

THE CORPORATE
IMMIGRATION
REVIEW

NINTH EDITION

Editor
Chris Magrath

THE LAWREVIEWS

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PREFACE

As immigration lawyers based in the United Kingdom, it is easy to believe that the world outside our shores no longer exists. Over the past year, the country has become so consumed by the constitutional, political and procedural dramas of the Brexit process that it is difficult to focus on the larger picture of change and development in global mobility or even identify the emergence of a clear long-term strategy for immigration and border control. The Brexit timetable has shifted from 29 March to 12 April to 30 June and finally to 31 October 2019. Who knows what the timetable will look like by the time this ninth edition of *The Corporate Immigration Review* is published.

The points-based system, which is the central framework of UK immigration control for investors, workers and students, remains in place. The only significant change so far in 2019 has been the introduction of new routes for innovators and start-up entrepreneurs, which, at the time of writing, have gained little traction and generated plenty of confusion. Focus and resources at the Home Office have shifted to ensuring the protection of EU citizens' rights under the EU settlement scheme, deal or no-deal – a major task given that there are approximately 3.2 million EU nationals residing in the United Kingdom in exercise of their treaty rights. The protection of citizens' rights is one of the central aims of the Withdrawal Agreement that has been negotiated between the United Kingdom and the European Union and is, at the time of writing, before parliament in Westminster as a 'meaningful vote' pursuant to the European Union (Withdrawal) Act 2018. Despite three such votes there is little indication so far that the legislature will ratify the Withdrawal Agreement.

The EU Settlement Scheme has had a generally successful launch. In excess of 90 per cent of applications have been approved without hitch. So far, it has met its aim of being transparent, easy to navigate, digital and quick to respond. Only 10 per cent of qualifying residents have so far applied, so there is a long way to go. No amount of technology, however, can dispel the disdain that many resident EU citizens have for a process that they do not believe they should have had to engage with. For many, the emotional impact of Brexit has been more significant than the legal consequences, most of which have yet to take effect.

Regardless of whether we enter a transitional phase following ratification of the Withdrawal Agreement in both the British and EU parliaments, or a no-deal 'cliff-edge' Brexit is the outcome, the British government is committed to an orderly transition to a new set of immigration arrangements, likely to be launched in January 2021. Central to these new arrangements will be measures to 'take back control' of the border as the United Kingdom leaves the single market.

With this in mind, in December 2018, following an extensive piece of research by the Migration Advisory Committee (MAC), the government published a White Paper on 'The UK's future skills-based immigration system'. Anticipating the country's departure from the

freedom of movement pillar of the single market, the new post-Brexit policy approach will be based on a 'one world' system with no preferential access for EU citizens. An autonomous immigration policy will also give government the control mechanisms necessary to enable net migration to be reduced to 'sustainable levels' (for many years defined as below 100,000 per annum). This was, after all, one of the central arguments of the leave campaign as well as being a core policy of the incumbent Prime Minister since she entered government as Home Secretary in 2010.

The government proposes to engage with stakeholders over the course of the next 12 months before refining its proposals into a new set of immigration rules. In tandem, the government is working on a simplification project that aims to change the current set of labyrinthine rules into a new user-friendly, transparent scheme.

Although the current intention is to adopt a 'one-world' approach, this position may change as the negotiations on the future relationship get under way. Much will depend on the character of the United Kingdom's future political leadership. Some form of EU preferential scheme may be the price of a close trading relationship.

It will certainly be necessary to expand the ambit of the United Kingdom's youth mobility and temporary worker schemes to maintain a flow of labour into the United Kingdom to take the 'lower skilled' jobs that will not meet the proposed £30,000 salary threshold under the formal sponsorship scheme. Employers in healthcare, hospitality and construction are particularly concerned about the impact the United Kingdom's withdrawal from the single market will have on their ability to recruit key workers.

At the time of writing, it is uncertain whether the United Kingdom will leave the European Union with or without a deal in place, or indeed whether the United Kingdom will leave at all. It is unclear whether the current political leadership has sufficient authority to remain in place for much longer. In this context, individual Member States across EU27 are making their own domestic arrangements for the regularisation of resident British citizens in their countries in the event of a no-deal 'hard' Brexit. This is because, in the absence of a Withdrawal Agreement containing pan-European provisions on citizens' rights, it falls to individual Member States to implement domestic immigration laws for third-country nationals. Fortunately, most Member States appear to be developing a soft approach to protect the British citizens that have chosen to make their homes across the European Union.

In the United States, immigration policy continues to be a lightning rod for the Trump administration and, with the 2020 election in sight, is anticipated to be a primary strand of the president's attempt to reignite the support of his base. The shift in approach to immigration issues that resulted from the new US political settlement and its focus on protectionist policies has impacted the broad sweep of business and investment routes of entry to the United States, and is not limited to illegal or irregular migration trends.

Key to this is the Buy American Hire American (BAHA) Executive Order, which came into force in 2017 and seeks to protect US economic interests and provide greater employment prospects for US workers.

BAHA refers to the body of law and policy concerning how immigration, visa and guest worker programmes are operated to ensure proper protections for American workers. The executive branch is required to 'rigorously enforce and administer the laws governing entry into the United States of workers from abroad'. Specifically, BAHA demands that the Attorney General, the DOS, the US Department of Homeland Security and the Department of Labor 'as soon as practicable, and consistent with applicable law, propose new rules and issue new

guidance if appropriate, to protect the interests of United States workers in the administration of the immigration system, including through the prevention of fraud or abuse’.

As a result, lawyers in the United States have seen a significant shift in the administrative approach to immigration applications, even if the legislative framework itself has not changed substantially. This has distilled into a culture of refusal from the US authorities, notably at the consular level. Practitioners have witnessed an increase in denial rates coupled with ever-growing requests for further evidence, often for indefinable reasons. The application process has become more document- and detail-oriented with additional representations or evidence being the norm rather than the exception. The consequence is that each application now requires substantially more preparation and outcomes are difficult to predict given the lack of consistency in approach to decision-making. Client expectation management is crucial for US immigration practitioners in such an uncertain landscape.

Around the world, national security and border protection continue to be integral issues in the development of immigration policy. Joined-up government (easily sharing data and intelligence across government agencies and public bodies) is a cross-jurisdictional trend. For example, in Australia, a federation of independent security and law enforcement agencies, including the Australian Border Force has been brought together under the Home Affairs Portfolio and the Department of Home Affairs. This whole government approach to security has had an impact on all aspects of immigration with greater scrutiny and monitoring by Australian Border Force Officers. The restrictive reforms that we see in Australia, including an increased focus on the security of systems, use of metadata and a whole-of-government approach are trends that can be seen worldwide.

As ever, immigration practitioners around the world are at the centre of a complex web of political, legal, compliance and regulatory developments. The contributors to this text are leaders in the field.

We would like to thank all of the contributors to this latest edition of *The Corporate Immigration Law Review* for their sterling input.

Chris Magrath and Ben Sheldrick

Magrath Sheldrick LLP

London

May 2019

VIETNAM

Jean-François Harvey and Bastien Trelcat¹

I INTRODUCTION TO THE IMMIGRATION FRAMEWORK

Vietnam is one of the world's fastest-growing economies and is quickly emerging as one of the most attractive markets in Asia for foreign investors and business visitors. Vietnam has the advantage of a low-cost labour force that is both young and skilled, providing the backdrop for rapid and sustained economic growth across a spectrum of sectors. It is well placed geographically with land, air and sea proximity to other Asian powerhouses in the region that have increasingly looked to establish their manufacturing hubs in the country. Vietnam is also one of the most attractive tourist destinations in South East Asia, reaching a record high of 15.49 million international arrivals in 2018, with tourism making up approximately 11 per cent of its gross domestic product.

i Legislation and policy

The Law on Entry, Exit, Transit and Residence of Foreigners in Vietnam (the Immigration Law) forms the legislative basis for immigration to Vietnam. In light of Vietnam's position as an increasingly attractive destination in South East Asia for business and travel, the National Assembly of Vietnam enacted the Immigration Law, which came into force on 1 January 2015. This was the first law to stipulate clearly the legal requirements for foreigners to enter and stay in Vietnam, whether on a short- or long-term basis.

Pursuant to the Immigration Law, all foreigners must obtain a visa before entry to Vietnam with exception of those who can show that they are exempt from the visa requirements (i.e., overseas Vietnamese) or are nationals from countries with reciprocal visa agreements.

ii The immigration authorities

Immigration in Vietnam is largely governed by the Vietnam Immigration Department, which is a subsidiary of the Ministry of Public Security, and the Ministry of Foreign Affairs through embassies, consulates and diplomatic missions abroad. Individuals wishing to enter Vietnam for employment purposes or otherwise must first obtain the relevant entry visa from the Vietnamese foreign mission in their country of residence unless they are nationals of countries that are permitted a visa exemption or are part of an exempt immigration category, in which case a visa exemption certificate must be acquired.

¹ Jean-François Harvey and Bastien Trelcat are partners at Harvey Law Group (HLG).

iii Exemptions and favoured industries

Vietnam offers visa-free travel for visitors, including business visitors, from 24 countries, the majority of whom are members of the Association of Southeast Asian Nations, of which Vietnam has been a member since 28 July 1995. Visitors holding a valid passport from these countries can enter Vietnam without a visa for between 14 to 30 days, depending on the country of the passport holder. Given the recent and continuous surge in tourism, Vietnam has also temporarily extended its visa exemption policy allowing a maximum 15-day stay for visitors from France, Germany, Italy, Spain and the United Kingdom. This visa exemption will be in force from 1 July 2018 to 30 June 2021. Any foreign national that enters Vietnam and is unilaterally granted visa-free entry must have a passport that is still valid for at least six months, and the entry date must be at least 30 days from the previous exit. Visitors from Denmark, Finland, Japan, Norway, Russia, South Korea and Sweden were also provided a visa waiver for up to a maximum of 15 days until the end of 31 December 2019.

In addition, international visitors are allowed to enjoy a 30-day stay while benefiting from a visa exemption when travelling to the popular tourist destination of Phu Quoc Island, on the sole condition, however, that they plan only on visiting Phu Quoc and have no other destination in Vietnam. This policy took effect in March 2014 and is still in force.

The Vietnamese government also announced the launch of an electronic visa system, effective from 1 February 2017, for foreign tourists visiting the country. Citizens from over 35 countries are eligible to apply for the e-visas via the Vietnam National Web Portal on Immigration.

II INTERNATIONAL TREATY OBLIGATIONS

Vietnam is one of, if not the main, participants in various trade treaties within the South East Asia region. The country has increasingly been willing to participate in trade agreements to attract foreign investments to stimulate the economy during the past two decades. As a result, international treaties have played a tremendous role in the country's evolution and development.

Vietnam now enjoys a global role thanks to international agreements concluded with Asian and European nations. Evidence of the confidence of foreign direct investment (FDI) has been demonstrated by increased gentrification of the various city landscapes, with many modern developments being constructed over the past few years. These new international legal frameworks have also underscored other positive impacts in corporate law, investment law and immigration law.

To date, the World Trade Organization (WTO) and the Association of South East Asian Nations (ASEAN) have been the two linchpins that have enabled Vietnam to boost its business climate and economy.

The setback to the Trans-Pacific Partnership (TPP) as a result of the recent withdrawal of the United States highlights the importance of two other treaties that are expected to significantly enhance the Vietnamese economy: the European Union–Vietnam Free Trade Agreement (EVFTA) and the Regional Comprehensive Economic Partnership (RCEP).

WTO

On a local scale, the WTO has had a significant impact, particularly with regards to corporate laws. Vietnam's status of becoming the 150th WTO's member on 11 January 2007, has helped to create a more efficient environment for the incorporation of new businesses by foreign entities.

Foreign investors are entitled to hold up to 100 per cent of the shares and capital of a company incorporated under Vietnamese laws. Furthermore, as a result of new processes and procedures implemented by the Vietnamese licensing authorities, the Ministry and Department of Planning and Investment, foreign investors now benefit from shorter time frames and more transparent procedures when establishing a foreign-owned business.

Compared to other neighbouring countries such as Thailand or Cambodia, this evolution allows businessmen, investors and entrepreneurs to consider Vietnam as the leading gateway to expanding business in South East Asia, which also provides access to the large ASEAN market, offering immense growth potential.

ASEAN

ASEAN was formed by the signing of the ASEAN Declaration on 8 August 1967 in Bangkok by five countries: Indonesia, Malaysia, the Philippines, Singapore and Thailand. The Association will celebrate its 52nd birthday at the end of this year and, with aims including creating a single market, it is now seen by stakeholders as the European Union of South East Asia. Various other countries have also joined this single market, namely Brunei, Laos, Cambodia, Myanmar and Vietnam.

Vietnam became a member on 28 July 1995, allowing the country to take advantage of the benefits offered by the ASEAN Economic Community (AEC). Established on 31 December 2015, AEC represents an architecture for integration and economic development. The AEC market constitutes an essential vehicle for the growth of its developing states. The Community is based on the elimination and reduction of tariff barriers, as well as the implementation of a free trade area in which products and services can circulate, in addition to making it easier for skilled workers to migrate within the region.

As a consequence, companies in Vietnam are able to reduce their costs and increase their competitiveness by importing or exporting goods more effectively within ASEAN states. This has had the effect of boosting the economy and it is expected that the benefits of the AEC will enable Vietnam's GDP to increase by up to 14.5 per cent in the coming years. Vietnam ended year 2018 with a growth rate of 7 per cent clearly showing that the country's economy is well on track to meet this forecast.

While Vietnam had accomplished significant efforts in terms of competitiveness, the country is still seeking to make itself even more attractive to foreign investment. Vietnam is also focused on entering free trade agreements to increase its volume of business transactions.

EVFTA

Europe remains a key and targeted market for developing Asian countries, and on 12 December 2015 the European Union and Vietnam signed the EVFTA, which came into effect in October 2016.

The EVFTA dramatically reduces tariff barriers. In particular, the EU has agreed to eliminate 85.6 per cent of import tariffs on Vietnam exports to the EU and 99.2 per cent of import tariffs after seven years. The EVFTA encompasses several types of goods, including goods that are remanufactured or repaired, agricultural goods, cars, machinery, chemicals,

textiles, alcoholic beverages, food and pharmaceutical products. Concrete commitments have also been made in strategic industries. As an illustration, the EU will eliminate all import taxes on textiles and footwear within seven years of the date the agreement comes into force, and Vietnam has to remove import taxes on wine, alcohol and beer within 10 years.

The EVFTA not only broadens the Vietnamese international treaty landscape, but places the country in a very competitive position compared with other developing ASEAN members. Vietnam is the first ASEAN developing state to enter into a free trade agreement with the EU and, from a practical standpoint, Vietnamese exporters are getting easier access to the European market than their South East Asian counterparts.

Indeed, the only existing agreement of this nature among ASEAN members was concluded in 2014 between the EU and Singapore. This new legal framework allows Vietnam to strengthen its position as one of the leading ASEAN countries.

On 26 June 2018, the EVFTA was divided into two agreements in terms of trade and investment: the European Union and Vietnam concluded the review of the Investment Protection Agreement (IPA) and the Free Trade Agreement (FTA).

The FTA will eliminate over 99 per cent of customs duties on goods traded. Vietnam will remove 65 per cent of import duties on EU exports and the remaining import duties will be gradually eliminated over a period of 10 years. Owing to this agreement, EU companies will have the right to participate on equal standards with Vietnamese companies in terms of bids for procurement tenders with Vietnamese authorities and state companies. The FTA also assures high standards of labour, safety, environmental and consumer protection, with the European Union and Vietnam committing to comply with International Labour Organization requirements on the fundamental labour rights and environmental Treaties binding the parties, such as the Paris Agreement of 12 December 2015. Meanwhile, the IPA includes modern rules on investment protection. The two agreements have already been submitted to the European Council and are waiting for its authorisation. They should be presented to the European Parliament for approval in 2019.

The above treaties and agreements show that Vietnam clearly wishes to expand its economy by growing its trading opportunities. In addition to having an impact on the country's economy, such trade and investment agreements are also seen as an important step towards providing greater freedom of movement between the signatories.

CPTPP

The Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) is a free trade agreement between Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore and Vietnam. The CPTPP was signed by the 11 countries on 8 March 2018 in Santiago, Chile. The CPTPP entered into force on 30 December 2018 for six countries, Australia, Canada, Japan, Mexico, New Zealand and Singapore, while Vietnam followed on 14 January 2019. The CPTPP is expected to bring opportunities for Vietnam's economy, especially in the field of import-export owing to the free trade zone of the 11 Member States. In fact, the trade pact will reduce tariffs on all types of goods to zero in Vietnam in the following years. According to Deputy Prime Minister and Foreign Minister Phạm Bình Minh, the CPTPP will improve investment environment, business environment and labour productivity in Vietnam.

Thanks to ASEAN, various mutual recognition agreements (MRAs) have been concluded, which allow some workers to migrate between the region's territories. The path

towards a single market in which people can settle freely, as in the EU market, remains the goal. However, there are still a lot of challenges to be overcome before this can become a reality.

In fact, only a few sectors are covered by MRAs and these agreements have done little to overcome other barriers, such as country-specific requirements. Qualifications predominate when it comes to cross-border employment matters. This demonstrates that South East Asia is not yet ready for the implementation of an open-borders system. While establishing a basis for the movement of workers, South East Asian countries currently act more as gatekeepers than facilitators, which impedes the integration of the different states' workforces.

At present, only specific types of jobs are given more flexibility in terms of mobility. MRAs apply under particular conditions, requiring applicants to have a minimum number of years of experience and practice. Medical practitioners, engineers and architects are some of the highly skilled jobs illustrating this situation. Dental and medical practitioners are required to have been in active practice for not less than five continuous years in the country of origin before being eligible to apply. Engineers have to demonstrate seven years' experience after graduation, two years of which must have involved significant engineering work. Architects must have been in practice for at least 10 years.

While it is crucial to enhance workers' mobility, these requirements show that the ASEAN states are implementing a slow, step-by-step process when it comes to the free flow of workers. Indeed, most 'free movement' opportunities are only available to skilled workers, yet around 87 per cent of ASEAN manpower is unskilled or low-skilled labourers. This trend might change in the coming 10 years, since more and more students from the ASEAN region are pursuing their education, especially college and university degrees, in developed countries such as the United States, Canada and Europe.

Bilateral labour agreements (BLAs) and memoranda of understanding will play also a role in this labour market in the coming years. As of now, labour mobility remains congested and ASEAN countries still need to find an actual operating model that will allow an effective workforce flow. Priority is still given to local resident workers in the first instance and working in the region remains a challenge.

Individual country regulations demonstrate significant differences in their policies towards foreign employment. As an illustration of this, Singapore introduced measures to protect local staff in August 2014, whereby employers have to advertise government job vacancies for at least 14 days before being allowed to consider foreign skilled workers.

Unlike other ASEAN member states, Vietnam offers a very liberal and flexible policy when it comes to employing foreigners and issuing long-term business visas.

III THE YEAR IN REVIEW

i Regulations applicable to the work permit process

Participation in the AEC has triggered an increase of foreign employees in the Vietnam labour market. Vietnam has, therefore, promulgated regulations and labour policies to enhance the process of issuing work permits and to facilitate bringing in foreign employees. Specifically, on 8 October 2018, the government issued Decree 140/2018/ND-CP amending previous Decrees regulating foreigners working in Vietnam. This Decree came into effect on the same day, creating several favourable changes such as the reduction in the processing time for the work permits and the easier grant of the work permit exemption for foreign nationals responsible to establish a commercial presence in Vietnam.

ii Better protection for workers

The new Penal Code No. 100/2015/QH13 adopted on 27 November 2015, and amended on 20 June 2017, provides new sanctions for violations in the employment sector that are broader than the scope of criminal liability applied to labour violations stipulated by the former Penal Code. Accordingly, illegal dismissal of employees, failure to pay employees' compulsory insurances and employment of employees under 16 and coerced labour may be subject to criminal liability, including imprisonment. In addition, the offender may also be banned from holding certain positions for a period from one to five years. This criminal liability would be imposed in addition to any civil or administrative liability that might be imposed under Vietnamese labour laws and administrative laws. The new Penal Code took full effect on 1 January 2018.

This new Penal Code is intended to put employers who fail to comply with the detailed requirements of Vietnam's labour laws on high alert, especially with regard to committing any labour violation of employees. From the point of view of employees (including foreign employees) the new Penal Code is intended to protect them from labour violations caused by employers.

IV EMPLOYER SPONSORSHIP

i Work permits

To perform work in Vietnam, an individual must apply for a work permit in addition to the necessary entry visa. The employer must first obtain a written approval. Such approval is issued either by the local Department of Labour, Invalids and Social Affairs (DOLISA), or by the local management authority for processing or industrial zones (the Management Authority), depending on the location of the legal entity hiring foreign staff. Once granted, the foreign national will be entitled to file a work permit application.

To ensure continuing immigration compliance, employers are required to submit reports and notify the local DOLISA or the Management Authority of any changes concerning their hired foreign nationals.

The hired foreign national is also required to provide certain documentation, including but not limited to: a copy of their passport; a health certificate; qualifications or professional certifications obtained from an appropriate authority; a police clearance certificate issued no later than six months prior to the application; and recent passport-sized photographs.

Applicants are not required to demonstrate any language proficiency, although it is necessary to undergo medical examinations. Since 1 January 2018, the compulsory social insurance scheme is automatically extended to foreign nationals working in Vietnam. Following the current regulations, employees who are foreign nationals working in Vietnam shall be entitled to the following social benefits: sickness, maternity, occupational accident, disease, retirement and death-insurance benefits.

Processing time

The employer must submit a written request for written approval to the competent authorities 30 days prior to the expected date of the foreigner's recruitment. It should take approximately 15 days for the issuance of the approval.

Upon the written approval being granted to the employer, the local DOLISA or the Management Authority will issue a work permit within seven working days of the date of receipt of a completed application. Where the application for work permit is rejected, a written reply containing the reasons for the rejection shall be provided.

Permit validity and quotas

Several factors may influence the duration of a work permit even though the maximum is two years. Under Vietnamese Law, factors can include: the duration of the labour contract; the duration of the assignment in Vietnam decided by the parties; the duration and undertaking of tasks that the foreign employee is entitled to complete as part of the activities of the company, etc. As long as the company still needs to hire the foreign national, the work permit may be reissued. In practice, the validity period for a reissued work permit will be an additional two years, while work permits can continue to be issued as long as the applicant satisfies the conditions set by the laws and regulations in force.

Although the Vietnamese government does not impose quotas for work permits, according to the Labour Code of Vietnam, employers may only employ foreign nationals if the employers are managers, managing directors, experts or technical workers, or if Vietnamese employees are not considered qualified for the designated works.

Work permit exemptions

To lessen the administrative burden for companies, Vietnamese law provides specific exemptions from the requirement to obtain a work permit, on a case-by-case basis, for:

- a* foreign employees who are internally reassigned to companies that engage in the service industries identified in the Vietnam's WTO commitments on services;
- b* foreign employees who enter Vietnam to provide professional and technical advisory services or perform other tasks in connection to research, construction, appraisal, assessment, management and the execution of programmes and projects funded by Official Development Assistance (ODA) according to the International Treaties on ODA;
- c* foreign workers appointed by foreign agencies or organisations to teach or do research in international schools under the management of foreign diplomatic missions or international organisations in Vietnam;
- d* foreign workers who enter Vietnam to hold the positions of experts, managers, chief executive officers or technicians for a period of less than 30 days, provided that the accumulated total working period remains under 90 days per year;
- e* foreign employees who are responsible for establishing the commercial presence of a company established in a foreign country;
- f* foreign lawyers possessing a professional practice licence in Vietnam in accordance with the Law on Lawyers; and
- g* other cases decided by the Prime Minister at the request of the Ministry of Labour, War Invalids and Social Affairs.

Although foreign nationals may be exempted from obtaining a work permit, it is mandatory for them to obtain the appropriate certificate of exemption of work permit.

Intra-company transfers

Introduced by Vietnam's Ministry of Industry and Trade, Circular 35/2016/TT-BCT (Circular) came into force on 10 February 2017 to set the requirements and procedures for work permit exemptions of Intra-Company Transfers (ICT) of foreign transferees to Vietnam. The Circular refers to the 11 service sectors specified in Vietnam's WTO Commitments.

To obtain the exemption, foreign transferees are required to meet three conditions:

- a* the foreign transferee must hold a managerial position, or be an expert, specialist or technician;
- b* the foreign transferee must have been working for the foreign entity for at least 12 months prior to being seconded to the Vietnam-based commercial presence; and
- c* the Vietnam-based commercial presence must be operating in one of the 11 service sectors, also defined in Annex I and Annex II of the Circular.

The 11 service sectors that qualify for work permit exemption are:

- a* business;
- b* communications;
- c* construction and engineering;
- d* distribution;
- e* education;
- f* environment;
- g* finance;
- h* healthcare;
- i* tourism;
- j* recreation, culture and sports; and
- k* transportation.

Qualifying foreign entities in Vietnam must have established a 'commercial presence', which is defined under the Circular as including the following: foreign-invested economic organisations, representative offices or branches, and executive offices of business cooperation contracts.

If all the necessary conditions are satisfied, a work permit exemption application can be submitted to the local DOLISA or the Management Authority at least seven business days before the foreign transferee's anticipated commencement date. Documents required for the application that are not in Vietnamese do not require legalisation but must be translated into Vietnamese and notarised in accordance with Vietnamese law.

The general processing time for a work permit exemption application takes at least three business days upon reception of the complete application file. Subsequently, the DOLISA or the Management Authority will issue an official letter to confirm whether the work permit exemption application has been granted or denied. Where the application has been refused, written justification for the refusal will be provided.

ii Labour market regulation

In parallel with the fast growth of the economy there has been a widening gap between the interests of employers and employees in the labour market. Legislation is supposed to bridge that gap and facilitate a healthy labour market by providing employment protection, the inspection of the activities of employers and settlement of labour disputes. The inspection divisions under the Ministry of Labour, Invalids and Social Affairs, DOLISA and the

Management Authorities are in charge of inspection duties. They are authorised to investigate labour accidents or labour violations, to inspect the compliance of employers and to settle the labour complaints. Labour violations, depending on the seriousness of their violations, shall be administratively sanctioned or examined for criminal liability.

A legal worker shall be protected by Vietnamese law. On the other hand, any foreigner who works in Vietnam without a work permit or certificate of eligibility of work-permit exemption (i.e., an illegal worker) shall be expelled. The DOLISA will ask the police to expel an illegal worker from Vietnam within 15 working days of the date of pronouncement of the illegal worker's status.

iii Rights and duties of sponsored employees

Foreign nationals hired by Vietnamese employers (including the foreign-invested companies) shall be broadly protected by the labour laws of Vietnam based on the Vietnamese labour contracts. A lawful foreign employee can seek support from the competent authorities and the court of Vietnam. Except for additional undertakings and commitments beyond Vietnam's jurisdiction. Foreign employees shall enjoy the same rights and obligations as Vietnamese employees, except for the provisions specifically addressed to Vietnamese citizens (like participation in trade unions) or exceptional clauses (like compulsory social insurance applied to foreigners, which only entered into effect as of 1 January 2018).

Foreign employees working for a foreign commercial presence (foreign employer) who sign the labour contract in a foreign country or chose the governing laws of any other jurisdiction rather than Vietnam shall comply with the governing law. The Vietnamese labour laws are referred to only if agreed by both parties.

V INVESTORS, SKILLED MIGRANTS AND ENTREPRENEURS

To enter Vietnam for business purposes, a business visitor, including those from one of the 24 countries participating in Vietnam's visa-free scheme, must make an application for the relevant business visa, including the DN, LV, DT or NN3 visa. Visas are issued as follows:

- a* LD visas are issued to workers;
- b* DN visas are issued to working partners of Vietnamese businesses;
- c* DT visas are issued to foreign investors and lawyers practising in Vietnam;
- d* LV1 and LV2 visas are issued to those working with the Vietnamese government, social and political organisations or the Chamber of Commerce;
- e* NN1 visas are issued to the chief representative of representative offices or projects of international organisations and foreign non-governmental organisations (NGOs) in Vietnam;
- f* NN2 visas are issued to the heads of representative offices, branches of foreign businesses, and representative offices of foreign economic, cultural and other professional organisations in Vietnam; and
- g* NN3 visas are issued to working partners of international NGOs and representative offices of foreign economic, cultural and professional organisations in Vietnam.

Foreigners issued with visas shall be issued with temporary residence cards with the same symbols.

A visa for Vietnam can be applied for by post, in person at a local consulate or by e-visa via the Vietnam National Web Portal on Immigration. Long-term business visas with single or multiple entries are also available and allow for a duration of stay of between six months and five years.

Once in Vietnam, business visitors can undertake various business activities, such as meetings, conferences and other business-related activities. Depending on the visa, holders may also undertake work in Vietnam during their duration of stay. Business visitors can also participate in short-term training by obtaining an HN visa, which is valid for three months and is granted for attending conferences or seminars.

i Permanent residency

Vietnamese law provides a narrow scope for foreign nationals to obtain permanent residency, which is only granted upon satisfaction of all the necessary conditions for obtaining a permanent residence card. Currently, there are four situations where a foreign national may obtain permanent residence in Vietnam:

- a* foreign nationals who have contributed to the development and protection of Vietnam and are awarded medals or titles by the Vietnamese government;
- b* foreign nationals who are scientists or experts temporarily residing in Vietnam. These people must be proposed by the ministers, heads of ministerial agencies or governmental agencies in corresponding fields;
- c* any foreigner who has temporarily resided in Vietnam for a minimum of three consecutive years and who is sponsored by their parent, spouse or child who is a Vietnamese citizen and has permanent residence in Vietnam; or
- d* any person who is stateless and who has had temporary residence in Vietnam since 2000 or earlier.

VI OUTLOOK AND CONCLUSIONS

Vietnam continues to be one of the main actors of the ASEAN region. The country currently enjoys a significant level of development, especially in its economic centre, Ho Chi Minh City.

Industrial zones and modern infrastructures are also growing throughout the Vietnam. Cities and large provinces such as Da Nang, Binh Duong, Dong Nai and Can Tho are witnessing changes in their landscapes because of this modernisation and industrialisation. Aside from these two trends, international treaties play a tremendous role in attracting foreign investments. Indeed, the liberalisation of the circulation of goods gives effect to the increased flow of inward investment.

The AEC, EVFTA and CPTPP are seen as tools allowing Vietnam to hasten and strengthen its competitiveness.

Vietnam's Foreign Investment Department has confirmed this year that the FDI inflows of foreign capital invested into Vietnam are again breaking previous records, with US\$19.1 billion invested in 2018, compared with US\$17.5 billion in 2017. As at the end of 2018, the total accumulated registered capital of FDI projects was estimated at US\$191.4 billion, representing approximately 56.2 per cent of the total registered capital of businesses in Vietnam.

Since Vietnam is actively implementing the regional, bilateral and multilateral treaties in area of commerce and economy, the Vietnamese legal framework has seen significant changes, especially in administrative procedures on foreign recruitments. Owing to these

positive changes in employment procedures, which have helped both FDI and local companies hire foreign workers more easily, the Vietnamese employment market has become more competitive and labour quality has also improved.

Overall, Vietnam has a clear advantage in offering a safe destination to investors. In fact, Vietnam is politically stable in comparison with other states of the South East Asia region and this stability is a real asset. In addition to stability, the country offers investment incentives through its local manpower. Its cost production base remains low compared with neighbouring countries and the workforce is growing along with the consumer market.

This advanced stage, which the country owes to 20 years of effort and foreign investment, is a stepping stone towards further developments in Vietnam. The country is now, more than ever, market-oriented and the Vietnamese government has shown that it will not hesitate to adapt its legal framework to attract more investments and, therefore, further development.

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