 2001 on the Continuous Improvement of the Business Environment.

511. The general procedures for soliciting public comment on draft legal instruments were laid down in Articles 40, 62, 65, 66 and 70 of the Law on the Enactment of Legal Normative Documents (as amended). In practice, the drafting entities circulated the draft legal instruments to organizations and individuals potentially affected by them or published the drafts in newspapers to elicit comments from the general public. Articles 62.2 and 65.4 of the amended Law on the Enactment of Legal Normative Documents required the Office of the Government to publish draft Government Resolutions and Decrees, and Decisions and Instructions of the Prime Minister, on the Internet or in mass media for comments by agencies, organizations and individuals. There was no specialized website for the publication of draft legal documents; draft legal documents were published on the website of the responsible Ministry and drafting agency, i.e., on the Ministry of Planning and Investment's website for documents related to investment (www.mpi.gov.vn), on the Ministry of Trade's website for documents concerning trade rules and regulations (www.mot.gov.vn), and on the Ministry of Finance's website for documents on tax and finance (www.mof.gov.vn). A number of draft documents were also published on the website of the Ministry of Justice (www.moj.gov.vn). Drafting entities could also organize workshops and seminars to discuss the drafts with those interested. He noted that Directive No. 28/2001/CT-TTg required ministries and agencies to seek comments from the business community through the Viet Nam Chamber of Commerce and Industry in the drafting of any policies or rules affecting business operations. Draft legal documents affecting the business community were published on the Internet site of the Chamber of Commerce and Industry (<http://www.vibonline.com.vn>).

512. The obligation to seek the opinions of those directly affected by the legal documents, and the possibility to take account of these opinions in the drafting process, was laid down in Articles 3, 26.4 and 61.4 of the amended Law on the Enactment of Legal Normative Documents. Article 3.3 of the Law required the drafting agency to synthesize, analyze and evaluate the comments received and, as necessary, to propose adjustments to the original draft. The comments received by the drafting agency were attached to the draft legal instrument when forwarded to the appropriate decision-making body.

...

518. The representative of Viet Nam confirmed that from the date of accession his Government would fully implement Article X of the GATT 1994, Article III of the GATS and the other WTO transparency requirements, including those requiring notification, prior comment and publication. As such, all laws, regulations, decrees, judicial decisions and administrative rulings of general application pertaining to or affecting customs issues, trade in goods, services, intellectual property and the control of foreign exchange would be published promptly in a manner that fulfils the WTO requirements, and no such laws, regulations, decrees, judicial decisions and administrative rulings of general application would become effective or be enforced prior to such publication, except for those regulations, judicial decisions and administrative rulings of general application, and other measures involving national emergency or security, or for which publication would impede law enforcement. To this end, he further confirmed that Viet Nam would, as of the date of accession, establish or designate an official journal or website for each of the topics (or an aspect of a topic) identified above, dedicated to the publication, prior to their entry into force, of all regulations, decisions, orders, and administrative rulings of general application, pertaining to or affecting that topic. Such journals or websites would be updated on a regular basis, notified to the WTO, and readily available to WTO Members, individuals, associations and enterprises. The websites or journals where these measures would be published are listed in Table 23. The publication of such regulations and other measures would include, as appropriate, the following: (i) the names of the authorities (including contact points) responsible for implementing a particular measure; and (ii) the effective date of the measure. The representative of Viet Nam confirmed that with respect to proposed laws, ordinances, decrees and other regulations and measures issued by the National Assembly and the Government pertaining to or affecting trade in goods, services, and intellectual property, Viet Nam would provide a reasonable period, i.e., no less than 60 days, for Members, individuals, associations and enterprises to provide comments to the appropriate authorities before such measures are adopted. The Government would take into account any comments received during the period for commenting. [emphasis added] The only exceptions to this opportunity for comment would be for those regulations and other measures involving national emergency or security, or for which publication would impede law enforcement. The Working Party took note of these commitments.

**COMMENTS ON THE DRAFT DECREE IMPLEMENTING THE 2012 LABOR CODE
REGARDING FOREIGN WORKERS**

*Prepared by
Human Resources Sub-group
Investment and Trade Working group*

No.	2012 draft Decree pertaining to foreign workers	Comments
		<p>It is suggested that the drafters reconsider the soundness of the requirement that workers who are foreign nationals have to present a work permit when it comes to procedures pertaining to exit and entry of the country, and before they enter Vietnam in case foreign workers, following their probationary periods, fail to meet the expected standards of the job.</p>
		<p>The current Decree only provides implementing details for provisions of Article 171.2, Article 172.9 and Article 175, Labor Code. Is it correct to understand that all other requirements will apply the same as Vietnamese workers, including probation, rights and obligations, participation in the trade union, severance, and so on.</p>
		<p>It is suggested that a provision rendering the labor contract void for lack of a work permit or provision of false information to enter Vietnam as a worker.</p>
		<p>The draft specifies that a work permit should not have a term longer than 24 months while the prevailing law allows every work contract to be signed for a maximum term of 36 months. Should that be understood as a foreign worker's contract should have a term no longer than 24 months?</p> <p>What about termed work contracts that have signed twice and are going to be renewed? Can an indefinite-term contract be used here? If an indefinite-term contract is allowed, how will the 24-month limit of the work permit apply?</p> <p>Or is it possible to understand that the term of the work permit and term of the employment contract apply separately? Meaning that a 36-</p>

<p>month work contract can be signed even if the work permit is only valid for no longer than 24 months, and the 24-month validity may be extended when due? And will it be extended for another 12 months or 24 months?</p>			
<p>There is no specific regulation if the foreign workers changing their company or work for the second company.</p>			
1		<p>Pursuant to the Law on Government organization of Dec. 25, 2001;</p> <p>Pursuant to the Labor Code of June 18, 2012;</p>	<p>The Investment Law should be named here as a source of reference for the provisions of Article 3 of the draft.</p>
2	Article 1. Scope of regulation	<p>This Decree details the implementation of paragraph 2 of Article 171 of the Labor Code concerning foreigners who working in Vietnam without a work permit will be expelled from the territory of Vietnam; Paragraph 9 of Article 172 of the Labor Code specifying the cases which work permits are not required; Article 175 of the Labor Code specifies the conditions for the grant, renewal, revocation of work permits for foreign workers who are foreign citizens coming to Vietnam to work (laborers who are foreign citizens coming to work in Vietnam hereinafter referred to as foreign workers).</p>	<p>This paragraph can be rephrased in a more generic and concise way based on Article 175 and other provisions it makes reference to. Attention should also be paid to the scope of Decree 34 and Decree 46, expected to be replaced by this decree.</p>
3	Article 2. Objects of Regulation	<p>1. Foreign workers coming to work in Vietnam in the following forms:</p>	<ul style="list-style-type: none"> - There should be a clear definition of the term “foreign workers” right in this decree or a circular (is it inclusive of Vietnamese residing overseas, foreigners working for an offshore subsidiary of a Vietnamese enterprise, among others?). - The term “<i>coming to work</i>” may be changed to “on termed residence or intending to do so in Vietnam for working purposes in one of the following ways:”

		<p>1. Foreign workers coming to work in Vietnam in the following forms:</p> <p>b) Intra corporate Transfer within an enterprise which has commercial presence in Vietnam.</p> <p>Intra-corporate transferees are Managers, executives and specialists of a foreign enterprise which has established a commercial presence in the territory of Viet Nam, temporarily moving as intra-corporate transferees to that commercial presence and who have been previously employed by the foreign enterprise for at least 12 months</p> <p>Commercial presence is understood as a service provider who is citizen of a country moving to another country to set up a legal entity and provide services in that country.</p>	<p>The definition of “commercial presence” should be reconsidered to be more consistent with the existing normative system and international practices.</p> <p>Existing rules, e.g. Decree No. 34/2008/ND-CP, specify that: Foreign workers on intra-corporate transfer: These include managers, executives and specialists mentioned above of a foreign enterprise that has established its commercial presence on the territory of Vietnam, those on temporary internal transfer to make commercial presence on the territory of Vietnam and who have been employed by the foreign enterprise for at least 12 months. We think that this provision should be removed to allow a foreign enterprise to freely appoint someone they see fit to a position in their facility in Vietnam, regardless of whether the person has been employed for at least 12 months.</p>
		<p>1. Foreign workers coming to work in Vietnam in the following forms:</p> <p>d) Contractual Service Providers Contractual Service Providers can be interpreted as foreign workers who are employees of a foreign enterprise having no commercial presence in Viet. These people should be working for the foreign companies having no commercial presence in Vietnam is at least 02 (two) years and have to meet the conditions for "experts" in accordance with the paragraph 2 of this Article.</p>	<p>Changes are needed to maintain consistency (paragraph 2 of this Article has no reference to “experts”)</p> <p>The requirement that a contractual service provider should be someone having worked for a foreign enterprise having no commercial presence in Vietnam for at least 2 years should be removed.</p> <p>The WTO service commitment schedule (“WTO commitments”) requires that a service provision bidder must not stay in Vietnam for longer than 90 days. The draft Decree has no response to this issue. This may create confusion that there is no time limit for service provision bidders.</p>

			The exact text of the WTO commitment on service provision bidders should be used here.
		1. Foreign workers coming to work in Vietnam in the following forms: e) Foreign laborers working for foreign non-governmental organizations , international organizations which are allowed to operate under the provisions of Vietnamese law;	Is a timeline necessary? Is a written labor contract needed?
		1. Foreign workers coming to work in Vietnam in the following forms: g) Volunteers Volunteers are those working in Vietnam in the form of voluntary and receive no remuneration to implement international treaties that the Socialist Republic of Vietnam has signed or participated.	Clearer definitions are needed (What type of employer? What international cooperation agreements? and so on).
4	Article 3. Cases of foreign workers who are not subject to work permits		Changes of “not subject to” to “exempted from” are recommended to avoid confusion with non-qualified individuals in accordance with Article 169, Labor Code.
			The regulation should be supplemented with some following objects whom should not be required to obtain a work permit to maintain consistency between the Enterprise Law, Investment Law and Labor Code. 1. Shareholder: someone contributing capital in a joint stock company; 2. Member of the Board of members for liability limited

			<p>companies;</p> <p>3. Directors of branches of foreign companies without a legal entity in Vietnam.</p>
		<p>2. Intra-corporate transfer, within the scope of services committed by Vietnam under the World Trade Organization which include 11 service sectors: business services; information services; construction services, distribution services; education services; environmental services; financial services; health care services; tourism and travel related services; Recreational, Cultural And Sporting Services and transportation services.</p> <p>Ministry of Industry and Trade is responsible for guiding the criteria, procedures to identify foreigner who are intra-corporate transferees under the 11 above-mentioned services.</p>	<p>11 lines of services have been explicitly described in Vietnam’s WTO Commitment Schedule. Further detailed guidelines by the Ministry of Industry and Trade to determine what fall under these 11 lines of service are, therefore, unnecessary. All corporate internal transfers that fall within the scope of the mentioned 11 lines of service should be exempted from work permits. The decree may regulate on how notification should be made in these cases.</p>
		<p>6. Volunteers</p> <p>Foreign diplomatic representative offices in Vietnam is responsible for certifying foreign laborers working in Vietnam in the form of volunteers.</p>	<p>Addition of “within international agreements entered into by Vietnam’s relevant authorities and foreign parties” is recommended.</p>
		<p>7. Other cases approved by the Prime Minister upon the request of the Ministry of Labour, Invalids and Social Affairs.</p>	<p>This provision needs to be reconsidered since implementing documents to the Labor Code are under the jurisdiction of the Government (Article 172.9 and Article 242, Labor Code), and not the Prime Minister.</p>
5	Article 4. Conditions for granting work		<p>As a principle, foreign workers must met concurrently two requirements for a working individual (Article 169, Labor Code) and employment recruitment conditions (Article 170, Labor Code). Article 4 of the draft, however,</p>

	permits for foreign workers		does not provide any specific guidelines or clear explanations on specific requirements to meet these criteria.
		1. Having full civil behavioral capability in accordance with Vietnamese law;	Civil behavioral capacity may be ruled differently in different countries. How should this be addressed? Or to be specific, what will happen in the case of countries having an agreement or international treaty with Vietnam?
		5. Obtained written approval from competent State agencies permitting the use of foreign workers.	Please be specific about the official title of this written approval (decision, notice, abstract etc.).
6	Article 5. Demand for foreign workers		The title of the Article can be changed to “Registration of the need for foreign workers” or “Planning for use of foreign workers” to remain consistent with the provisions of Article 5 of the draft. This is basically a new procedure that may directly affect business operation and management (human resources planning).
			<p>This provision is in place to clarify Article 170.2, Labor Code. We have no problem with the rationality of the provision.</p> <p>But the following should be made clear: (i) timing for employers filing in their annual declaration of need for workers and narrative statements; (ii) timeline for the Department of Labor-Invalids-Social Affairs to answer yes or no to the applicants’ need for foreign workers. If it is a no, the Department of Labor-Invalids-Social Affairs’ reply should clearly tell why.</p>

			Employers' right to provide further information or appeal the Department of Labor-Invalids-Social Affairs' denial should be elaborated upon.
			We think that this is a kind of labour quota and this article might break the Law on Enterprises. According to the rights of the Enterprise regulated in Item 5, Article 8 of the Law on Enterprises: "To recruit, employ and use labour in accordance with business requirements".
		1. Every year, employers are responsible for estimating their demand for foreign workers for each position in accordance with the guidance of the Ministry of Labor, Invalids and Social Affairs, which defines each position that Vietnamese workers are unable to fulfill and need to recruit foreign workers; written reports should be sent to Departments of Labor, Invalids and Social Affairs in provinces and cities directly under the central government, where the employers locate their headquarters.	<ul style="list-style-type: none"> - This is a normal human resources planning activity of businesses and any entities and organizations in need of employees. - This is a requirement on fulfillment of employment-related procedures. The format and content of the written report should be made clear for employers to adhere to.
		2. Departments of Labor, Invalids and Social Affairs are responsible for compiling demands for foreign workers for each position locally and report to the chairman of the People's Committees of provinces and cities directly under the Central governments to consider and make decision on positions that require recruitment of foreign workers.	This is interference of the regulator in the business affairs of employing businesses, entities and organizations.
		3. Departments of Labor, Invalids and Social Affairs approved in writing the demand for foreign workers for each employers and each position in accordance with the decision of Chairmen of the People's Committee of	The authority of the Department of Labor-Invalids-Social Affairs and Chairs of municipal PCs, and specific administrative behaviors of each agency relating to approval of the plan to use foreign workers of

		<p>provinces and cities directly under the central government.</p>	<p>businesses, entities and organizations should be made clear.</p>
		<p>4. If there are any changes in demand for foreign worker recruitment employers must submit additional reports in writing to the Department of Labor, Invalids and Social Affairs in provinces and cities under central government where the employers locate their headquarters in accordance with the provisions of paragraph 2 and paragraph 3 of this Article.</p>	<p>This is interference of the regulator in the business affairs of employing businesses, entities and organizations.</p> <p>The requirement of obtaining approval by the People's Committee and Department of Labor-Invalids-Social Affairs under Articles 5.2, 5.3 and 5.4 seems to be impractical and will double the procedures that both employers and regulators have to go through. This provision should be removed.</p>
		<p>5. Departments of Labor, Invalids and Social Affairs shall report to the Ministry of Labor, Invalids and Social Affairs on demand for foreign workers; the status of approving demands for foreign workers and the situation of foreign workers working in businesses and organizations in their management areas.</p>	<p>This is a normal activity of the regulator.</p>
<p>7</p>	<p>Article 6. Work permit dossier</p>	<p>2. Health certificate issued abroad or health certificate issued in Viet Nam as prescribed by the Ministry of Health.</p>	<p>Health certificates issued in Vietnam under the Ministry of Health's standards only if a foreign worker is allowed to enter Vietnam after having obtained a work permit. The Item 2 of Article 6 should be reconsidered.</p>
		<p>3. ... Legal background record/Judicial certificates should be valid for 6 months from the date of submission for work permit.</p>	<p>What the underlying criteria to determine this time line?</p> <p>In practice, many foreign workers may have a different nationality than the country he/she lives and works in before coming to Vietnam. The country the person lives in before coming to Vietnam may not maintain the rule</p>

			<p>of issuing legal background records for foreign nationals (e.g. Singapore announced that it stopped issuing crime-free records for foreigners from Oct. 18, 2010) and some foreign workers may not be staying in Vietnam long enough as required to be granted legal background records. In this case, foreign workers should be allowed to submit legal background records issued by his/her country of nationality.</p>
		<p>4. Certification of professional and technical qualifications of foreign workers in accordance with the paragraph 3 of Article 4 of this Decree.</p> <p>For some occupations, jobs, certification of professional of foreign workers will be replaced by one of the following documents:</p> <p>...</p> <ul style="list-style-type: none"> - Confirmations or labor certificates or labor contracts certifying that he or she has at least (05) five years' experience in an occupation or trade, in operating production or in managerial work and suitable with the occupation positions that foreigner plans to take. Above confirmations with at least (05) five years' experience are certified by enterprises, agencies and organizations where foreigners have worked. <p>...</p> <ul style="list-style-type: none"> - Other cases under the Prime Minister's regulations. 	<p>Who certifies this?</p> <p>In practice, the DOLISA only accepts the confirmation from overseas. If the foreign employee has worked for a Vietnamese company, in this case they will not be accepted. This new regulation is not clear whether the confirmation of a Vietnamese employer could be OK? If possible, this point should be regulated in details.</p> <p>Please clarify whether the authority rests with the government or the Prime Minister.</p>
		<p>5. Written approval of Departments of Labor, Invalids and Social Affairs to allow the use of foreign workers;</p>	<p>Please clarify the format and content of this form to avoid discretion.</p>

		<p>6. ... The documents specified in paragraph 2, paragraph 3 and 4 of this article which are original or duplicated copies in foreign languages must have consular authentication then translated to Vietnamese and notarized or certified in accordance with the law of Vietnam.</p>	<p>Article 6.7 on papers associated with foreign workers does not address legalization and translation of documents in foreign languages. Clearer regulations on whether the documents should be legitimately authenticated or only notarized translation is needed to avoid discretion in practice.</p>
8	Article 7. Duration of the work permit	<p>The duration of work permits depends on the terms of the labor contract expected to be signed or the duration that the foreign will assign the foreign workers to work in Vietnam or the terms of the contracts signed between Vietnamese partners and their foreign parties or the terms that service providers assign the foreign workers to Vietnam for negotiation of service provision or duration specified in the certificate of non-governmental organizations, international organizations permitted to operate under the provisions of Vietnamese law. ...</p>	<p>A work permit should not have a term longer than 2 years while the work contract can be as long as 36 months. Is there any inconsistency in this provision?</p> <p>Are indefinite-term work contracts for termed visas and work permits viable?</p> <p>The government favors training and use of Vietnamese workers in place of foreign workers. Extension of work permits is only possible if there is no equivalent supply of Vietnamese workers. Are indefinite-term work contracts with foreign workers, therefore, advisable?</p>
9	Article 8. Procedures of granting a work permit	<p>1. prior to at least 20 (twenty) days from the date the foreign worker is expected to begin working at enterprises, agencies and organizations in Vietnam, the employers shall submit directly or send by mail application dossiers for work permits to the Department of Labor, Invalids and Social Affairs where foreign workers will work full time for the employers in a province or city under the central government management. ...</p>	<p>In practice, acquiring a work permit for foreign workers in a province or city where the employer does not have a principal office is quite difficult. The Department of Labor-Invalids-Social Affairs of the municipality where the foreign worker want to practice may refuse accepting an application for work permit. There should be clear regulations on the liability to accept applications of the Department of Labor-Invalids-Social Affairs where the employer does not have a principal office.</p>
10	Article 9. Cases for Renewal of	<p>1. Work permit is lost, damaged or changes in passport numbers, working locations indicated on the work permit</p>	<p>Is the old permit withdrawn?</p>

	work permit		
11	Article 10. Application dossier for work permit renewal		There is no paragraph 3, only paragraphs 1, 2 and 4.
12	Article 10.4.(b); Article 12.3	<p>Article 10.4.b</p> <p>b) For the case of labor license renewal as specified in Article 9.2 and Article 9.3 of this Decree health certificates issued in Vietnam are required; documents of employers appointing the foreign laborers to work in Vietnam or copies of contracts signed between Vietnam and foreign parties or documents proving the foreign workers continue to work on negotiation for service provision in Vietnam or valid registration document of the non-governmental organizations, international organizations in Vietnam and a copy of agreements between the non-governmental organizations, international organizations and the foreign workers proving that the foreign workers continue working in those non-governmental organizations.</p> <p>Article 12.3. The duration of renewed work permit for cases specified in Article 9.3 of this Decree shall be the same duration as the term of the labour contract set out in the decision of the foreign party on appointment to come to work in Vietnam, or the same duration as the term of the contract between the Vietnamese party and the foreign party or the same duration as the term specified in the certificate proving that the foreign non-Governmental organization is permitted to operate in accordance with the</p>	These provisions refer to Article 9.3, but the draft Decree has no Article 9.3.

		law of Vietnam. The duration of the work permit specified in Paragraph 1,2,3 of this Article shall not exceed 24 months.	
13	Article 12. The duration of renewed work permits	3. The duration of renewed work permit for cases specified in Article 9.3 of this Decree ...	There is no paragraph 3 in Article 9.
14	Article 13. Withdrawal of work permit	1. Cases that work permit will be withdrawn b) The work permit expires.	In other cases of re-issuance under Article 9.1, is the old permit withdrawn?
15	Article 14. Forced departure or deportation of foreign workers	1. Foreign workers working in Vietnam without work permits,...	On what grounds will this take place? (spot check records, audit records, permit withdrawal decision etc.). The authority to issue such background documents should be clarified (by the Dep. of Labor-Invalids-Social Affairs, Labor inspectors, district level PC Chairs).
		2. Departments of Labor, Invalids and Social Affairs of provinces and cities directly under Central Government shall request the police to impose forced departure measures or deportations on cases specified in Paragraph 1 of this Article.	The authority to propose and enforce coerced exit or deportation should be made clear.
16	Article 15. Effectiveness	2. This decree replaces Decree No. 34/2008/NĐ-CP ...	The authority to supersede or rescind related decrees that exist before this draft decree should be considered.



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Promulgator

- ◆ The National Assembly
- ◆ The Standing Committee of National Assembly
- ◆ The President of the Socialist Republic of Vietnam
- ◆ The Government
- ◆ The Prime Minister of Government
- ◆ Ministries
- ◆ Ministerial-level agencies

Type of Document

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- ◆ Code
- ◆ Law
- ◆ Resolution
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- ◆ Decree
- ◆ Decision
- ◆ Circular
- ◆ Joint circular

THE NATIONAL ASSEMBLY

No: 71/2006/QH11

SOCIALIST REPUBLIC OF VIET NAM

Independence - Freedom - Happiness

Ha Noi, day 29 month 11 year 2006

RESOLUTION

Ratifying the Protocol of accession of the Socialist Republic of Vietnam to the Agreement establishing the world trade Organization

THE NATIONAL ASSEMBLY OF THE SOCIALIST REPUBLIC OF VIETNAM

Pursuant to Article 84 of the 1992 Constitution of the Socialist Republic of Vietnam, which was amended and supplemented under Resolution No. 51/2001/QH10 of December 25, 2001, of the Xth National Assembly, the 10th session;

Pursuant to the Law on Conclusion of, Accession to, and Implementation of Treaties;

At the proposal of the State President in Report No. 05 TT/CTN of November 16, 2006, to the National Assembly on the ratification of the Protocol of Accession of the Socialist Republic of Vietnam to the Agreement Establishing the World Trade Organization;

After considering the Government's Report No. 155/TT-CP of November 22, 2006, to the National Assembly, the National Assembly's External Affairs Committee's Examination Report No. 2410/UBND of November 27, 2006, and opinions of National Assembly deputies;

DECIDES:

1. To ratify the Protocol of Accession of the Socialist Republic of Vietnam to the Agreement Establishing the World Trade Organization (WTO), which was concluded on November 7, 2006, in Geneva, Switzerland (hereinafter referred to as the Protocol).

2. To apply directly Vietnam's commitments stated in the Annex to this Resolution and other WTO commitments that are adequately detailed and clear in the Protocol, attached annexes and the Report of the Working Party on the Accession of Vietnam to the Agreement Establishing the WTO.

If the provisions of Vietnamese law are inconsistent with the provisions of the Agreement Establishing the WTO, the Protocol and attached documents, the provisions of the Agreement, the Protocol and attached documents prevail.

3. Within their respective tasks and powers, the Government, the Supreme People's Court and the Supreme People's Procuracy have the following responsibilities:

a/ To review Vietnam's WTO commitments that are adequately detailed and clear in the Protocol, attached annexes and the Report of the Working Party on the Accession of Vietnam to the Agreement Establishing the WTO but are not specified in the Annex attached to this Resolution for direct application and reporting to the National Assembly Standing Committee;

b/ To review legal documents before submitting them to the National Assembly and the National Assembly Standing Committee for amendment, supplementation or promulgation; to amend, supplement or promulgate legal documents falling under their competence in consistency with Vietnam's WTO commitments;

c/ On the basis of the assessment of opportunities, challenges, advantages and difficulties and impacts of Vietnam's accession to the WTO to elaborate specific programs and plans of action and organize the implementation of Vietnam's WTO commitments, serving the national socio-economic development and stepping up the profound and broad integration into the world economy.

4. The Government shall carry out external procedures for ratification of the Protocol of Accession of the Socialist Republic of Vietnam to the Agreement Establishing the WTO.

5. The Government shall coordinate with the Central Committee of the Vietnam Fatherland Front and direct concerned central and local agencies and organizations in well performing communication and information work in order to create a uniformity in awareness and action of all the people at home as well as overseas about Vietnam's WTO accession.

6. The National Assembly Standing Committee, the Nationality Council, the Committees of the National Assembly, the delegations of National Assembly deputies and National Assembly deputies shall, within the ambit of their respective tasks and powers, supervise the implementation of this Resolution.

This Resolution was adopted on November 29, 2006, by the XIth National Assembly of the Socialist Republic of Vietnam at its 10th session.

THE NATIONAL ASSEMBLY

CHAIRMAN

(signed)

Nguyen Phu Trong

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ANNEX: CONTENTS OF DIRECT APPLICATION OF VIETNAM'S COMMITMENTS

(Attached to the National Assembly's Resolution No. 71/2006/QH11 of November 29, 2006)

Ordinal number	Names of documents	WTO commitments	Contents of application
1.	Law No. 60/2005/QH11 – the Law on Enterprises Articles 51, 52, 103 and 104	Sections 503 and 504 in the Report of the Working Party on the Accession of Vietnam to the Agreement Establishing the World Trade Organization (hereinafter referred to as the Working Party)	<p>A limited liability company or a joint-stock company may provide in its charter the following contents:</p> <ol style="list-style-type: none"> 1. Required number of representatives to convene a meeting and mode of adopting a decision of the Members' Council or the Shareholders' General Meeting; 2. Issues falling under the deciding competence of the Members' Council or the Shareholders' General Meeting; 3. Required majority percentage of votes (including the percentage of 51%) to adopt decisions of the Members' Council or the Shareholders' General Meeting.
2.	Law No. 65/2006/QH11 – the Law on Lawyers Article 69, Clause 1	Commitment on legal services in the schedule of commitments on trade in services	<p>Foreign lawyers organizations may practice in Vietnam in the following forms:</p> <ol style="list-style-type: none"> a/ Branches of foreign lawyers organizations (hereinafter referred to as branches); b/ Limited liability law firms with 100% of foreign capital, limited liability law firms in form of joint-venture or partnership between foreign lawyers organization and Vietnamese law partnerships (hereinafter collectively referred to as foreign law firms)
	Article 70	Commitment on legal services in the schedule of commitments on trade	<p>Branches and foreign law firms practicing in Vietnam may provide legal consultancy and other legal services, may neither nominate foreign lawyers and Vietnamese lawyers being their</p>

		in service	staffs to participate in legal proceedings in capacity as representatives, defense counsels, protectors of legitimate rights and benefits of the concerned parties before Vietnamese courts nor provide services on legal papers and notarization relevant to Vietnamese law, may nominate Vietnamese lawyers being their staffs to provide consultancy on Vietnamese law
	Article 72, Clause 1	Commitment on legal services in the schedule of commitments on trade in service	A limited liability law firm with 100% of foreign capital is a lawyers organization established in Vietnam by one or more foreign lawyers organizations. A limited liability law firm in the form of joint-venture is a joint-venture lawyers organization between foreign lawyers organization(s) and Vietnamese lawyers organization(s). A law partnership is a lawyers partnership between foreign lawyers organization(s) and Vietnamese law partnership(s).
	Article 76	Commitment on legal services in the schedule of commitments on trade in service	Foreign lawyers practicing in Vietnam may provide consultancy on foreign laws and international laws and other legal services related to foreign laws. Those who possess the bachelor degree in Vietnamese law and fully satisfy the requirements provided for Vietnamese lawyers may provide consultancy on Vietnamese law but may not participate in legal proceedings in capacity as representatives, defense counsels or protectors of legitimate rights and benefits of the concerned parties before Vietnamese courts.
3.	Law No. 24/2000/QH10 – the Law on Insurance Business Article 9, Clause 2	Commitment on insurance services in the schedule of commitments on trade in service	Insurance enterprises are not required for reinsurance of part of their insurance liability to domestic reinsurance enterprises in case of accepting reinsurance for overseas insurance enterprises
4.	The 1996 Law on Promulgation of Legal Documents and Law No. 02/2002/QH11	Commitment on transparency in the	

	Amending and Supplementing a Number of Articles of the Law on Promulgation of Legal Documents	Report of the Working Party	
	Clause 2, Article 3 of the 1996 Law on Promulgation of Legal Documents, which was amended and supplemented under Law No. 02/2002/QH11 of December 16, 2002 Amending and Supplementing a Number of Articles of the Law on Promulgation of Legal Documents	Sections 509 and 519 in the Report of the Working Party	In the process of elaboration of legal documents, concerned agencies and organizations shall create conditions for agencies, organizations and individuals to make their comments on draft legal documents; organize the collection of comments from those who are directly affected by those documents. Drafting agencies shall publish draft legal documents of the National Assembly, the National Assembly Standing Committee and the Government on the website of the Government for collecting comments of agencies, organizations and individuals on those documents within 60 days from the date of publication.
	Clause 1, Article 10 of the 1996 Law on Promulgation of Legal Documents, which was amended and supplemented under Law No. 02/2002/QH11 of December 16, 2002 Amending and Supplementing a Number of Articles of the Law on Promulgation of Legal Documents	Sections 507, 508, 509 and 519 in the Report of the Working Party	Legal documents of central-level state agencies must be published in “CONG BAO” and concurrently on the website of the Government and may be reported on the mass media, except for documents involving state secrets
	Article 75 of the 1996 Law on Promulgation of Legal Documents, which was amended and supplemented under Law No. 02/2002/QH11 of December 16, 2002 Amending and Supplementing a Number of Articles of the Law on Promulgation of Legal Documents	Sections 507, 508, 509 and 519 in the Report of the Working Party	1. Legal document-promulgating agencies shall clearly stipulate state the effective date of a document right in that document. 2. The stipulation of effective date of a legal document must ensure the reasonability in order to facilitate the preparation for the enforcement of that document by agencies, organizations and entities directly affected by that document. 3. The effective date of a legal document issued by a central-level state agency must not be less than 15 days after its publication in “CONG BAO,” except in emergency circumstances.
5.	Law No. 50/2005/QH11 – the Law on Intellectual Property	Section 397 in the Report of the Working	Broadcasting organizations that use published works, phonograms or video recordings in their broadcasts are not required to ask for

	Articles 26 and 33	Party	permission but shall pay royalties or remunerations to copyright or related rights holders
6.	Law No. 62/2006/QH11 – the Law on Cinematography Article 30	Commitment on cancellation of film import quotas (from Section 200 thru Section 227) in the Report of the Working Party	No limitation on quantity of films to be imported.