

LEGAL UPDATES



CONTACT US

 www.likonlaw.com

 inquiries@likonlaw.com

 8th Floor, VICTORY Hotel, No. 14 Vo Van Tan Street, Vo Thi Sau Ward, District 3, Ho Chi Minh City, Vietnam.

LIKON LAW – VIETNAM INTERNATIONAL PRACTICE

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LEGAL UPDATE CONTENTS MAY 2024

1. CIRCULAR 02/2024/TT-BNNPTNT REGULATING THE LIST OF FIELDS AND DURATION FOR PERSONS WITH POSITIONS AND POWERS NOT TO ESTABLISH, HOLD MANAGEMENT AND ADMINISTRATIVE POSITIONS, TITLES IN PRIVATE ENTERPRISES, LIMITED LIABILITY COMPANIES, JOINT STOCK COMPANIES, PARTNERSHIPS AND COOPERATIVES AFTER LEAVING POSITIONS WITHIN THE SCOPE OF MANAGEMENT OF THE MINISTRY OF AGRICULTURE AND RURAL DEVELOPMENT

On March 27, 2024, the Minister of Agriculture and Rural Development issued Circular 02/2024/TT-BNNPTNT regulating the list of fields and duration for persons with positions and powers not to establish, hold management and administrative positions, titles in private enterprises, limited liability companies, joint stock companies, partnerships and cooperatives after leaving positions within the scope of management of the Ministry of Agriculture and Rural Development.

1.1. *Regulated entities*

Pursuant to Article 2 of Circular 02/2024/TT-BNNPTNT, the Circular applies to people with positions and powers after leaving positions at state agencies, organizations which are within the scope of management of the Ministry of Agriculture and Rural Development and other relevant agencies, organizations, individuals.

1.2. *List of fields where persons with positions and powers are not allowed to establish, hold titles, management and administrative positions in private enterprises, limited liability companies, joint stock companies, partnerships and cooperatives after leaving positions*

In accordance with Article 4 of Circular 02/2024/TT-BNNPTNT, the fields which persons with positions and powers are not allowed to establish, hold management and administrative positions, titles in private enterprises, limited liability companies, joint stock companies, partnerships and cooperatives are the ones they were previously responsible for managing after leaving positions, include:

- (1) State management of crop cultivation;
- (2) State management of plant protection;
- (3) State management of livestock husbandry;
- (4) State management of veterinary medicine;
- (5) State management of irrigation;

- (6) State management of dikes and disaster prevention and control;
- (7) State management of forestry;
- (8) State management of forest rangers;
- (9) State management of fisheries;
- (10) State management of fisheries inspection;
- (11) State management of cooperative economy and rural development;
- (12) State management of quality, agricultural product processing;
- (13) Programs, projects, schemes in the fields specified in clauses 1, 2, 3, 4, 5, 6, 7, 8, 9, 10 and clause 11 of this Article.

1.3. Duration for persons with positions and powers not to establish, hold titles, management and administrative positions in private enterprises, limited liability companies, joint stock companies, partnerships and cooperatives after leaving positions

According to Article 5 of Circular 02/2024/TT-BNNPTNT:

- Within 12 months from the date of leaving the position according to the decision of the competent authority, persons with positions and powers working in the fields specified in clauses 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11 and clause 12 of this Circular are not allowed to establish, hold titles, management and administrative positions in private enterprises, limited liability companies, joint stock companies, partnerships and cooperatives in the fields they were previously responsible for managing after leaving their positions.

- The duration for persons leaving positions as cadres, civil servants, officials who are directly involved in research, development or appraisal, approval of programs, projects, schemes specified in clause 13 of Article 4 of this Circular not to establish, hold, management and administrative titles, positions in private enterprises, limited liability companies, joint stock companies, partnerships and cooperatives is the duration to complete the implementation of the program, project, scheme.

2. DECREE NO. 34/2024/ND-CP REGULATING THE LIST OF DANGEROUS GOODS AND THE TRANSPORTATION OF DANGEROUS GOODS BY ROAD MOTOR VEHICLES AND INLAND WATERWAYS

On March 31, 2024, the Government issued Decree No. 34/2024/ND-CP regulating the list of dangerous goods, the transportation of dangerous goods by road motor vehicles and inland waterway vehicles, replacing Decree No. 42/2020/ND-CP on the list of

dangerous goods, the transportation of dangerous goods by road motor vehicles, and the transportation of dangerous goods on inland waterways. This decree aims to enhance safety and efficiency in the management of the transportation of dangerous goods on roads and inland waterways, protecting the environment and public health. The decree shall come into effect on May 15, 2024.

Some key points to note in Decree No. 34/2024/ND-CP:

2.1. Updates in the scope and subjects of regulation

Compared to Decree 42/2020/ND-CP, Decree 34/2024/ND-CP additionally includes activities such as transporting weapons and hazardous goods using specialized vehicles like tanks, tanks, specialized containers, etc., within the regulated scope of the decree. Furthermore, it expands from industrial explosive material transportation to include transportation of explosives, auxiliary tools, explosive precursors, and fireworks. This expansion of hazardous goods categories is more suitable for the practicalities of safely using genuine fireworks products manufactured by the Ministry of National Defense's Factory 2121, which have been permitted for use, thus necessitating the transportation of materials for fireworks production.

Regarding the list of hazardous goods, the decree has also been updated to the latest international standards (IMDG 2022, ADR 2023) and adds some new types of hazardous goods not previously specified in Decree 42/2020/ND-CP.

In terms of the subjects of regulation, there is an additional provision in Article 3, Clause 9 of the decree adding "warehouse keeper" with the definition: *"the person primarily responsible for managing the condition and quantity of all goods from the time they enter the warehouse until they are shipped out of the warehouse."*

2.2. New regulations on conditions for transporting dangerous goods by road in Vietnam

The decree also updates additional conditions regarding the transportation of dangerous goods by road, specifically: vehicles transporting dangerous goods must meet additional technical safety requirements according to international standards; drivers, accompanying personnel, warehouse keepers, and handlers of dangerous goods must be trained according to a training program appropriate to the type of dangerous goods being transported. Furthermore, it strengthens the inspection and supervision of the transportation of dangerous goods by road.

2.3. Amendment to Regulations on Packaging, Containers, and Packing of Dangerous Goods

Packaging, containers, and the packaging of dangerous goods within the territory of Vietnam must not only comply with national technical standards (QCVN) or national standards (TCVN) but also adhere to the regulations of the corresponding specialized laws for the type of goods. Additionally, packaging and containers for imported goods are carried out according to the recommendations and requirements of the manufacturer.

Decree 34/2024/NĐ-CP also adds additional minimum requirements in cases where there are no national standards, national technical regulations, regulations of specialized laws, or international standards published by the Ministry managing the list of dangerous goods:

- The packaging and containers must withstand impacts and vibrations during transportation, transfer of goods between vehicles, and loading and unloading into warehouses.
- The packaging and containers must ensure no leakage of dangerous substances during transportation or when exposed to factors such as vibration, temperature changes, humidity, and pressure.
- The exterior of the packaging and containers must be clean and free from any residues of hazardous chemicals.
- Any parts of the packaging and containers in contact with dangerous substances must meet requirements to ensure they are not affected or deteriorated by the impact of the hazardous substances inside, without affecting the composition, characteristics, and effects of the dangerous goods.
- For liquid hazardous goods, the packaging and containers must ensure no leakage or deformation due to the expansion of liquids when the temperature changes; they must withstand appropriate pressure from the inside during transportation and be tested for leakage before leaving the factory.
- Inner packaging or containers prone to breakage or puncture, such as glass, porcelain, or certain types of plastics, must be securely packed with outer packaging or containers using suitable cushioning or shock-absorbing materials.
- Packaging or containers for volatile substances must prevent vapor loss during transportation as per the manufacturer's requirements.
- Packaging or containers for hazardous goods in the form of granules or powders must ensure no spillage during loading, unloading, and transportation.

2.4. Addition of provisions on training for the safe handling of dangerous goods.

Compared to Decree 42/2020/NĐ-CP, Decree 34/2024/NĐ-CP adds a new provision regarding training for the safe handling of dangerous goods: specifying the organization of training for the safe handling of dangerous goods; the entities required to undergo training for the safe handling of dangerous goods; the content of training for the safe handling of dangerous goods; trainers; training duration; evaluation of results and storage of records for training on the safe handling of dangerous goods; records for training on the safe handling of dangerous goods; record keeping.

2.5. Update the provisions related to applying for, reissuing, and renewing permits for transporting dangerous goods.

a) Regarding content, the license form, and duration

- The content of the license specifies more clearly: the itinerary section, the transportation schedule applicable in case of issuing per trip; for cases where the license is issued per trip, in addition to information about the vehicle and the vehicle controller, if the transportation of dangerous goods requires a loader, information about the loader must also be included.

- The license form will undergo changes compared to the provisions in Decree 42/2020/NĐ-CP, specifically, this license form must include a QR identification code, indicating danger issued by the managing and issuing authority.

- Changing from issuing per trip or per period according to the request of the dangerous goods transportation unit to issuing a nationwide valid license with the duration as requested by the transporter while still maintaining the maximum duration of not more than 24 months and not exceeding the vehicle's period of use.

b) Regarding the authority to issue permits and cases exempted from permit issuance

- Decree 34/2024/NĐ-CP brings changes to the authority to issue permits, specifically: adding the authority of the Ministry of National Defense to organize the issuance of permits for transporting dangerous goods for organizations and enterprises under the management scope of the Ministry of National Defense; for permits to transport dangerous goods classified as plant protection chemicals, the authority previously held by the Ministry of Agriculture and Rural Development is now shifted to the authority of the People's Committees of centrally-governed provinces and cities; adding clause 7 of Article 17 regarding the rejection of permit issuance for transporting dangerous goods, specifically for flammable and explosive substances traveling through tunnels, ferries as regulated in Article 12 of this decree.

- Additionally, clause 9 of Article 17 is added to regulate that vehicles transporting dangerous goods exempted from permit issuance according to clause 8 of this Article must ensure conditions for fire safety as stipulated by the fire prevention and firefighting laws during transportation.

c) Regarding the documentation required for applying for or renewing permits for transporting dangerous goods

- Decree 34/2024/NĐ-CP updates by allowing electronic copies for submitted documents in the dossier, whereas the previous decree only allowed for photocopies or originals.

- There are changes in the composition of the dossier. For example, instead of requiring a Business License for Road Transport by Automobile or a Certificate of Business Registration for Enterprises or Cooperatives, it is now modified to require a Vehicle List ensuring valid inspection periods as stipulated.

3. CIRCULAR NO. 02/2024/TT-BLDTBXH OF THE MINISTRY OF LABOR, INVALIDS AND SOCIAL AFFAIRS AMENDING AND SUPPLEMENTING SOME ARTICLES OF CIRCULAR NO. 21/2021/TT-BLDTBXH DATED DECEMBER 15, 2021 OF THE MINISTER OF THE MINISTRY OF LABOR, INVALIDS AND SOCIAL AFFAIRS DETAILING SOME ARTICLES OF THE LAW ON VIETNAMESE WORKERS GOING TO WORK ABROAD UNDER CONTRACTS

On February 23, 2024, the Ministry of Labor, War Invalids and Social Affairs issued Circular No. 02/2024/TT-BLDTBXH amending and supplementing several articles of Circular 21/2021/TT-BLDTBXH dated December 15, 2021 of the Minister of Labor, Invalids and Social Affairs detailing several articles of the Law on Vietnamese Workers working abroad under contract.

3.1. Amendment of Clause 3, Article 3 of Circular 21/2021/TT-BLDTBXH on Documents proving that the authorities of the receiving country allow recruitment of foreign workers for foreign parties cooperating for the first time Vietnamese company

Accordingly, in Circular 21/2021/TT-BLDTBXH, Documents prove that the receiving country's authorities allow foreign workers to recruit foreign parties cooperating with Vietnamese enterprises for the first time just need to meet one of two types of documents:

- 01 copy of the operating license issued by the competent authority of the host country in case the foreign party receiving labor is an employment service organization (point a); or

- 01 copy of one of the following documents in case the foreign party receiving labor is the employer: document approving the use of foreign labor issued by the competent authority of the host country; Notification of quotas for receiving foreign workers issued by competent authorities of the host country; Other documents permitting the recruitment of foreign workers according to the laws of the host country (point b).

However, Circular 02/2024/TT-BLDTBXH divides it into 2 cases and stipulates documents for each case, specifically:

- In case the foreign party is the employer (point a), supporting documents include:
 - 01 copy of the business license or other equivalent document issued by the competent authority to the employer showing the business field following the industry and profession recruiting foreign workers, accompanied by a Vietnamese translation;
 - For countries with regulations on conditions for accepting foreign workers, provide 01 copy of documents showing that the employer meets these regulations, accompanied by a Vietnamese translation.
- In case the foreign party is an employment service organization (point b), supporting documents include:
 - 01 copy of the business license or other equivalent document issued or certified by a competent authority to the employment service organization showing the business line including employment services, with a Vietnamese translation;
 - 01 copy of the cooperation agreement or written request to prepare sources or recruit Vietnamese workers from the employer to the employment service organization, accompanied by a Vietnamese translation;
 - Proof documents for employers specified in point a of this clause.

3.2. Amending Clause 5, Article 3 of Circular 21/2021/TT-BLDTBXH on Commitment to prioritize the selection of workers who have participated in labor resource preparation activities

The Vietnamese circular 02/2024/TT-BLDTBXH has brought about a new definition for the "Commitment to prioritize the selection of workers who have participated in labor resource preparation activities". Essentially, this is a written agreement between Vietnamese service enterprises and workers, which outlines the company's commitment to prioritize the recruitment of workers who have participated in labor resource preparation activities, once the labor supply contract has been registered and approved. This revision has made the "Commitment to prioritize the

selection of workers who have participated in labor resource preparation activities” document more transparent compared to the previous regulations.

3.3. *Amending and supplementing Article 4 of Circular 21/2021/TT-BLDTBXH on the detailed content of labor supply contracts*

Amend the regulations on the detailed content of labor supply contracts according to market, industry, occupation, and job into points from point a to point h, clause 1, in addition, add clause 2 regulating the agreement of the parties in the contract, however, the minimum conditions specified in Clause 1 must be ensured.

3.4. *Amending and supplementing Article 5 of Circular 21/2021/TT-BLDTBXH on Documents proving the sending of Vietnamese workers to work abroad by the law of the receiving country*

Circular 02/2024/TT-BLDTBXH shortens supporting documents for the Malaysian market and the Taiwanese market (China), in addition to detailing regulations for the markets of European countries, America, Oceania, Korea, and other countries and territories, specifically dividing cases and specific supporting documents.

In addition, Circular 02/2024/TT-BLDTBXH also amends the wording in Article 7, changing from “Remuneration ceiling” to “Service price ceiling”; Replaced: Appendix II (Detailed content labor supply contracts for industries, occupations, and jobs in the Japanese market), Appendix III (Detailed content of labor supply contracts for industries, occupations, and jobs in the Taiwan market (China)), Appendix IV (Detailed contents of labor supply contracts for industries, occupations, and jobs in the Korean market), Appendix V (Detailed contents of labor supply contracts for industries, occupations, jobs in West Asia, Central Asia and Africa markets), Appendix VI (Detailed content of labor supply contracts for industries, occupations, jobs in European and Oceania markets), Appendix VII (Detailed contents of labor supply contracts for industries, occupations, and jobs in the American market), Appendix VIII (Detailed contents of labor supply contracts for industries, occupations, jobs in the Chinese market, Macau (China) and Southeast Asia), Appendix IX (Detailed content of labor supply contracts for industries, occupations, and international maritime jobs), Appendix X (the ceiling of remuneration under brokerage contracts for a number of markets, industries, jobs, work) and Appendix XI (the ceiling of service money collected from workers for some markets, industries, professions, work) issued together with Circular No. 21/2021/TT-BLDTBXH respectively in Appendix II, Appendix III, Appendix IV, Appendix V, Appendix VI, Appendix VII, Appendix VIII, Appendix IX, Appendix X and Appendix XI issued together with this Circular; Form No. 01 Appendix XIII (Outline of annual reports of service enterprises sending Vietnamese workers to work abroad), Form No. 02 (Registration of labor supply

contract) and Form No. 03 (Contract for sending workers to work abroad) Appendix I issued together with Circular No. 21/2021/TT-BLDTBXH respectively in Form No. 01, Form No. 02 and Form No. 03 Appendix I issued together with this Circular.

Regarding effectiveness, Circular 02/2024/TT-BLDTBXH takes effect from May 15, 2024. Contracts for sending Vietnamese workers to work abroad and other related agreements have been signed. signed and the employee has left the country before the effective date of this Circular, it will continue to be implemented until the end of the contract. Suppose a registered labor supply contract is approved by the Ministry of Labor, War Invalids and Social Affairs and the worker has not left the country before May 15, 2024. In that case, the Contract Labor supply must be amended, supplemented, or newly signed.