



## COMMENTS TO DRAFT CIRCULAR ON WORK PERMIT FOR WTO SECTORS

Ho Chi Minh City, 18 October 2013

ARTICLES	CONCERNS	RECOMMENDATIONS
<u>References</u>	As from 01 November 2013, Decree 34/2008/ND-CP and Decree 46/2011/ND-CP shall be no longer effective and replaced by Decree 102/2013/ND-CP.	We recommend that reference to Decree 34 and Decree 46 should be removed and replaced by Decree 102/2013/ND-CP.
<u>Article 2: Subject of Application</u>	<p>What is the definition of “manager, managing director or specialist”?</p> <p>Are there any definitions/criteria for the DeLISA to assess if the position meets the requirements?</p>	The subject of application should be in line with the WTO’s Schedule of Specific Commitments in Services.
	<p>What is the interpretation for “...was recruited for the company 12 months before as minimum”?</p>	<p>In our opinions, this regulation should be interpreted as follows:</p> <p><i>The foreign employee has been recruited (with labour contract) for the foreign company, or its branches/subsidiaries, or other companies of the same corporation 12 months before as minimum.</i></p>



	<p>The requirement for transferee to be “recruited for the company 12 months before as minimum” appears to be a constraint.</p> <p>This shall confront companies with difficulties in establishing or strengthening their presence in Vietnam, hence raises obstacles to FDI, because they need to be able to hire or to transfer managers in case of need in a more and more fast changing context.</p>	<p>Since many companies have internal transfer policy for their employees from one country to another, the employee can work in different countries for that company or its branches/subsidiaries, and have labour contract with these branches/subsidiaries or other companies of the same corporation. It is unnecessary to require that the employee has been recruited for that exact foreign corporation or company which is hiring them in Vietnam 12 months before as minimum.</p> <p>Given that the constraint cannot be totally removed, we would like to recommend that at least companies should be able to hire or transfer managers occupying top management positions (general director, COO, CFO, managing director, chief of representative office) without being subject to the constraint above.</p>
<p><b><u>Article 3.</u></b> <b>Documentations required to certify</b></p>	<p>a) <i>Request form;</i></p> <ul style="list-style-type: none"> <li>o Does this refer to form No.11? Will the “request form” be attached to the circular?</li> </ul>	



<p><b>that a foreign employee is moving within a company which operates in the 11 sectors of Viet Nam's WTO service commitment.</b></p> <p><b>(point a to point e)</b></p>		
	<p><i>b) Profile of the employee, including: last name, first name, age, gender, nationality, passport number, starting and ending date of working, working position;</i></p> <ul style="list-style-type: none"> <li>○ Will any format of "profile" be accepted or will there be a specific form attached to the circular?</li> </ul>	
	<p><i>c) Assignment letter of the foreign company and document to prove that the employee was recruited 12 months before moving to Viet Nam;</i></p> <ul style="list-style-type: none"> <li>○ What document to prove that the employee was recruited at least 12 months before moving to Vietnam will be accepted? Should it be only labor contract or other documents required as well (please specify)?</li> </ul>	
	<p><i>d) Document produced by 3rd party to certify that professional skills of the employee fit well the sector of the company;</i></p> <ul style="list-style-type: none"> <li>○ What does "3<sup>rd</sup> party" refer to?</li> <li>○ How should we define "fit well the sector of the company"? Does this means that only applicants who have skills that matches the sector of the company are exempted? For example, based on this regulation, an intra-company transferee who is Financial Risk Manager assigned to a bank (finance sector that belong to the 11 sectors) will be exempted of Work Permit. However, is it also the case for an intra-company transferee who is IT Engineer coming to install a new software for the same bank? Or this IT Engineer</li> </ul>	<p>From our prospective, this requirement is unnecessary and will create lots of confusion and grey areas, Foreign nationals can submit their university degree or work testimonial to certify that their skills matches with the position in Vietnam but NOT with the sector of the company. Indeed, How do you justify that professional skills for a CEO position fits well with the sector of company? How do you justify that a Marketing Manager fits well with a company in Health sector?</p>



	<p>has to apply for a work permit.</p> <ul style="list-style-type: none"> <li>○ Who is allowed to certify? Any special regulation? Can a Vietnamese law firm certify for an IT businessman? → This can lead to both confusion and troubles later on.</li> </ul>	<p>We would like to put forward 02 recommendations as follows:</p> <ul style="list-style-type: none"> <li>- Provide clarification on “3rd party” or to remove it for the avoidance of confusion.</li> <li>- Remove the part "fit well with the sector of company" or provide clearer guidance,</li> </ul>
	<p>e) <i>Document(s) to prove that the sector of the company is among 11 sectors of Viet Nam’s WTO service commitment (this can be Investment Certificate or Business License...?)</i></p> <ul style="list-style-type: none"> <li>○ As per this Circular, DOLISA will be responsible to receive/approve the exemption application. We are concerned about how DOLISA officials will be able to identify if the company belongs to the 11 services or not only based on Investment Certificate or Business License... Will further guidelines be provided?</li> </ul> <p>These supporting documents will be provided in one copy and one original, those prepared in foreign language must be translated into Vietnamese and notarized in accordance with Vietnamese law.</p>	<p>Is this referring to the document(s) of the registered company in Vietnam or can it also be document(s) from the sending entity in overseas.</p> <p>Instead of the term “<i>this can be Investment Certificate or Business License...?</i>” <i>our recommendation would be</i> “Investment Certificate, Business License or equivalent official documents providing detail of the company’s business sector”.</p> <p>To prevent from any confusion can it be written as below, in line with decree 102, article 8, 3 c: “.....documents that are issued in foreign language are <b>exempt from consular legalization</b> but must be translated into Vietnamese and notarized in accordance with Vietnamese law</p>