

# Legal Updates

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## 1. New regulations on foreign employees in Vietnam

Decree No. 152/2020/ND-CP issued on December 30, 2020, replaces Decree 11/2016/ND-CP on foreign employees working in Vietnam and recruitment and management of Vietnamese employees. It takes effect from February 15, 2021. According to the new regulations, here are some of the key points:

### *Foreign employee being experts*

Previously, according to Clause 3, Article 3 of Decree No. 11/2016/ND-CP, a foreign employee is qualified for being an expert if: (i) it has a document certifying that he/she is an expert of an overseas agency, organization or enterprise; or (ii) it has a bachelor's degree or equivalent or higher qualifications provided that he/she has worked for at least 03 years in his/her training field in corresponding with job position that he/she shall be appointed in Vietnam; or (iii) other special cases in consideration and decision of the Prime Minister.

However, pursuant to Clause 3, Article 3 of Decree No. 152/2020/ND-CP, these requirements are amended as follows:

- experts have at least a bachelor's degree or equivalent and at least 03 years' experience in his/her training field in corresponding with the job position/job assignment that he/she will be appointed in Vietnam; or
- experts have at least 5 years' experience and a practicing certificate in corresponding with the job position that he/she will be appointed in Vietnam; or
- Experts fall into a special case subject to decision of the Prime Minister according to a request of the Ministry of Labor, War Invalids and Social Affairs.

Therefore, written certification of an expert of an overseas agencies, organizations, or enterprises is no longer acceptable. Besides, there are more



specific requirements for qualifications, certificates, and experiences in some industries in Vietnam.

### *Foreign employees being technical employees*

Previously, as stipulated in Clause 5, Article 3 of Decree No. 11/2016/ND-CP, technicians are workers who had undergone training in technique or other majors for at least 01 years and have worked for at least 03 years in their training fields.

However, pursuant to Clause 6, Article 3 of Decree No. 152/2020/ND-CP, employees' seniority is to increase up to at least five years of experience instead of at least one year of experience.

### *Foreign employees working for less than 30 days*

Exemptions of work permit are applied only if (Point e, Clause 2, Article 7 of Decree No. 11/2016/ND-CP) working time of foreign employees entering Vietnam to work as experts, managers, chief executive officers, or technical workers is less than 30 days and the accumulated working period does not exceed 90 days in 01 year.

The new regulations require that, (as specified in Clause 8, Article 7 of Decree No. 152/2020/ND-CP), the maximum number of entrances to Vietnam is limited to 03 times in a year.

### *Labor certification shall be exempt in some circumstances*

Under the Labor Code 2012, and Decree 11/2016/ND-CP, there are 03 cases that are not required for certification of foreign employees exempt from work permits. However, the Labor Code 2019, and Decree 152/2020/ND-CP add new cases. Pursuant to Clause 2, Article 8 of Decree No. 152/2020/ND-CP, a foreign employee is exempt from work permit in the following



- a) entering Vietnam for a period of less than 03 months to do marketing for a service.
- b) being a foreign lawyer who has been granted a lawyer's practice license in Vietnam in accordance with the Law on Lawyers.
- c) a foreigner who is married to Vietnamese and wish to reside in Vietnam.<sup>1</sup>
- d) being an owner or capital contributor of a limited liability company with a capital contribution value of at least VND 03 billion.
- e) being the chairman of the Board of Directors or a member of the Board of Directors of a joint-stock company with a capital contribution value of at least VND 3 billion.
- f) entering Vietnam to work as a manager, executive director, experts or technical worker with a working period of less than 30 days and up to 03 times a year.
- g) relatives of members of representative office of foreign organizations in Vietnam are specified in treaties to which the Socialist Republic of Vietnam is a signatory.<sup>2</sup>

However, it is necessary to report to the Ministry of Labor, War Invalids and Social Affairs or the Department of Labor, War Invalids and Social Affairs of the province where a foreign employee is expected to work, at least 3 days before the foreign employee starts to work in Vietnam.

### *New regulations on renewal of work permits*

**\*Number of renewals:** From 2021, foreign employees may be extended once up to 02 years.<sup>3</sup>

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<sup>1</sup> Clause 4, 6, 8, Article 154 of the Labour Code 2019

<sup>2</sup> Clause 1, 2, 8, 11, Article 7 of the Decree No. 152/2020/ND-CP

<sup>3</sup> Article 155 of the Labour Code 2019.





**\*Duration of work permit:** The duration of work permit shall be extended once with a maximum term of 02 years, as specified in Article 10 of Decree No. 152/2020/ND-CP.

**\*Eligibility requirements for renewal of work permit:** <sup>4</sup>

- a) The remaining validity period of the work permit is at least 5 days but not exceeding 45 days.
- b) The competent authority grants acceptance of demand for foreign employees as prescribed in accordance with law.
- c) Availability of a document evidencing that a foreign employee will continue to work with the employer as specified in the concerned work permit.

Note that the procedure for determining demands for foreign employees must be carried out at least 30 days before the date on which foreign workers are expected to be employed.

### *Change of application forms for work permits*

From February 15, 2020, when implementing the following procedures, it should be noted that the change of forms is in accordance with the new regulations in Decree 152/2020/ ND-CP:

Procedure	Old Form	New Form
Application for issuance, re-issuance and renewal of work permit	Form No. 07 of Circular No. 40/2016/TT-BLDTBXH	Form No. 11/ PLI of Decree No. 152/2020/ND-CP

<sup>4</sup> Article 16 of Decree No. 152/2020/ND-CP.



Dossier of the procedure for determining the demand for foreign workers	Form No. 01 of Circular No. 18/2018/TT-BLDTBXH	Form No. 1/PLI of Decree No. 152/2020/ND-CP
Dossiers for the change in demand for employment of foreign workers	Form No.02 of Circular No. 18/2018/TT-BLDTBXH	Form No. 2/PLI of Decree No. 152/2020/ND-CP
Dossiers for the procedure for determining foreign workers exempt from work permits	Form 5 of Circular No. 18/2018/TT-BLDTBXH	Form No. 9/PLI of Decree No. 152/2020/ND-CP

## 2. New regulations related to land use rights certificate (LURC)

Pursuant to Decree No. 148/2020/ND-CP of Government issued on December 18, 2020 officially takes effect on February 8, 2021, amending and supplementing several implementing decrees of the Law on Land. Accordingly, here are some notable new points related to the LURC:

### *Branches of land registration offices may receive dossiers for issuance of LURC*

According to Clause 2, Article 60 of Decree No. 43/2014/ND-CP, the agency receiving dossiers and notifying the results of settlement of procedures for registration of land and other land-attached assets; granting, renewing and re-granting certificates are land registration offices.



However, under the new regulations of Clause 19, Article 1 of Decree No. 148/2020/ND-CP amending Article 60 of Decree No. 43/2014/ND-CP, in addition to the land registration offices, branches of the land registration offices may also receive the registration dossiers and notify the results of settlement of the above procedures.

### *Landowners may agree to carry out procedures for issuance of LURC*

This is a new point specified in Clause 19, Article 1 of Decree No. 148/2020/ND-CP amended in Clause 2, Article 60 of Decree No. 43/2014/ND-CP, time and places of received dossiers and notification of administrative settlement results shall be agreed upon between applicants and land registration offices or branches of land registration offices on condition that such time does not exceed the statutory time regulated by the provincial People's Committees.

Thus, the landowners may agree to get the LURC issued quickly if they wish but the time-line must meet the time prescribed by the provincial People's Committee.

### *No issuance of LURC for consolidation and swapping of land parcels*

Clause 24, Article 1 of Decree No. 148/2020/ND-CP stipulates that re-survey and re-measurement of areas and sizes of land parcels" will be issued with LURC. LURC will not be issued in the case of consolidation and swapping of land parcels.

### *Amending procedures for withdrawing LURC in violation of the Law on Land*

Pursuant to Clause 26, Article 1 of Decree No. 148/2020/ND-CP amending Clauses 4 and 5, Article 87 of Decree No. 43/2014/ND-CP providing for the revoicing of certificates of land use rights, ownership of houses, and other properties associated with land issued specified in Point d, Clause 2, Article 106 of the Law on Land. Accordingly, it supplements the provisions "In case the



People's Court having jurisdiction to settle land-related disputes has an effective judgment or decision, including the conclusion regarding revocation of the issued LURC, the revocation of that certificate must adhere to that judgment or decision" in accordance with the provisions of Clause 2, Article 106 of the 2013 Law on Land.

### *Amending procedures for issuance of LURC in housing development projects*

Pursuant to Clause 22 Article 1 of Decree No. 148/2020/ND-CP amending Clause 1, Article 72 of Decree No. 43/2014/ND-CP on procedures for registration and grant of certificates of land use rights and ownership of houses and other land-attached property to acquirers of land use rights and buyers of residential houses and construction facilities belonging to housing development projects. Accordingly, project developers in housing development projects should pay attention to these changes when submitting dossiers to the Department of Natural Resources and Environment after completing the projects:

- a) if there is any change in financial obligations, the documents evidencing fulfillment of financial obligations arising from such change are required;
- b) a notice of a specialized construction authority allows a project developer to conduct acceptance for completion of construction or approval of completion of handover of construction into use under the Law on Construction.





## LIST OF DOCUMENTS ISSUED IN FEBRUARY 2021

DATE OF ISSUE	NO.	NAME OF DOCUMENT	ISSUED BY	MAIN CONTENTS
15/02/2021	152/2020/ND-CP	Decree	Government	Foreign employees working in Vietnam and recruitment of Vietnamese employees working for foreign employers in Vietnam
08/02/2021	148/2020/ND-CP	Decree	Government	Amendments and supplements to several decrees detailing the Law on Land

