

# Vietnam NewsBrief\*

An update on labour issues in Vietnam

3 April 2008

## Decree on removal of 3% cap of foreign employees working for enterprises in Vietnam

On 25 March 2008, the Government issued Decree 34/2008/ND-CP ("Decree 34") repealing the previous regulations on the employment and administration of foreigners working in Vietnam.

The most notable changes under Decree 34 are the removal of the 3% limitation on the ratio of foreign employees to the total number of employees in an enterprise and the removal of the work permit exemption for Chief Representatives, heads of foreign branches and employees of foreign contractors. Although not clear, it would also seem that the previous exemption applicable to foreign individuals appointed to the Members' Council of limited liability companies may also have been removed.

Those formerly exempt employees currently working in Vietnam are now required to apply for a work permit within 6 months from the effective date of Decree 34. It is expected that further clarification on the work permit application procedures for such employees will come in the form of a Circular providing guidance on the implementation of Decree 34.

As expected, with the removal of the 3% limitation, the requirements for obtaining and/or extending a work permit have become more stringent. The new criteria will not affect those currently working under a valid work permit. However, under Decree 34, an organisation wishing to extend the work permits of their foreign employees must be able to justify the need for that employee and the steps being taken to train a Vietnamese employee to replace the foreigner.

Organisations will also be expected to submit to the labour authorities a report on those employees exempt from work permit requirements and provide documentation regarding the employee similar to that required for a normal work permit application.

As under the previous regulations, all documents to be submitted as part of a work permit application must be translated, notarised and legalised.

There are some other interesting and important changes under Decree 34 which however will require some further clarification, for example:-

- (i) In respect of work permit applications for intra-corporate transferees (i.e. foreign employees transferred to Vietnam from within the corporate group), the employer must be able to show that at least 20% of the total number of its managers, executives and specialists are

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Vietnamese citizens. Although this provision is in line with Vietnam's WTO Commitments, it would not seem consistent with the general removal of the foreign employee ratio limitations. This requirement does not apply to representative offices.

- (ii) Foreigners who are either the owner of a single limited liability company or member of a limited liability company with two or more members are exempt from work permit requirements. As the member of such companies are often corporates, it is not clear whether this exemption also extends to foreign individuals appointed by the foreign owners to the Members' Council of such companies.

Decree 34 shall take effect within 15 days from the date it is published in the Official Gazette.

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