

Support for the Implementation of the EU-Vietnam Free Trade Agreement

Workshop on Work Permits for Foreign Service Providers, Workers and other Business People in Vietnam

21st September 2022

10:00am – 12:30pm

Lotte Hotel, Hanoi

Agenda

Session I: The Current Law on the Presence of Foreign Natural Persons for Business Purposes in Vietnam (10:25am – 11:10am)

- (1) Introduction and the EVFTA context – **Dr. Oliver Massmann**
- (2) Presentation on current law on entry and temporary stay of foreign labour in light of the EVFTA – **Prof. Ngan Kim Vu**
 - a. ENT
 - b. Visa requirements
 - c. Residency requirements
 - d. Licensing procedures
 - e. Extension of business stay
- (3) Presentation on practical implementation of the law, with real life experiences – **Dr. Oliver Massmann**
- (4) Discussion and Q&A – **Dr. Oliver Massmann** and **Prof Ngan Kim Vu**

Session II: Current law on relevant issues on the presence of foreign labor in Vietnam (11:25am – 12:15pm)

- (1) Brief introduction – **Dr. Oliver Massmann**
- (2) Presentation on other issues under consideration – **Prof. Ngan Kim Vu**
 - a. Minimum wage, collective wage agreements
 - b. Social security, retirement
 - c. Taxation
 - d. Worker's remuneration and remittance
- (3) Presentation on practical implementation of the law, with real life experiences – **Dr. Oliver Massmann**
- (4) Discussion and Q&A – **Dr. Oliver Massmann** and **Prof Ngan Kim Vu**

The background features a stylized map of Southeast Asia, including Vietnam, Laos, Cambodia, Thailand, and the Philippines. The map is rendered in a light, semi-transparent style, allowing the underlying color gradient to show through. The gradient transitions from a deep blue on the left to a vibrant red on the right. Several large, semi-transparent circles in shades of red and orange are scattered across the right side of the image, adding a decorative, bokeh-like effect.

Session I: The Current Law on the Presence of Foreign Natural Persons for Business Purposes in Vietnam

I (1) - Introduction and the EVFTA context (Dr Oliver)

- The EVFTA is a new generation free trade agreement between Vietnam and 27 EU member countries
- On 2nd December 2015, both Vietnam and the EU concluded the negotiations.
- On 26 June 2018, the EVFTA was divided into 2 agreements in terms of trade and investment following the European Court of Justice's opinion on the EU – Singapore FTA
- The EVFTA will cover trade issues while investment protection and investment-related dispute settlement will be under the IPA.
- On 30th June, the EVFTA and the IPA were signed in Hanoi.
- EVFTA takes effect from 01 August 2020.
- The EVFTA is the first comprehensive and ambitious trade and investment agreements that the EU has ever concluded with a developing country in Asia

I (1) - Introduction and the EVFTA context (cont) (Dr Oliver)

- Chapter 13 of EVFTA on Trade and Sustainable Development requires Viet Nam and the EU “reaffirms its commitments, in accordance with its obligations under the ILO and the ILO Declaration on Fundamental Principles and Rights at Work, to respect, promote and effectively implement the principles concerning the fundamental rights at work”.
- They include the freedom of association and the effective recognition of the right to collective bargaining; the elimination of all forms of forced or compulsory labour; the effective abolition of child labor; and the elimination of discrimination in respect of employment and occupation.
- This chapter specifically stipulates that each party will make continued and sustained efforts towards ratifying eight fundamental ILO conventions. Viet Nam has ratified seven out of eight fundamental conventions. It will leave the Convention 87 on Freedom of Association and Protection of the Right to Organize as the only fundamental convention left and the Government plans to ratify it in 2023.

A stylized map of Europe and Vietnam is visible in the background. The map is rendered in a light purple/pink color against a dark blue background. The map shows the outlines of the continents, with Vietnam specifically highlighted in a slightly darker shade of pink. The overall aesthetic is modern and academic.

I (2) - Presentation on current law on entry and temporary stay of foreign labour in light of the EVFTA – **Prof. Ngan Kim Vu**

- a. Restriction and ENT in light of EVFTA
- b. Visa requirements and procedures
- c. Extension of business stay
- d. General evaluation

Support for the implementation of the EU-Vietnam Free Trade Agreement

Current Law on the Presence of Foreign Natural Persons for Business Purposes in Vietnam

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EVFTA context (Section D – Chapter 8)

Vietnam does not open its labor market in general but allows entry and temporary stay for **4** specific types of EU natural persons entering Vietnam for business purposes:

- 1. Business visitors for establishment purposes:** senior officer of an EU juridical person responsible for setting up an enterprise of that juridical person in Vietnam;
- 2. Intra-corporate transferees:** managers, directors, specialists, or trainee employees who have been employed by an EU juridical person for at least 1 year and are temporarily transferred to an enterprise of that juridical person in Vietnam;
- 3. Business sellers:** representatives of an EU supplier of goods or services, without receiving remuneration from Vietnam, going to Vietnam to negotiate the sale/entering into agreements of sale of goods or services

→ Allowed to enter only if falling within services sectors/sub-sectors that Vietnam committed (8-B-1)



EVFTA context (Section D – Chapter 8)

4. Contractual service suppliers: e.g., employed by an EU juridical person –without commercial presence and having concluded a *bona fide* contract with a final consumer in Vietnam– requiring temporary presence in Vietnam

Conditions:

- university degree or equivalent;
- professional qualifications if required;
- at least 05 years of professional experience relevant to the subject of contract;
- at least 02 years of being employed by an (EU) juridical person before applying for entry.

Sectors/subsectors applicable:

- (a) architectural services;
- (b) urban planning and landscape architecture services;
- (c) engineering services;
- (d) integrated engineering services;
- (e) computer and related services;
- (f) higher education services (only privately funded services);
- (g) foreign language training; and
- (h) environmental services.



EVFTA context: Restrictions and Economics Needs Test

Type	Duration	Notes
Business visitors for establishment purposes	Up to 90 days	Same duration as committed within WTO
Intra-corporate transferees	<ul style="list-style-type: none"> - Managers, executives, specialists: up to 3 years - Trainee employees: up to 1 year (Vietnam implement after 3 years since 1st August 2020) 	<ul style="list-style-type: none"> - At least 20 % of managers, executives and specialists shall be Vietnamese nationals, unless they cannot be substituted by Vietnamese. A minimum on 3 non-Vietnamese managers, executives and specialists shall be permitted per enterprise. - No WTO commitments for trainee employees
Business sellers	Up to 90 days (within any 12-month period for EU)	Same duration 90 days as committed within WTO
Contractual service suppliers	Up to 6 months cummulatively or less depending on the contract (within any 12-month period for EU)	Long than commitments within WTO: Up to 90 days or less, depending on the contract.

Independent professionals (self-employed): to be reviewed after 5 years since 1st August 2022

EVFTA context: Restrictions and Economics Needs Test

SERVICE SECTORS/SUB-SECTORS	RESTRICTIONS/ENT
Computer and related services (CPC 84) Management consultant services (CPC 865) Services related to management consulting (CPC 866, except CPC 86602) CONSTRUCTION AND RELATED ENGINEERING SERVICES (A,B,C,D,E) Franchising services (CPC 8929)	The chief of the branch has to be a resident in Viet Nam.
EDUCATIONAL SERVICES	<ul style="list-style-type: none"> - Only in technical, natural sciences and technology, business administration and business studies, economics, accounting, international law and language training fields. - For Higher education, Adult education, and Other education services (CPC 929 including foreign language training): <i>the education content must be approved by Viet Nam's Ministry of Education and Training</i>; Foreign teachers who wish to work in Viet Nam shall have at least 5 years of teaching experience, and their qualifications shall be recognised by the competent authority.
Travel agencies and tour operator services (CPC 7471)	Tourist guides in foreign-invested enterprises shall be Vietnamese citizens.
MARITIME TRANSPORT Passenger transportation less cabotage (CPC 7211) Freight transportation less cabotage (CPC 7212)	Foreign seafarers may be permitted to work in ships under the national flag of Viet Nam (or registered in Viet Nam) owned by joint - ventures in Viet Nam but not exceeding 1/3 of total employees of the ships. The Master or first chief executive must be a Vietnamese citizen.
ROAD TRANSPORT (Passenger and Freight)	100 % of a joint-venture's drivers shall be Vietnamese citizens.

EVFTA context: Evaluating compatibility of Vietnamese Law

- Vietnamese law is in general compatible with Chapter 8 commitments related to trade in services mode 4
- In practice, many things need to be done to facilitate the EU's natural persons' presence to supply services in Vietnam



Entry and temporary stay for business purposes of EU natural persons in Vietnam: VISA

VISA REQUIREMENTS

The 2014 Law on Entry, exit, transit and residence of foreigners in Vietnam (amended in 2019) provides for more than 20 types of visas bearing different symbols and durations.

Symbol	Description
LS	issued to foreign lawyers practicing in Vietnam, of which duration is no longer than 05 years
DN1	issued to the foreigner working with the enterprise and the organization that is juridical persons as per the law of Vietnam and does not exceed 12 months
DN2	issued to people who come to sell services, establish commercial presence and do other activities in conformity with international treaties of which Vietnam is a member, of which duration is no longer than 01 year
DH	issued to people who come to study or serve internship , of which duration is no longer than 01 year
LĐ1	issued to people who come to work without having to ask for work permit , of which duration is no longer than 02 years
LĐ2	issued to people who come to work after having work permit , of which duration is no longer than 02 years



Entry and temporary stay for business purposes of EU natural persons in Vietnam: VISA

VISA PROCEDURES:

Step 1: submission of written **application** by inviting/sponsoring entity to the Immigration Department under Vietnam's Ministry of Public Security (IM)

Step 2: the IM provides a **response** to the inviting entity, notifies the overseas visa-issuing authority of Vietnam
Processing time: 05 working days

Inviting entity in Vietnam:

- Operation license of the company of the company/office where the foreigner is working for;
 - Certificate of seal specimen or Statement of Seal Use by the Company
- Registration form for the seal and signature of the legal representative of the enterprise operating in Vietnam;
- Application for visa, visa extension, extension of stay for foreigners in Vietnam.
 - ***Work permit or work permit exemption certificate.***



Entry and temporary stay for business purposes of EU natural persons in Vietnam: VISA

VISA PROCEDURES:

Step 3: submission to obtain visa at an overseas visa-issuing authority of Vietnam.

Processing time: 03 working days

Foreigners having a temporary residence: same procedures at the immigration authority.

Processing time: 05 working days.

Submitting to obtain the work visa:

Visa application form with the applicant's photo

Original valid passport

Copy of the visa letter issued by the Immigration Department/Office of Vietnam

Foreigners from 80 countries or their inviting/sponsoring entities can also apply for electronic visas through the National web portal on immigration (E-visa page:

<https://evisa.xuatnhapcanh.gov.vn/web/guest/trang-chu-ttdt>



Entry and temporary stay for business purposes of EU natural persons in Vietnam: VISA

REMAINING ISSUES IN PRACTICE:


- **Lengthy procedures:** difficult and troublesome to even obtain an appointment at the Immigration Department to submit visa application. Step 3 could take 12 days instead of 3 days.
- **Unclear explication for visa rejection**
- **Reduced duration of visa without clear explication**
- **More difficult for those outside Hanoi or HCMC:** natural person demanding for visa or inviting/sponsoring entity shall submit visa application, as agents are no more authorized to do so
- **Some but not all EU citizens enjoy visa-free entry:** citizens of Denmark, Norway, Finland, Sweden, France, Germany, Spain, Italia can stay in Vietnam visa-free for up to 15 days, for all types of passports and all types of entry purposes



GENERAL EVALUATION

- According to *Expat Insider 2022 report*, ill-managed administrative procedures remain a big obstacle for foreigners entering and staying in Vietnam:
 - Administrative perspective: Vietnam ranks 51st among 52 countries studied;
 - Difficulty due to bureaucracy: 66% locally vs. 39% globally;
 - Difficulty in obtaining visa: 48% locally vs. 24% globally;
 - Validity of administrative/government services online: Vietnam ranks last among 52 countries studied (44% of expats unhappy vs. 21% globally)





**THANK YOU FOR YOUR
ATTENTION!**

I (3) - Presentation on practical implementation of the law, with real life experiences (Dr Oliver)

Temporary Resident Cards in Vietnam:

- Temporary Resident Card (TRC) is a document issued by an immigration authority under Ministry of Public Security to a foreign individual who is permitted to reside in Vietnam for a certain period of time.
- TRC has the same validity as a visa.
- The law does not require expats to obtain a TRC. However, expats often choose to do so, considering the substantial benefits and convenience from a TRC. Not all expats who intend to stay in Vietnam can apply for a TRC, as it depends on their visa type. Only foreign individuals who are issued LV1, LV2, ĐT, NN1, NN2, DH, PV1, LĐ, TT visas can be issued the TRC with the same symbols.
- The duration of TRC depends on the entry purpose, visa type, the application and validity period of the passport, e.g. 10 years for big investor's visa (with symbol ĐT1) or 5 years for investor's visa (with symbol ĐT) or 2 years for working visa (with symbol LĐ).

I (3) - Presentation on practical implementation of the law, with real life experiences (Dr Oliver)

Why obtain a TRC

1. **Remove the need of visa extension** – Expats do NOT have to apply for any visa until the TRC expires, which helps with saving costs, time and valuable resources.
2. **Removes the need to Exit and re-Enter Vietnam** – Expats are able to stay in Vietnam for extended periods as long as the TRC is valid, without the need to exit and re-enter Vietnam to re-archive visas.
3. **Simplified Entry and Exit procedures** – Expats with TRCs are entitled to simplified procedures once entering and exiting Vietnam.
4. **Other benefits:** A number of commercial banks will accept TRCs for the purpose of individual banking services in Vietnam

I (3) - Presentation on practical implementation of the law, with real life experiences (Dr Oliver)

TRC Application Procedure

- **Authority:** Filing application at the Immigration Department - Ministry of Public Security
- **Regulatory timeline:** 5 working days from the application filing date.
- **Key Required Documents:**
 1. Notarized true copy of the Enterprise Registration Certificate
 2. Written confirmation of temporary residence by the local police
 3. 2 recently-taken photos in 2x3 cm size, with white background, front view, bare head without sunglasses
 4. Original passport, with a valid Vietnam visa
 5. Documents proving the type of visa (e.g., Work Permit, Investment Registration Certificate, etc.)

I (4) - Discussion and Q&A



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Session II: Current law on relevant issues on the presence of foreign labor in Vietnam

II (1) - Brief introduction (Dr Oliver)

Why Obtain Work Permits for Foreign Employees?

- Work Permits are required for all foreign employees in Vietnam before entering into a Vietnam-law labor contract or conducting any work, unless subject to an exemption per Decree 152/2020/ND-CP.
- With a Work Permit foreign employees can receive salaries into a Vietnamese bank account (in Vietnam Dong OR a nominated foreign currency), and can later transfer these funds abroad via their bank.

II (1) - Brief introduction (cont) (Dr Oliver)

Why Obtain Work Permits for Foreign Employees?

Payments to foreign employees with Work Permits are generally deductible for Corporate Income Tax (CIT), reducing company tax liabilities for the employer.

A Work Permit is valid for up to 2 years, and can be renewed once, and also allows an individual and their family to obtain Temporary Resident Cards (TRC), removing the need for obtaining and maintaining Visas whilst in Vietnam.

II (2) - Presentation on current law on entry and temporary stay of foreign labour in light of the EVFTA – **Prof. Ngan Kim Vu**

WORK PERMIT PROCEDURES + REMAINING PROBLEMS

- a. Minimum wage, collective wage agreements
- b. Social security, retirement
- c. Taxation
- d. Worker's remuneration and remittance

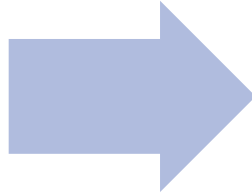
Entry and temporary stay for business purposes of EU natural persons in Vietnam: WORK PERMIT

LABOR CODE 2019 and DECREE No. 152/2020/ND-CP:

STEP 1: SUBMISSION OF REPORT ON DEMAND FOR FOREIGN WORKERS

SEND REPORT TO
MOLISA OR DOLISA OF
PROVINCE

- At least 20 days for online registration and 30 days for direct registration



RESPONSE ON ACCEPTED
AND NON-ACCEPTED JOB
POSITIONS

- MOLISA or DOLISA of province to respond within 10 days

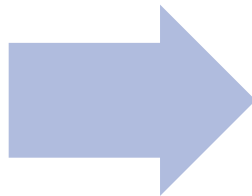


Entry and temporary stay for business purposes of EU natural persons in Vietnam: WORK PERMIT

STEP 2: SUBMISSION OF AN APPLICATION FOR WORK BY APPLICANT

SEND APPLICATION TO
TO MOLISA OR DOLISA
OF PROVINCE

- At least 15 working days before the day on which a foreigner worker starts to work



ISSUANCE/REJECTION
OF WORK PERMIT

- MOLISA or DOLISA of province to respond within 05 days
- Maximum duration of WP: 2 years



Entry and temporary stay for business purposes of EU natural persons in Vietnam: WORK PERMIT

WORK PERMIT EXEMPTIONS (14 types), including

- **Intra-company transferee within 11 sectors in the schedule of commitments in services between Vietnam and WTO**, including: business services, communication services, construction services, distribution services, educational services, environmental services, financial services, health services, tourism services, recreational and cultural services, and transport services;
- Being granted a **communication and journalism practicing certificate in Vietnam** by the Ministry of Foreign Affairs as per the law;
- Entering Vietnam to hold the position of a **manager, executive, expert or technical worker** for a period of work of **less than 30 days and up to 3 times a year**;
- **Student** studying at a foreign school or training institution which has a probation agreement with an agency, organization or enterprise in Vietnam;
- Being in charge of **establishing a commercial presence**;
- Being **certified** by the Ministry of Education and Training as a foreign worker entering Vietnam for **teaching and research** purpose.



Entry and temporary stay for business purposes of EU natural persons in Vietnam: WORK PERMIT

REMAINING ISSUES IN PRACTICE:

Lengthy procedures:

- **Lengthy and complicated online submission procedures:** may take an extra of 7-10 days
- **Longer processing time for Step 1:** may take 15-17 days for a response from MOLISA/DOLISA (3-7 days to announce the reception of the complete application)
- **Longer processing time for issuance of work permit:** online submission + 5-7 days (announcement of receiving complete documents) + 7 days (submit printed copies + 1-2 days for issuance of WP → 14-15 days in total)

Requirements of additional documents:



Entry and temporary stay for business purposes of EU natural persons in Vietnam: WORK PERMIT

REMAINING ISSUES IN PRACTICE:

Requirements of additional documents, though may not be required by the law:

- For applicant, to submit an introduction paper and the certificate of business registration of the company;
- For managers and executives, the applicant shall submit all degrees, diplomas, certificates proving their experience related to the potential position;
- For experts, in many cases, the DOLISA of province accept only certificates of experience issued abroad; all certificates issued by Vietnamese entities are not considered.

More difficult to justify demand on foreign workers:



Entry and temporary stay for business purposes of EU natural persons in Vietnam: WORK PERMIT

REMAINING ISSUES IN PRACTICE:

More difficult to justify demand on foreign workers:

- (i) why the company needs foreign workers;
- (ii) (detailed job description of the potential employee;
- (iii) (requirements related to qualifications and experience of the foreign workers;
- (iv) the reasons why the company is not able to employ Vietnamese workers.



MINIMUM WAGES

Regions	Minimum wages per month	Minimum wages per hour
Region I	4.680.000 VND	22.500 VND
Region II	4.160.000 VND	20.000 VND
Region III	3.640.000 VND	17.500 VND
Region IV	3.250.000 VND	15.600 VND

Source: Decree no 38/2022/ND-CP, July 2022 onwards

- applicable on a non-discriminatory basis for domestic and foreign workers in Vietnam in each region
- the wages paid for EU's qualified workers are usually higher (even many times) than these statutory minimum wages
- foreign workers can receive their salary in foreign currency



SOCIAL SECURITY

	Sickness and parental insurance benefit fund	Occupational accident and disease benefit fund	Retirement and death insurance benefit fund	Total
Foreign employee	-	-	8%	8%
Employer	3%	0.5%	14%	17.5%

Source: Decree No. 143/2018/ND-CP, Jan 1st 2022 onwards

CONDITIONS

- i) to obtain work permits, practicing certificates, practicing licenses issued in Vietnam;
- ii) To have employment contract (indefinite-term or definite-term) valid for at least one year with employers in Vietnam
- iii) Not intra-corporate transferees or reach retirement age determined by the 2019 Labour Code



TAXATION

For foreigners being resident individuals:

- i) being present in Vietnam for 183 days or more in one calendar year or in 12 consecutive months from the first day of entry within Vietnam; or
 - ii) having a permanent residence in Vietnam, including a place to live under permanent residence registration or a rented house in Vietnam under a term lease
- income tax regime is applied for income from business, salaries and wages with rates specified by Partial Progressive Tariff in article 7.2 of the Circular 111/2013/TT-BTC

For foreigners being NON-resident individuals:

- Income from business activities: 1% for goods trading; 5% for the service business; and 2% for production, construction, transportation and other business activities
- Income from salaries and wages: tax rate is 20% of taxable incomes from salaries and wages



REMITTANCE AND PENSION

REMITTANCE


According to the Decree no. 70/2014/NĐ-CP, non-resident and resident foreign workers in Vietnam can easily remit or carry overseas:

- i) the foreign currency kept in their accounts or legally earned in Vietnam; and
- ii) the foreign currency purchased from Vietnamese dong legally earned in Vietnam

PENSION

- Under the mandatory social security applicable for foreign workers in Vietnam, foreign workers shall be entitled to the nearly full social security benefits like Vietnamese workers (excluding the unemployment insurance benefits): sickness, maternity, occupational accident, disease, retirement and death insurance benefits
- Pension for foreign workers is similar to the regime applicable for Vietnamese workers:
 - the pension entitlement rates
 - the adjustment of pension benefits
 - the starting date of entitlement to the pension
 - the one-off social security benefit entitlement
 - temporary suspension or continuation of entitlement to monthly pension





THANK YOU FOR YOUR
ATTENTION!

III (3) - Presentation on practical implementation of the law, with real life experiences

Retirement age for local employees under Labor Code 2019:

Upfront, Vietnam has gradually increased the retirement age to 60 years for women and 62 for men starting from 2021.

In particular, with effect from 1 January 2021, a male employee can retire at 60 years and three months and a female employee can retire at 55 years and four months.

After that, three months will be added each year to the retirement age of a male employee until it becomes 62 in 2028. For a female employee, it will be raised by four months on a yearly basis until it becomes 60 in 2035.

III (3) - Presentation on practical implementation of the law, with real life experiences

Retirement age for expats working in Vietnam

Under Article 151.1 of Labor Code, a foreign employee must be at least 18 years of age and has full legal capacity. This means that there is no maximum threshold applicable for expat's age to work in Vietnam.

Under Decree 143/2018/ND-CP on mandatory social insurance scheme, expats working in Vietnam under a work permit (e.g. expat employee) or under a practicing certificate (e.g. an expat lawyer) shall be required to contribute to the social insurance scheme until reaching the retirement age applicable to male and female employees under the Labor Code. To stop contribute to the social insurance scheme does NOT mean to stop working.

Why have a number of work permit applications been rejected by authorities because expat employees reach statutory retirement age in practice?

III (3) - Presentation on practical implementation of the law, with real life experiences

What to do after the issuance of work permit?

- Employer and Expat to enter into Vietnam-law labor contract.
- Term of labor contract must be in line with the term of the issued work permit.
- The employer shall send the signed lab or contract to the competent authority that issued that work permit.
- The labor contract shall be the original copy or a certified true copy.
- Penalty of up to 6M VND (equivalent to US\$ 250) shall apply in case of failure to follow this obligation.

III (3) - Presentation on practical implementation of the law, with real life experiences

Is there an indefinite-term labor contract for expat employees?

- **No indefinite term labor contract for expat employees**
- Only multiple fixed term labor contracts. Term of labor contract must be in line with term of issued work permit.
- **Local employees:** First fixed-term labor contract of up to 36 months -> Second fixed-term labor contract of up to 36 months -> Indefinite-term labor contract

II (4) - Discussion and Q&A

