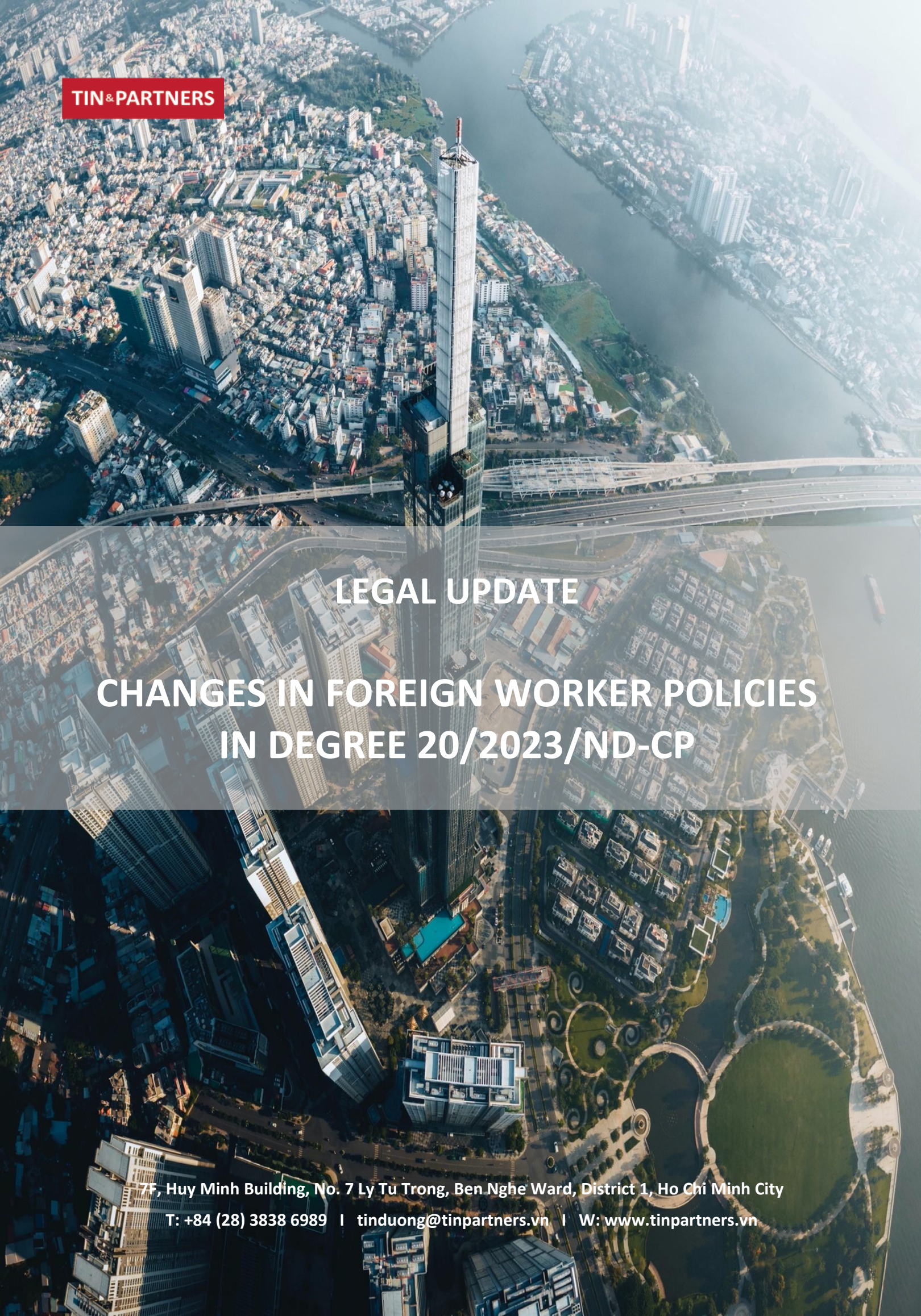


An aerial photograph of a city, likely Ho Chi Minh City, featuring a dense urban landscape with numerous buildings and a prominent river. A tall, modern skyscraper stands out in the center. The image is used as a background for a legal update document.

TIN&PARTNERS

LEGAL UPDATE

CHANGES IN FOREIGN WORKER POLICIES IN DEGREE 20/2023/ND-CP

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"On September 18, 2023, the Government officially promulgates Decree No. 70/2023/ND-CP amending and supplementing a number of articles of the Government's Decree No. 152/2020/ND-CP dated December 30, 2020 regulating foreign workers working in Vietnam and recruiting and managing Vietnamese workers working for organizations, foreign individuals in Vietnam."

Right from the time it was drafted, this Decree has especially attracted attention and received many comments from the business community as well as foreign business associations in Vietnam, because according to the general perception and via practice, the provisions of Vietnam's current law for foreign workers are rather complicated, inconsistent in practice, causing many difficulties, not only for enterprises but also for state agencies in carrying out work permit procedures for foreign workers.

In general, the new Decree has basically solved some limitations compared to the old Decree, while creating some more advantages for both enterprises and foreign workers when participating in the labor market in Vietnam, specifically:

1. Conditions for recognition of Experts and Technical Workers

The new regulations remove the

requirement that professionals be trained in the field appropriate to the experience and position they are expected to hold.

In fact, a similar regulation previously existed in Decree 11/2016/ND-CP, but this regulation has been adjusted to open more qualifications for experts.

Similarly, technical worker positions are adjusted in an expanded manner and do not require workers to be trained in the "technical" field but only need to be trained in any profession, as long as they have 03 years in the job position they are expected to hold.

We believe that the amendment in the new Decree is relatively consistent with practice, because it addresses the problem of a foreign worker who is trained differently to the industry in which he or she is working and has in-depth experience in the field of work but the field of their formal training makes it impossible to apply for a work permit in Vietnam.

2. Clarify and expand the definition of Managing Director

Accordingly, the Managing Director is identified as the head of a branch, representative office or business location of an enterprise; or the head and directly manages at least one department of an agency, organization or enterprise and is under the direct direction and administration of the head of the agency, organizations and

enterprises.

The clarification of the above definition is necessary and creates consistency in the process of consideration and appraisal of competent state agencies, on the other hand, creating conditions for enterprises to accurately provide documents proving the job position being recruited.

However, with the definition *"The head and directly runs at least one field of the agency, organization or enterprise"*, although the regulations are clear, the proof will be relatively complicated. It will be difficult for enterprises to determine exactly what kind of documents they will need to prove that the employee will head and directly run at least one area of the agency, organization or enterprise.

3. Reduce the time for fulfilling obligations to prove the needs for employing foreign workers and reduce some cases of adjustment of labor demand

Accordingly, employers only need to apply for determination of the need to employ foreign workers at least 15 days in advance from the expected date of recruitment of foreign workers, instead of having to notify at least 30 days in advance compared to the previous regulations.

A new point is also considered very positive for employers, which is that the new Decree has eliminated some cases where employers have to carry out procedures for adjusting labor demand. Accordingly, only changes related to position, job title, form of work, number of worker and location of work will need to carry out this procedure again.

The withdrawal of cases where it is necessary to use labor is necessary because the adjustment procedure is relatively complex and time-consuming.

4. Adding some additional cases where there is no need to apply for confirmation of labor needs

The new Decree has added a number of cases in which employers do not need to carry out procedures for confirming the need for employment.

Specifically, when recruiting workers who (i) are foreign lawyers who have been granted a license to practice law in Vietnam in accordance with the Law on Lawyers; or (ii) being a foreigner married to a Vietnamese and living in the territory of Vietnam; or (iii) entering Vietnam to provide provide professional and technical consultancy services or perform other tasks in service of research, elaboration, appraisal, monitoring, evaluation, management and implementation of programs or projects using official development assistance (ODA) as prescribed or agreed upon in international ODA treaties signed between competent agencies of Vietnam and abroad; or (iv) be licensed by the Ministry of Foreign Affairs to conduct information and press activities in Vietnam in accordance with law; or (v) Volunteers; or (vi) certified by the Ministry of Education and Training as foreign workers entering Vietnam to

teach, research or work as managers or executives at educational institutions.

The above-mentioned positions are exempt from Work Permits, therefore, allowing employers not to apply for confirmation of labor needs and is assessed as appropriate and reducing the burden of administrative procedures for enterprises.

5. Additional requirements for notification of recruitment of Vietnamese before applying for recruitment of foreigners

From January 1, 2024, the announcement of recruitment of Vietnamese workers to positions expected to recruit foreign workers shall be made on the Portal of the Ministry of Labor, War Invalids and Social Affairs (Employment Department) or the Portal of the Employment Service Center that the Chairman of the Provincial People's Committee decided to establish.

In our opinion, requiring employers to officially announce the recruitment of foreign workers is intended to clarify that the employer has *"recruiting Vietnamese but not being able to recruit"*.

This regulation may aim to minimize the situation of enterprises only

pretent to explain to state agencies for the purpose of recruiting foreigners, especially labor positions that Vietnamese can fully fill. On the other hand, it is also easier for businesses to prove their needs and is the basic to determine that they have prioritized recruiting Vietnamese but have not been able to.

However, the regulation also causes many inadequacies, especially when enterprises want to recruit senior personnel, managerial positions, or under internal movement from abroad to Vietnam and therefore cannot recruit in the usual way.

On the other hand, the recruitment of senior positions is also sensitive information and is a business, so businesses will find it difficult to disclose this information so publicly.

6. Adding regulations on the case of employees working at multiple locations

In case a foreign worker works for an employer in many provinces or centrally-run cities, within 03 working days from the date the foreign worker starts working, the



employer must report electronically to the Ministry of Labor, War Invalids and Social Affairs and the Department of Labor, War Invalids and War Invalids and The society where foreign workers come to work.

In our opinion, this regulation can be introduced to solve problems in case the enterprise has many subordinate units and/or employees working and receiving wages in many places instead of fixed in one place, then labor procedures will be clear, Avoid the case that the employee has to reapply many times.

However, this regulation does not specify what the result of this notification is and whether employees need to wait for confirmation from state agencies before working.

On the other hand, this regulation does not specify the criteria for evaluating what is an employee working for an employer in multiple places. In fact, it is very common for employees to be sent to participate in projects or short-term work at affiliated units. In that case, is it considered that the employee works in more than one place?

Without clarifying the above-mentioned points, the implementation of this procedure may cause difficulties as well as disruptions in the normal operation of the enterprise.

7. Adding and clarifying a number of supporting documents when applying for a work permit for the titles of managers, executives, experts and technical workers

7.1. Executives, Managers

The new Decree details documents that may be required to be provided,



rather than stipulating them in a general way as before. Specifically, documents proving that the manager or executive director will include (i) the company's charter or operation regulations of the agency, organization or enterprise; (ii) of Enterprise Registration Certificate or certificate of incorporation or establishment decision or other document of equivalent legal validity; and (iii) Resolution or appointment decision of the agency, organization or enterprise.

The rule does not specify whether the above documents must be presented simultaneously, or if only one of the three documents will be required.

However, according to guidelines of the Department of Labor, Invalids and Social Affairs, all of these three documents must be submitted.

7.2. Experts and Technical Workers

In addition to Degrees or Diplomas being considered as the confirmation document of training as before, the Decree added the Certificate as a document with similar proving value.

This regulation may not seem important at first glance, but in fact, the new regulation solves the problem of different names of qualifications as in some countries. As in Japan, universities will only issue Certificates of Graduation and in fact workers have had difficulty submitting this Certificate to prove appropriate training capacity.

In addition, proof of experience documents are not limited to documents certified by overseas entities, but may include work permits that have been issued or Confirmation of work permit exemption.

The unfortunate point of this amendment is that the Decree does not recognize the Notice of work permit exemption proving work experience, which disadvantages employees who have worked and have corresponding experience but are not properly recognized.

8. Change of procedures for foreign workers married to Vietnamese

Under this new regulation, foreign

workers who marry Vietnamese and live in the territory of Vietnam will have to carry out procedures to confirm that they are exempted from work permit instead of just going through notification procedures as before.

We believe that the above regulation is appropriate, because if carrying out the confirmation of work permit exemption procedure, employees will need to prove that they meet the conditions for the corresponding job position, instead of just declaring information as at present.

9. Allow work permit extension more than once

The new Decree has allowed the 2nd extension of work permits for experts and technical workers instead of only 1 time extension as in the old Decree.

This is what businesses and workers expect because allowing work permit renewals only once leads to disruptions in work and costs significant implementation.

10. Additional cases of carrying out procedures for re-issuance of work permits

The Decree adds the case of re-issuance of a work permit: changing the name of the enterprise without

changing the enterprise code, instead of the enterprise having to carry out new issuance procedures according to the old regulations and helping to significantly reduce the time and cost of implementation for the enterprise.

11. Additional jurisdiction of licensing authorities

The Decree provides for the competence of licensing authorities in cases where workers work at multiple locations across the country.

A noteworthy point is that in the case of enterprises operating in Industrial Parks or Export Processing Zones, if employees work in more than one location, the enterprise must apply for a work permit at the Department of Labor, War Invalids and Social Affairs, instead of submitting it to the Management Board of Industrial Parks as before.

It is unclear whether this permission applies exclusively to the position, or will apply to all businesses that employ employees. Also, if the business has previously applied for confirmation of labor demand at the Department of Labor, War Invalids and Social Affairs, but then there are no more workers working at many locations, can it return to apply for a work permit at the Management Board of Industrial Parks?

12. Additions to document form and work permit

The amended regulations replace the phrase "translated into Vietnamese" with the phrase "translated into Vietnamese and notarized or authenticated" in order to clarify the form of documents when submitted.

The regulation also allows businesses to confirm copies of workers' passports instead of having to request public notarization or attestation as before.

In addition, the e-Work Permit may be used in the future, instead of just using paper copies as at present.

13. Change the procedure form

The newly issued Decree encloses the forms used to apply for work permits.

Decree 70/2023/ND-CP takes effect from September 18, 2023.

