

THE
CORPORATE
IMMIGRATION
REVIEW

EIGHTH EDITION

Editor
Chris Magrath

THE LAWREVIEWS

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PREFACE

The politics of immigration continue to dominate headlines worldwide.

The tensions between national protectionism, free trade arrangements and the need to attract skilled workers and foreign investors create conflict and inconsistency in many jurisdictions. This can be seen most acutely in the United Kingdom, where the net migration target (the aim to reduce the annual population increase caused by migration to the tens of thousands from a high of nearly 350,000) continues to be the central plank of government immigration policy. The result of the Brexit referendum in June 2016 is beginning to impact on the figures. In the 12 months from June 2016 to June 2017, migration from the EU decreased by over 100,000, causing a significant drop in net migration. Undoubtedly this is the consequence of uncertainty surrounding the United Kingdom as a long-term destination of choice – EU workers find the country less attractive. The referendum result has therefore assisted in the delivery of the overarching policy.

However, this reduction in the supply of workers from the EU has resulted in a spike in demand for workers from the rest of the world. The consequence of this has been friction in the Tier 2 (General) scheme, where demand has exceeded supply of Certificates of Sponsorship for the final four months of the allocation year (April to March). The government imposes a strict limit of 20,700 Certificates of Sponsorship for skilled new hires from abroad across all employers annually, regardless of business needs. This overall annual allocation is broadly equally divided across 12 monthly allocations. The final four months of the year were oversubscribed, causing significant frustrations for the many businesses that cannot sponsor the workers they need. This is unhelpful when added to the general business uncertainty surrounding the United Kingdom's post-Brexit trading arrangements.

The reduction in worker supply dictated by government policy does not appear to have resulted in an 'upskilling' of the local labour market or a reduction in UK unemployment (which in any event remains fairly low). There is a risk that the strict migration policy and uncertainty caused by Brexit will result in a slowdown in the economy, as businesses struggle to fill skilled jobs. Is this really a sensible immigration policy for Britain in the 21st century?

Furthermore, setting aside the overall policy wisdom, a major question mark hangs over whether the Home Office has the operational capacity to handle a registration and settlement scheme on the scale required to manage Brexit. There are approximately three million EU nationals in the United Kingdom and each one of them will have to engage with a new 'light-touch' process between now and the end of the transition period in 2021. We are promised a streamlined digital scheme that will minimise inconvenience and delay, but how can this promise be squared with the need for data integrity and avoidance of

fraud? Apparently 1,200 new caseworkers are being recruited to carry the burden. However, whether they can be recruited and trained in time to ensure a seamless transition to a new set of immigration arrangements remains to be seen.

The future of post-Brexit immigration policy remains opaque. The Migration Advisory Committee (MAC) will not issue its substantive report on EEA nationals and the UK labour market until September, although earlier indications of its thinking are expected. A White Paper and Immigration Bill will then follow. It will be some time before clarity is reached on the new immigration arrangements for 'taking back control'.

The Home Affairs Committee of the House of Commons has been highly critical of the government's Brexit preparedness in the context of immigration. The Committee's report (February 2018) expresses frustration at the lack of administrative preparedness and policy definition, and there is a sense that the government is feeling its way on the issues rather than providing firm leadership. By the time the next edition of *The Corporate Immigration Review* is published, the immigration road map to Brexit should be much clearer.

Donald Trump's 'America First' immigration and trade policies provide an echo of the situation in the United Kingdom. As with Brexit, we see in the United States the long-term effects of populism at the ballot box. The realisation of the President's promise to start building a border wall on 'day one' has proven more elusive in practice than his campaign-trail proclamations suggested. He is learning that the implementation of ideas is more complex in Washington than it is when undertaking more traditional real-estate deals in the private sector (and particularly when Congress controls the budget). However, Trump's hard-line approach to immigration policy is beginning to bite in less symbolic ways. On the ground, applications to the authorities are receiving considerably more scrutiny than was the case under the Obama administration, attracting harsher refusals or calls for additional evidence. US immigration practitioners report significant uncertainty in respect of the outcome of their cases. Paradoxically, this uncertainty results in a spike in business for lawyers, as applicants seek guidance and assistance in navigating a fast-changing legal landscape.

It is perhaps the fate of the 'Dreamers' that speaks most eloquently to the shift in approach to immigration policy in the United States. Named after the failed Development, Relief and Education for Alien Minors Act, the Dreamers are migrants who were brought to the United States illegally as children and who applied for renewable two-year work permits under the Deferred Action for Childhood Arrivals (DACA) programme, introduced under Barack Obama in 2012. In 2017, the Trump administration rescinded DACA and announced that, from 5 March 2018, the protection it offered to almost 800,000 people would begin to expire. Since then these individuals have found themselves at the centre of a political impasse that shut down the US federal government for three days. The Democrats had refused to agree to a budget deal that did not offer permanent protection to the Dreamers, but on 22 January they relented, agreeing to a short-term spending package to fund the government until 8 February, in exchange for a pledge by Republicans to address the fate of DACA recipients. At the time of writing, the Dreamers' future remains uncertain. Whether they are provided with a route to citizenship or face deportation will depend on the Democrats' ability to negotiate with a Republican Party dominated by hardliners and an unpredictable president.

Travelling east, we can see the tentacles of protectionism spreading to Singapore, where the Fair Consideration Framework (the Framework) approaches its fourth anniversary. Businesses are witnessing increased scrutiny of foreign manpower profiles, Employment Pass applications and hiring practices.

The Framework was introduced in 2014 as part of the Singapore government's overall strategy to promote fair employment practices and to strengthen the Singaporean core in the local workforce. Since then, the practical measures designed to facilitate this have been increasingly felt by companies and individual foreigners. The Ministry of Manpower (MOM) continues to emphasise that a quota for Employment Passes is not on the agenda, and instead that foreign workforce growth must be moderated to ensure it functions as an enhancement to the local workforce in a sustainable manner. In essence, the measures aim to maintain the delicate equilibrium between protecting and nurturing the local workforce, while also capitalising on available foreign talent to enable the longer-term growth and expansion of the Singapore economy. Development of the local workforce is key, as unemployment rises and net growth in the local economy begins to slow down.

The MOM wishes to see employers actively interpreting the spirit of the Framework in demonstration of their commitment to the overarching policy. The authorities will not shy away from scrutinising a company's hiring practices and curtailing work pass privileges in circumstances where firms are found to have nationality-based or other discriminatory HR practices. Around 300 countries are currently estimated to be on the MOM watch list and are required to work with Singapore's Tripartite Alliance for Fair and Progressive Employment Practices to demonstrate their commitment to improving internal hiring and employment practices. The term 'triple weak' has been used to describe companies found not to be actively nurturing a strong Singaporean core or demonstrating a strong relevance to Singapore's economy and society.

Immigration practitioners, wherever they live, face a constant stream of political scrutiny, policy development and legislative change. Now in its eighth edition, *The Corporate Immigration Review* contains the thinking of the world's leading business immigration lawyers. We are immensely grateful to them all for their contributions.

Chris Magrath and Ben Sheldrick

Magrath Sheldrick LLP

London

May 2018

VIETNAM

*Jean-François Harvey and Bastien Trelcat*¹

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 12.9 million international arrivals in 2017, with tourism making up approximately 7 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 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 surge in tourism, Vietnam has also temporarily extended its visa exemption policy allowing a maximum 15-day stay for visitors from the United Kingdom, France, Germany, Italy and Spain, which is set to expire on 30 June 2018 (but may well be extended). Visitors from Russia, Japan, South Korea, Denmark, Norway, Sweden and Finland 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, in a two-year pilot scheme (effective from 1 February 2017), for foreign tourists visiting the country. Citizens from 46 countries will be 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 50th birthday at the end of this year and, with aims including creating a single market, it is now, more than ever, 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. Being the seventh-largest economy in the world, 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 ARC will enable Vietnam's GDP to increase by up to 14.5 per cent in the coming years. Vietnam ended year 2016 with growth rate of 6.2 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 will get 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 will allow Vietnam to strengthen its position as one of the leading ASEAN countries.

RCEP

The TPP was considered an ambitious, ground-breaking partnership. However, the prospects for this partnership had to be reviewed following the withdrawal of the United States in January 2017, and although, now, the lowering of trade, tariff and non-tariff barriers will ultimately not be attained through the TPP, these goals might yet be reached through another association – the RCEP.

RCEP members include the 10 ASEAN nations as well as six other countries: Australia, New Zealand, South Korea, Japan, China and India. The Partnership covers economic and technical cooperation and sets trade incentives for goods, services and investments among the above countries. The RCEP is still at an early stage. The Kobe negotiating round held on 3 March 2017 shows that this treaty might be used as a way to compensate TPP's setback on a larger scale by incorporating trade deals with China and India that were not included in the TPP.

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 agreements are also seen as an important step towards providing greater freedom of movement among SEA countries.

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 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 county 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

Regulations applicable to the work permit process

Participation in the AEC has triggered an increase of foreign employees in the Vietnam labour market in the past couple of years. 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 3 February 2016, the government issued Decree 11/2016/ND-CP for foreigners working in Vietnam. This Decree came into effect on 1 April 2016, creating several favourable changes to the classification of foreigners exempted from requiring work permits, and simplifying application requirements for work permits for non-exempt applicants.

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 old 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 as of 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 complete a work permit application and obtain permission from the local Department of Labour, Invalids and Social Affairs (DOLISA) by providing reasons for hiring a foreign employee. The DOLISA is the sole governmental branch that possesses the authority to issue Vietnam work permits to foreign nationals. To ensure continuing immigration compliance, employers are required to submit reports and notify the local DOLISA of any changes concerning their hired foreign nationals.

The foreign hire 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 certificate proving that they do not have any criminal record (which must be issued no later than 180 days prior to application); and recent passport-sized photographs.

Applicants are not required to demonstrate any language proficiency, although it is necessary to undergo medical examinations. With effect from 1 January 2018, the compulsory social insurance scheme will also be extended to foreign employees working in Vietnam. However, as of the first quarter of 2018, although the social insurance scheme has theoretically been extended to foreign employees, regulations have yet to be drafted detailing how this is to be implemented.

Processing time

The processing time for work permit applications in Vietnam is divided between the issuance of the initial visa and the work permit afterwards. For the issuance of the initial visa, the overseas visa-issuing authority of Vietnam generally issues the visa within three working days of receipt of the notification from the immigration authority or the competent authority of the Ministry of Foreign Affairs. Subsequently, the local DOLISA will issue a work permit within seven working days of the date of receipt of a completed application. Where the DOLISA refuses to grant a work permit, a written reply containing the reasons for the rejection shall be provided.

Permit validity and quotas

Several factors may influence the initial duration of a work permit as long as this period is less than 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 the foreign hire is permitted to complete as part of the activities of the foreign enterprise, etc. Generally, the validity period for a reissued work permit will be for a maximum of an additional two years. Work permits and visas can continue to be issued as long as the applicant satisfies the conditions provided by law.

Although the Vietnamese government does not impose quotas for work permits and visas, Vietnam prohibits the employment of foreign workers to perform jobs that can be satisfactorily executed by local workers, especially regarding manual labour and unskilled jobs. While the employer may be able to make determinations on the necessity of hiring a foreign employee, a written request must be sent to the president of the local People's Committee, and it is ultimately at the discretion of this body to grant the employer permission to hire a foreign national.

Work permit exemptions

Vietnam currently suffers from a shortage of highly skilled labour and has consequently introduced various plans and incentives to improve human capital, including education and training to enhance the knowledge and professional skills of employees located in rural areas as well as attracting highly skilled foreign labour to the country. Vietnamese law provides specific exemptions from the requirement to obtain a work permit for foreign nationals; for example, for managerial positions, experts or technicians.

With that said, while highly skilled foreign hires are exempted from obtaining a work permit, it is still necessary to obtain the appropriate entry visa in accordance with their category of work. To promote the objectives of industrialising and modernising the economy, the incentives for highly skilled applicants are meant to ease the administrative burden on enterprises seeking to hire foreign workers.

Intra-company transfers

Introduced by Vietnam's Ministry of Industry and Trade, Circular 35/2016/TT-BCT (the Circular) came into force in February 2017. To address the administrative burden for companies seeking internal transfers of foreign employees, the Circular provided the requirements and procedures for work permit exemptions of intra-company transfers (ICTs) of foreign transferees to Vietnam for companies operating in one of 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 defined in Annex I or 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.

In the case of companies operating outside the sectors provided under the Circular, internal transfers of foreign employees that are seeking work permit exemptions will require written authorisation from the DOLISA. Otherwise, such ICTs are subject to the usual formalities and necessary visas and work permits to commence employment in Vietnam.

If all the necessary conditions are satisfied, a work permit exemption application can be submitted to the local DOLISA 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 is approximately three business days upon reception of the application package. Subsequently, the DOLISA 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 and the DOLISAs 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; and, if causing any damage, shall pay compensations in accordance with law.

A legal worker shall be protected by Vietnamese laws. 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 employees recruited 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, a Vietnamese labour contract signed with a foreign employee is the same as the labour contract signed with a Vietnamese worker. 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 and labourers;
- b* DN visas are issued to working partners of Vietnamese businesses;
- c* DT visas are issued to foreign investors and lawyers operating 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 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 institutions in Vietnam; and
- g* NN3 visas are issued to working partners of international NGOs, representative entities of foreign businesses and representative offices of foreign specialised institutions in Vietnam.

A visa for Vietnam can be applied for by post or in person at a local consulate. 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. This person 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 is and will, in the coming years, continue 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 and EVFTA are seen as tools allowing Vietnam to hasten and strengthen its competitiveness.

Vietnam's Foreign Investment Agency has confirmed this year that the FDI inflows of foreign capital invested into Vietnam are again breaking previous records, with US\$17.5 billion in 2017, compared with US\$15.8 billion in 2016. Indeed, the total registered capital of FDI projects launched in 2017 reached US\$35.88 billion, up by 44.4 per cent compared with 2016, which can be explained principally by the fact that many large-scale projects were granted investment registration certificates over the past year. As of the end of 2017, the total accumulated registered capital of FDI projects is estimated at US\$172.35 billion, representing approximately 54 per cent of the total registered capital of businesses in Vietnam.

As mentioned, the process of setting up a foreign-owned business in Vietnam has been eased by the Vietnamese licensing authorities and the current system is expected to become even more efficient in the coming years.

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.

Businesses are allowed to be cost-effective and are able to meet the needs of customers and clients through employing young educated workers, with the further benefit of being able to hire foreign workers easily. In fact, prior to the worker mobility established by the AEC, foreign employment was already fully implemented thanks to a strong work permit system that expedited applications by foreign workers for employment in Vietnam.

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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