



## **PROPOSED TALKING POINTS**

### **for the meeting with H.E. Mr. Pham Minh Huan, MOLISA Vice Minister, on the implications of the new Decree 102/2013-ND/CP**

Date and time: 09.30-11.00, 15 October 2013  
Venue: MOLISA office, Hanoi, Vietnam

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*First and foremost, EuroCham together with its HR&Training Sector Committee wishes to extend the greatest congratulations to H.E. Mr. Pham Minh Huan and the Ministry of Labour, Invalids and Social Affairs (MOLISA) on the ratification of new Decree 102/2013-ND/CP on foreign nationals working in Vietnam. We are pleased to note that the new Decree, once in force, shall bring about a number of radical changes, exerting positive impact on businesses, i.e. the inclusion of more cases where foreigners working in Vietnam are exempt from work permit, or the removal of job advertisement, etc. It is of even deeper significance under the circumstance that these constructive developments are the outcomes achieved through various consultative dialogues between the MOLISA and the industry, of which EuroCham is a part.*

*Bearing that partnership spirit in mind, we very much appreciate His Excellency's openness for dialogues with the industry, and therefore wish to communicate some of our comments on the new Decree 102 to His Excellency, as follows:*

#### **Issue 1: Foreign nationals who enter Vietnam for short term assignment activities also required to apply for a work permit.**

The requirement for foreign nationals who are assigned to Vietnam on a **short term mission (less than 3 months)** to apply for a work permit shall lead to heavy administrative burdens considering the time they may stay in Vietnam, sometimes just couple of days. Examples of short term assignment activities are: deliver training to a Vietnam registered entity or contractor; conduct any type of audit at company's or contractor's site (quality, financial, tax compliance, security, IT audit...etc); deliver Good / equipment; purchase goods / equipment; supervise/manage an installation of equipment for the company or for client; maintain/repair specific equipment; hire people (job Interview) or terminate labor contract

We recommend that the MOLISA should develop a list of activities allowed on Business visa only (attend meeting, conference, and such activities as above); and include such short term activities in the list of Work Permit exemption for foreign nationals.

#### **Issue 2: Work Permit renewal applications of more than 15 days not accepted**

During our meeting with MOLISA in Dec 2012/ Jan 2013, we had already highlighted the issue of not accepting Work Permit **renewal applications of more than 15 days** versus 30 days (as regulated previously) **before its expiry date**. This is a critical timing issue, as in many situations companies shall not have enough time to extend visa/ temporary Residence Card for the expatriate and family members on time.



We recommend that renewal applications of up to 30 days before work permit expiry date should be accepted as regulated previously.

**Issue 3: Decree 102, Article 2 on Subject of application, point 1h) The person in charge of establishing the commercial presence.**

We wonder what is the process for a person who comes to Vietnam to establish an entity to obtain a Work Permit, while this local entity, sponsoring the work permit, is not yet existing?

**Issue 4: Drafting and Issuance of guiding Circular**

Is there any indication as until when the Circular will be issued? Since the Decree shall not take effect until 1 November, should we expect the Circular to be issued on or before (or after) that date?

From our experience in the past, the Circular usually isn't issued on a timely manner (i.e should be before the effective date of the Decree). Shall this be the case for this Decree?

How are we going to address some of the new rulings that do not have proper guidelines and instructions such as: i) obtaining the consent from the People's Committee, and ii) reporting of use/demand of foreign recruits for the applications that are to be submitted on or after November 01.

**Issue 5: New categories of foreign employees subject to work permit exemption**

One of the new categories is listed as "volunteers." In the draft decree, volunteers are defined as "foreigners who work in Vietnam voluntarily without salary to implement international treaties which the Socialist Republic of Vietnam is a party to". But this definition has been removed from the final Decree 102 and only says "volunteers". Can all volunteers (no matter what entity they are volunteering for) permitted to enter with just a work permit exemption report?

**Issue 6: According to Article 8.2 of Decree 102, employer is required to obtain the local DOLISA's written confirmation that the employees are not required to obtain a work permit.**

Please clarify where the request for the written confirmation should come from: i.e the employer's overseas office or the host office in Vietnam?

Shall local DOLISA issue a written confirmation? As of current practice, Vietnam host entity will fill in and stamp the exemption form No. 11 with personal details of the assignees and



assignment details, before it gets submitted to DOLISA. Also with the current practice, we do not get any official written confirmation from DOLISA but only a signature/initial from the officer acknowledging the receipt of exemption form.

**Issue 7: Additional documents for work permit application dossier (Internal transferees)**

In addition to assignment letter, a proof of employment of at least 12 months is required. Are the individual's resume/CV plus assignment letter considered as sufficient proof?

**Issue 8: Item 1, Article 7 of Decree 102 on cases where foreign nationals are not required to apply for a work permit: Entering Vietnam for a period of less than 3 months to offer services... (as stipulated in Item 4, Article 172 of the Labour Code)**

Please clarify the definition of "services" in this context. Do they include intangible services such as training, consulting, auditing, after-sales services (for software/hardware products), etc.?

**Issue 9: Item 2, Article 4: The President of the People's Committee of the province shall issue written approval to the employer for the employment of foreign workers in each position.**

What's the turnaround time for approval? What happens if no approval? What next the industry should do?

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