



ICLG

The International Comparative Legal Guide to:

Corporate Immigration 2016

3rd Edition

A practical cross-border insight into corporate immigration law

Published by Global Legal Group, with contributions from:

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Email: info@glgroup.co.uk
URL: www.glgroup.co.uk

GLG Cover Design
F&F Studio Design

GLG Cover Image Source
iStockphoto

Printed by
Ashford Colour Press Ltd
August 2016

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ISBN 978-1-911367-07-9
ISSN 2054-7579

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Vietnam

Harvey Law Group

Jean-François Harvey



Bastien Trelcat



1 Introduction

1.1 What are the main sources of immigration law in your jurisdiction?

The main source of immigration law in Vietnam is the Law on Entry, Exit, Transit, and Residence of Foreigners in Vietnam. This law provides the regulatory and legal framework outlining: the rights and obligations of foreigners; the rights and obligations of Vietnamese authorities; as well as those of other entities relating to the entry, exit, and residence of non-citizens in Vietnam.

In addition, this law also intends to provide more clarity for foreign nationals and employers in accordance with Vietnam's Labour Code.

1.2 What authorities administer the corporate immigration system in your jurisdiction?

The Ministry of Public Security, Ministry of Foreign Affairs and their affiliate departments are the primary authorities who administer the immigration regime in Vietnam, including corporate immigration. With regard to investment specifically, in accordance with Vietnam's Law on Investment, the Ministry of Planning and Investment is the principal institution in charge of state management of foreign investment and supports the government in managing foreign investment activities in Vietnam.

1.3 Is your jurisdiction part of a multilateral agreement between countries (EU/NAFTA/MERCOSUR) which facilitates the movement of people between countries for employment purposes?

Vietnam is a member of the Association of the South East Asian Nations (ASEAN) and part of ASEAN's Mutual Recognition Agreements (MRAs). In addition to being able to travel visa-free among ASEAN Member States, the MRA scheme enables the mobility of professionals and skilled individuals among ASEAN states, including: engineers; nurses; architects; dental practitioners, medical practitioners, accountants, and tourism professionals. Individuals in these professions will, as long as they comply with certain minimum legal requirements, be free to work in any ASEAN nation.

2 Business Visitors

2.1 Can business visitors enter your jurisdiction under a relevant visa waiver programme?

Vietnam offers visa-free travel for holders of regular passports from a limited list of 24 countries, the majority of which are ASEAN Member States, with varying durations of stay ranging between 14 and 30 days depending on the country.

2.2 What is the maximum period for which business visitors can enter your jurisdiction?

The maximum period of stay depends on which grounds the visitor is entering Vietnam. Usually, business visas allow holders to stay for up to one, three or six months, or up to five years, depending on the visa type.

2.3 What activities are business visitors able to undertake?

Vietnam business visa holders have the right to attend meetings, conferences and other business-related activities. In accordance with the law, a number of new types of business visas have been introduced. The "DT" category is issued to foreign investors in Vietnam and foreign lawyers practising in Vietnam, and the "LV2" category may be issued to those who come to work for socio-political organisations, social organisations, or the Vietnam Chamber of Commerce and Industry.

2.4 Are there any special visitor categories which will enable business visitors to undertake work or provide services for a temporary period?

The current laws have not established any special visitor categories for business visitors who wish to undertake work or provide services for a temporary period. However, applicants may be granted other types of business visa depending on the circumstances of their case. For example, a "DN" visa can be issued to people who come to work for companies in Vietnam, while an "NN3" visa can be issued to people who come to work with foreign non-governmental organisations, representative offices, branches of foreign traders, etc.

2.5 Can business visitors receive short-term training?

Yes, business visitors can obtain an “HN” visa, which is granted for attending conferences or seminars. An “HN” visa is valid for up to three months.

3 Immigration Compliance and Illegal Working

3.1 Do the national authorities in your jurisdiction operate a system of compliance inspections of employers who regularly employ foreign nationals?

Yes, they do.

3.2 What are the rules on the prevention of illegal working?

Fines are imposed on employers who hire foreign workers in Vietnam without proper work permit documentation or possess expired work permits. The amount of the fine will vary in accordance with the number of workers involved in the violation:

- a) From VND 30,000,000 to VND 45,000,000 if the violation involves 1–10 workers.
- b) From VND 45,000,000 to VND 60,000,000 if the violation involves 11–20 workers.
- c) From VND 60,000,000 to VND 75,000,000 if the violation involves more than 20 workers.

In addition to monetary penalties, employers who commit such a violation may be forced to suspend their business for a period ranging from one to three months.

Foreign workers who violate Vietnamese labour laws and regulations in undertaking work without a work permit (except for those exempt from work permits), or working with an expired work permit, will be deported from Vietnam.

3.3 What are the penalties for organisations found to be employing foreign nationals without permission to work?

Generally, penalties come in the form of administrative sanctions including cautions, fines, and the revocation of professional practice licences; however, the severity of the penalty depends on the rule(s) the organisation has breached.

4 Corporate Immigration – General

4.1 Is there a system for registration of employers who wish to hire foreign nationals?

Employers who wish to hire foreign nationals are required to obtain permission from the local office of the Department of Labour, Invalids and Social Affairs (DOLISA) and provide them with an explanation as to the reasons for which they want to hire foreign nationals. Applications are entered into the Department’s registry, which allows the Department to ensure proper compliance with Vietnamese labour laws.

4.2 Do employers who hire foreign nationals have ongoing duties to ensure immigration compliance?

Employers are required to submit reports and notify the local DOLISA office of any changes concerning foreign nationals, to ensure continuing immigration compliance. Failure to comply will result in the revocation of a foreign employee’s work permit as well as the imposition of fines and sanctions on the employer.

4.3 Do the immigration authorities undertake routine inspections of employers who sponsor foreign nationals, to verify immigration compliance?

Random inspections of employers who sponsor foreign nationals are predominantly undertaken by DOLISA to ensure immigration compliance.

4.4 Do the immigration authorities maintain a list of skilled occupations which may be filled by foreign nationals?

The relevant laws, regulations and policies do not prescribe an exclusive list of skilled occupations that may be filled by foreign nationals.

4.5 Is there a recognition that some occupations may be in short supply and do special exemptions apply to certain sectors and occupations?

It is recognised that Vietnam currently suffers a shortage of advanced and highly skilled workers. Consequently, Vietnam has introduced various plans and incentives to improve human capital in Vietnam, including education and training to enhance the knowledge and professional skills of employees located in rural areas of Vietnam.

According to the laws and regulations of Vietnam, there are a number of specific cases where foreigners are exempt from the requirement of obtaining a work permit.

However, it is important to note that although foreign workers can be exempt from obtaining a work permit, they are still required to obtain the appropriate visa, in accordance with their category of work, to enter Vietnam.

4.6 Are there annual quotas for different types of employment-related work permits or visas?

The Vietnamese government does not impose quotas for work permits and visas. Work permits and visas are issued as long as applicants satisfy the conditions provided by law.

4.7 Are there restrictions on the number of foreign workers an employer may sponsor, in relation to a maximum percentage of foreign workers in the employer’s workforce?

It is prohibited to employ foreign workers to perform jobs that can be satisfactorily executed by Vietnamese workers, specifically manual labour and unskilled jobs.

It is at the discretion of employers to determine the necessary demand for foreign workers, however, a written request for the

employment of Vietnamese workers in the positions available for foreign workers must first be sent to the President of the People's Committee of the relevant province where the employment will be based. Where there are no Vietnamese workers with the competency or qualifications required to fill the position(s), then the President of the People's Committee of the province will grant approval for the employer to hire foreign workers.

4.8 Are employees who are sponsored to work in your jurisdiction required to demonstrate language proficiency?

No, there is no requirement to demonstrate language proficiency.

4.9 Are employees who are sponsored to work in your jurisdiction required to undergo medical examinations before being admitted?

Yes, foreign workers are required to undergo medical examinations before being issued a work permit.

4.10 Are employees who are sponsored to work in your jurisdiction required to have medical insurance or are they entitled to any free public medical services?

Vietnam has a mandatory social insurance obligation which applies to all Vietnamese employees working in Vietnam. Both the employer and employee pay social insurance premiums which allow the employee to benefit from a social insurance allowance in the event of sickness, labour accident, occupational disease, pregnancy, retirement or death.

As of 1 January 2018, foreign employees working in Vietnam with work permits, practice certificates or practice licences granted by competent Vietnamese agencies will also be covered by the compulsory social insurance scheme.

4.11 Does the work permit system allow employees who hold work permits to be seconded to a client site?

Work permits only allow holders to work at the business specified in the permit. If an employee works at another place for the same employer, they will need to obtain an additional work permit specifying the additional location.

5 Highly Skilled Visas

5.1 Is there an immigration category which covers highly skilled individuals?

There is no specific immigration category for highly skilled individuals. However, if an applicant meets the specific requirements to be considered an "expert" in accordance with Vietnamese law then a work permit exemption can be granted. Moreover, to further the objective of industrialising and modernising the economy, the government is offering additional incentives for highly skilled applicants.

6 Investment or Establishment Work Permits

6.1 Is there an immigration category which permits employees to be authorised to work based on investment into your jurisdiction?

Foreign investors are required to obtain a "DT" visa and provide documentation of their investment within Vietnam, in accordance with the Law on Investment. Said law also provides that investors carrying out investment activities shall be granted the proper visa for a maximum period of five years, subject to renewal thereafter.

7 Temporary Work Permits

7.1 Is there an immigration category permitting the hiring of temporary workers for exchanges, career development, internships or other non-economic purposes?

Individuals who wish to pursue internship opportunities in Vietnam are able to stay in the country for a maximum of 12 months. There are also immigration categories specifically for those who wish to enter with the purpose of attending conferences and conventions in Vietnam.

There is no particular immigration category for exchanges and career development.

7.2 Are there sector-specific temporary work permit categories which enable foreign workers to perform temporary work?

Aside from journalists who can obtain a visa for a short period of time in the case that they are coming to work in Vietnam, there is no other sector or category that allows foreign workers to perform temporary work.

8 Group or Intra-Company Transfer Work Permits

8.1 Does a specific immigration category exist for inter-company transfers within international groups of companies?

Work permit exemptions are available for foreign employees who are managers, executive directors, experts or technical workers and internally transferred within an enterprise operating in one of the 11 service sectors outlined in the list of Vietnam's commitments to the World Trade Organization, including: business; communication; construction; cultural entertainment; distribution; education; environment; finance; healthcare; tourism; and transport.

Inter-company transfers beyond those specified are not entitled to work permit exemptions. Employers are required to obtain written confirmation by DOLISA for foreign employees who wish to have an exemption from acquiring a work permit. The validity period of work permit exemptions is for a maximum of two years.

Foreign employees who are exempt from obtaining a work permit still need a visa for their entry into Vietnam.

8.2 What conditions must an employing company or organisation fulfil in order to qualify as part of a group of companies?

For work permit exemptions, as per those mentioned under question 8.1, business entities in Vietnam must be established by a foreign company under the form of a “commercial presence” (including business cooperation contracts, joint ventures, wholly foreign-invested enterprises, representative offices, and branches of foreign enterprises).

8.3 What conditions must the employer fulfil in order to obtain a work permit for an intra-company group employee?

In order to obtain a work permit exemption for internal transfers, the following conditions must be satisfied:

- the foreign enterprise has established a commercial presence in Vietnam;
- the commercial presence in Vietnam of the foreign enterprise operates within 11 service sectors in the list of Vietnam’s commitments on services to the World Trade Organization; and
- any foreign employee that has been employed by the foreign enterprise for at least 12 months before being sent to work at the company’s commercial presence in Vietnam.

8.4 What is the process for obtaining a work permit for an intra-company group employee?

Employers must submit an application package to DOLISA at least seven working days before an employee’s start date. The processing time for such requests is approximately three days; DOLISA will issue an official letter to confirm an employee’s work permit exemption if the conditions are satisfied.

8.5 What is the process for the employee to obtain a visa under the intra-company group transfer category?

There is no special process for obtaining a visa under a work permit exemption. Generally, the employer in Vietnam shall submit an application package with the immigration authority and receive the relevant response within five working days. Based on the response from the immigration authority, the relevant overseas visa-issuing authority of Vietnam will issue the required visa to the employee.

8.6 How long does the process of obtaining the work permit and initial visa take?

The processing times for obtaining a work permit exemption are generally assessed and accepted within three working days from receipt of a completed application package.

Within five working days from receipt of a completed application package, the immigration agency in Vietnam will send a response to the applicant and notify the overseas visa-issuing authority of Vietnam. The employee shall receive the visa at the overseas visa-issuing authority of Vietnam within three working days after receipt of the response by the immigration agency.

8.7 How long are visas under the “initial” category valid for, and can they be extended?

The duration of NN1, NN2 and NN3 visas cannot exceed 12 months

provided that the duration of a visa shall be at least 30 days shorter than that of a passport or international *laissez-passer*.

8.8 Can employees coming under the intra-company transfer route apply for permanent residence?

No, employees coming under the intra-company transfer route cannot apply for permanent residence solely based on their employment status. Permanent residence is granted only when a foreigner satisfies all conditions for obtaining a permanent residence card, as detailed and explained in Section 12 below.

9 New Hire Work Permits

9.1 What is the main immigration category used for employers who wish to obtain work permits for new hires?

Generally, the “LD” visa category is issued to individuals who are coming to work in Vietnam.

9.2 Is there a requirement for labour market testing, to demonstrate that there are no suitable resident workers, before a work permit can be issued to new hires?

There are no formal mechanisms for labour market testing. Employers are responsible for determining whether there is a necessity for foreign workers, and must first send a written request for the employment of Vietnamese workers in the positions available for foreign workers to the President of the People’s Committee of the relevant province where the employment is based. Only after it is determined that there are no Vietnamese workers available who are able to fill the desired work positions, can approval be granted to hire foreign workers.

9.3 Are there any exemptions to carrying out a resident labour market test?

Recruitment of employees who are exempted from work permits does not require a resident labour market test.

9.4 What is the process for obtaining a work permit for a new hire?

Where a work permit is required, the process of applying for a work permit for a new hire in Vietnam can be described as follows.

First, employers must fill all required forms for a work application and get the confirmation from the competent authority that he can indeed employ the foreign worker.

Second, the worker will have to fill and provide documentation, including but not limited to: a health certificate; their qualifications or professional certifications obtained from an appropriate authority; a criminal record check to prove that the worker is not criminally liable in accordance with both Vietnamese and foreign law; photos, etc.

Finally, the completed application package is submitted to the proper office of the Department of Labour, depending on where the work will be undertaken.

9.5 What is the process for the employee to obtain a visa under the intra-company group transfer category for a new hire?

A new hire cannot obtain a visa under the intra-company group transfer category since the relevant provisions stipulate that a foreign worker must be employed for a period of at least 12 months prior to such transfer by the foreign enterprise. For further details, please see the answer to question 8.4.

9.6 How long does the process of obtaining the work permit and initial visa for a new hire take?

For the issuance of the initial visa, the overseas visa-issuing authority of Vietnam shall issue the visa within three working days of receipt of the notification from the immigration authority or a competent authority of the Ministry of Foreign Affairs.

For the issuance of a work permit, DOLISA must issue a work permit within seven working days from the date of receipt of a completed application for issuance of a work permit. Where the Department refuses to grant a work permit, a written reply containing the reasons for rejection will be issued.

9.7 How long are initial visas for new hires granted for and can they be extended?

According to the law of Vietnam, the initial validity period of a work permit issued by the authorities for a new hire is equal to the duration of one of the following periods, as long as those periods are of less than two years:

1. The duration of the labour contract to be signed.
2. The duration of the assignment in Vietnam as decided by foreign parties.
3. The duration of the contract or agreement between Vietnamese and foreign partners.
4. The duration of the service contract or agreement between Vietnamese and foreign partners.
5. The duration specified in documents of the service provider appointing the foreign worker to come to Vietnam to negotiate on service provision.
6. The duration specified in certificates of foreign non-governmental organisations and international organisations permitted to operate in accordance with the law of Vietnam.
7. The duration specified in documents of the service provider appointing the foreign worker to come to Vietnam to establish a commercial presence of the service provider.
8. The duration specified in documents proving that the foreign worker is permitted to engage in activities of the foreign enterprise which has established a commercial presence in Vietnam.

Generally, the validity period for a reissued work permit will be for a maximum of a further two years.

9.8 Is labour market testing required when the employee extends their residence?

Yes, a labour market test is required, since employers must produce reports on foreign employees and obtain permission to hire foreign workers. Therefore, foreign workers may only be hired when there is a necessity to do so.

9.9 Can employees coming as new hires apply for permanent residence?

No, there are few and limited cases in which a foreigner can be considered for permanent resident status in Vietnam. One of these cases, as stipulated in the law, is that of foreigners who are scientists or experts temporarily residing in Vietnam.

10 Conditions of Stay for Work Permit Holders

10.1 What are the conditions of stay of those who obtain work permits and are resident on this basis?

The conditions are the same as for a renewal of said work permit, such as an employment contract, and being still employed by a recognised entity. The validity shall be as mentioned in the employment contract, or for a maximum of three years.

10.2 Are work permit holders required to register with municipal authorities or the police after their arrival?

Foreigners are required to register their residence with the local authorities via the manager of the lodging establishment (such as the manager of a hotel, landlord of a leased apartment, etc.).

11 Dependants

11.1 Who qualifies as a dependant of a person coming to work on a sponsored basis?

An applicant's spouse and children under the age of 18 qualify as dependants.

11.2 Do civil/unmarried or same-sex partners qualify as family members?

Vietnam does not acknowledge same-sex marriage that is registered under Vietnamese law; however, the law is silent on same-sex marriages certified in other countries, making it a case-by-case evaluation.

Civil/unmarried partners do not qualify as family members.

11.3 Do spouses and partners have access to the labour market when they are admitted as dependants?

A family member who is admitted as a dependant will require a separate work permit if they wish to have access to the labour market.

11.4 Do children have access to the labour market?

Children or other dependants wishing to access the Vietnamese labour market have to obtain a proper work permit or they need to be specially entitled to a work permit exemption. However, conditions to obtain a work permit include "the capacity for civil acts fully in accordance with the law"; under the Civil Code, only persons 18 years of age or older satisfy such a civil capacity. Consequently, the only suitable circumstances are for students who undertake an internship programme and therefore are entitled to a work permit exemption.

12 Permanent Residence

12.1 What are the conditions for obtaining permanent residence?

There are four principal categories of person who may be possible to obtain permanent residence in Vietnam. In every case, the foreigner must have legitimate residence and legal employment in Vietnam.

1. Foreigners who have contributed to the development and protection of Vietnam and are awarded medals or titles by the Vietnamese government.
2. Foreigners who are scientists or experts temporarily residing in Vietnam. This person must be proposed by the Ministers, heads of ministerial agencies or Governmental agencies in corresponding fields.
3. Foreigners who have temporarily resided in Vietnam for a minimum of three consecutive years, and are sponsored by a parent, spouse or child who is a Vietnamese citizen and has permanent residence in Vietnam.
4. Any person without a nationality who has had temporary residence in Vietnam from 2000 or earlier.



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He also brings extensive experience in commercial legal matters, and in particular has advised on many high-value due diligence and merger and acquisition activities for a broad range of international and multinational industries.

12.2 Is it possible to switch from a temporary work visa to a work visa which leads to permanent residence?

Visa holders are entitled to permanent residence only when they fall into one of the four circumstances outlined under question 12.1 above, and must satisfy all relevant conditions to obtain the permanent residence card issued by the immigration authority.

13 Bars to Admission

13.1 What are the main bars to admission for work?

The main bars to admission for work are health inadmissibility and having criminal convictions on one's record.

13.2 Are criminal convictions a bar to obtaining work permission or a visa?

Yes, foreign nationals are required to prove that they do not have any criminal record with a national security offence, and must not currently be subject to criminal prosecution or any criminal sentence in accordance with Vietnamese and foreign laws.



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Mr. Trelcat is a partner of HLG and acts as the Managing Partner of HLG Thailand. He also plays an important role in the development of the South East Asia market.



Founded in 1992 by Jean-François Harvey, the Montréal-based Harvey Law Group (HLG) has maintained a presence throughout Asia, South America and the Middle East from the beginning. Today, it has evolved into a leading international immigration and business law firm that has developed a worldwide reputation of excellence by providing sophisticated legal representation to businesses and individuals. With offices notably in Hong Kong, Bangkok, Ho Chi Minh City, Hanoi, Da Nang and Yangon, along with a regional and international network, HLG has an extensive team that can provide exceptional support to a diverse global clientele.

In summary, the strength of HLG stems primarily from its well-recognised and respected expertise as well as its well-defined approach towards legal services based on quality and time-honoured practices, fused with a corporate culture that emphasises and cultivates a client-focused attitude. Simply and precisely put, HLG is veteran, yet pioneering; firmly grounded, yet progressive.

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