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Foreign Employees in Vietnam

May 2010 The Vietnamese Government has issued a new Decree on Administrative Penalties for Breach of Law on Labour on 6 May 2010 which will come into effect on 25 June 2010. It replaces the current decree 113-2004-ND-CP.

The new Decree mainly regulates administrative breaches, forms and level of penalty, as well as measures for remedying consequences. Besides penalties for breaches of labour contracts, collective labour agreements, provisions on salary and wages and on working hours and rest breaks, the decree also provides for penalties regarding breaches of provisions on foreigner working in Vietnam.

The decree imposes fines between 15 and 20 million VND for employers who employ a foreigner who does not satisfy the requirements as laid down in Decree 34-2008-ND-CP on Employment and Administration of Foreigners Working in Vietnam, *i.a.* who do not have work permit or who are not a manager, executive director or expert. In addition, penalties shall be imposed *i.a.* in case of failure to conduct the correct procedures for extension or re-issuance of work permits as well as in case of failure to have a plan for training Vietnamese workers to replace foreign employee's working in Vietnam in case of work of high technical nature or managerial work for which Vietnamese workers are not yet able to satisfy the work requirements. A fine between 20 and 30 million VND shall be imposed in case an employer

recruits foreign employees without having notified the need to recruit such employees and / or fails to report to the Department of Labour regarding recruitment and administration of foreigners working in Vietnam. The limitation period for imposition of fines is one year from the last commitment of the breach.

Most decisively for foreign employees, the decree provides for the deportation of foreign employees working in Vietnam for three or more month without a work permit or foreign employees using a work permit that has already expired. This commitment is in line with the issued draft decree regarding the amendment of Decree 34-2008-ND-CP, which *i.a.* states that foreigners working without a work permit and failing to obtain one within six month after effectiveness of the amended decree (planned 1 July 2010) shall be deported. In addition, it also directs the Ministry of Public Security to not issue visas to foreigners who have worked in Vietnam for three month or more without a work permit or an extended work permit and to not extent temporary residence cards card to them but deport them.

Even if mentioned regulations do not in substance provide material changes (also current regulations provide in general for the same however not as detailed scope), it shows that handling of labour compliance especially regarding foreigners should be in the focus of both the employer as well as the employee.