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## Vietnam: Law on Overseas Worker Dispatch under Contracts

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On 13 November 2020, the new Law on Overseas Worker Dispatch under Contracts (Law No. 69/2020/QH14) was passed by the National Assembly (the “**New Law**”). This New Law will come into effect on 1 January 2022 and will replace the Law on Overseas Worker Dispatch under Contracts 2006 (the “**Current Law**”).

### 1. Additional prohibited acts

The New Law provides for additional prohibited acts, including, but not limited to:

- using forms of artifice to deceive workers, such as through false enticements, promises, advertising, or information; taking advantage of the recruitment/overseas dispatch of workers to engage in human trafficking, exploitation or forced labor, or other illegal acts;<sup>1</sup>
- committing labor-related discrimination or forced labor;<sup>2</sup>
- using security measures other than deposits and guaranties as prescribed under the New Law;<sup>3</sup> and
- collecting from workers brokerage fees or service charges in violation of the New Law.<sup>4</sup>

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<sup>1</sup> Article 7.1 of the New Law.

<sup>2</sup> Article 7.4 of the New Law.

<sup>3</sup> Article 7.10 of the New Law.

<sup>4</sup> Articles 7.8 and 7.9 of the New Law.

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## 2. Tightening of requirements for obtaining and maintaining licenses

Apart from requirements that are similar in nature to those provided under the Current Law and its guiding instruments, enterprises in Vietnam engaging in overseas worker dispatch services (“**Dispatching Service Providers**”) are additionally required to satisfy the following conditions, among others:

- they must have an electronic information site;<sup>5</sup> and
- the legal representative of such Dispatching Service Providers must (a) be a Vietnamese citizen, (b) have a minimum five years of experience in the field of overseas Vietnamese worker dispatch or employment services, and (c) not have a criminal record with respect to certain statutory crimes.<sup>6</sup>

Under the Current Law, there are no conditions with respect to any electronic information site or the nationality or criminal record of the legal representative, and the experience threshold for Vietnamese worker dispatch is set at a minimum of three years in fields involving overseas or international cooperation and relations.<sup>7</sup>

Additionally, a Dispatching Service Provider may have its license revoked if it does not dispatch any workers overseas for 24 consecutive months (except in cases of natural disasters, epidemics, wars, political instability, economic recession or other force majeure events resulting in the enterprise(s) of the host country(ies) not being able to receive workers).<sup>8</sup> Under the Current Law, a Dispatching Service Provider may have its license revoked if it fails to dispatch workers overseas for 12 months from the issuance date of its license.<sup>9</sup>

## 3. Workers no longer required to share brokerage fees

Under the Current Law, Dispatching Service Providers are allowed to request workers to bear entirely, or share a part of, the brokerage fees that are payable by the Dispatching Service Providers to brokers who connect such Dispatching Service Providers with foreign employers.<sup>10</sup> This provision has been removed under the New Law, and the collection of brokerage fees from workers is noted in the New Law as a prohibited act.<sup>11</sup> As such, it could be understood that workers are no longer responsible for paying such fees to the Dispatching Service Providers.

## 4. Notable new points regarding service charges

Under the Current Law, the service charges are payable by workers to Dispatching Service Providers.<sup>12</sup> The New Law has changed this, broadening “payers” of service charges to cover both workers and foreign employers. Accordingly, if a foreign employer has already paid the service charges, the Dispatching Service Provider may only collect from workers the deficit amount of the service charges, if any, agreed by the parties.<sup>13</sup>

<sup>5</sup> Article 10.1(e) of the New Law.

<sup>6</sup> Article 10.1(c) of the New Law.

<sup>7</sup> Article 9.3 of the Current Law; Article 9.2 of Decree 38/2020/ND-CP.

<sup>8</sup> Article 16.2(c) of the New Law.

<sup>9</sup> Article 15.2(c) of the Current Law.

<sup>10</sup> Article 20 of the Current Law.

<sup>11</sup> Articles 22 and 7.8 of the New Law.

<sup>12</sup> Article 21.1 of the Current Law.

<sup>13</sup> Article 23.2(d) of the New Law.

A Dispatching Service Provider may only collect service charges from workers after it has registered the relevant labor supply contract with, and obtained approval from, the relevant authority and executed overseas worker dispatch contracts with such workers.<sup>14</sup>

If workers must return to Vietnam prior to the expiration date as agreed, due to reasons not attributable to such workers, Dispatching Service Providers must return to the workers the paid service charges plus interest calculated in proportion to the remaining period of the dispatch contract.<sup>15</sup>

## 5. Notable new points regarding overseas dispatch for training

These provisions are applicable to enterprises duly established in Vietnam, including foreign invested enterprises, that wish to send their employees abroad for training and improving their professional skills, including intra-group training.

- Under the Current Law, there are four contracts to be signed among the parties relating to this arrangement, namely (i) a contract for receiving the workers signed between the employer and the foreign entity that will receive the worker for training; (ii) an overseas internship contract signed between the employer and the worker; (iii) a labor contract signed between the employer and the worker, and (iv) an internship contract for training and improving professional skills signed between the foreign entity and the worker.<sup>16</sup> Under the New Law, contract (iv) is no longer required.<sup>17</sup>
- Notably, the employer is required under the New Law to accept the return of the dispatched workers and assign them to suitable positions in consideration of the knowledge that they have acquired overseas.<sup>18</sup>

## 6. Additional rights and obligations of workers dispatched overseas

Under the New Law, workers are (i) entitled to unilaterally terminate the relevant contracts if they are mistreated, are forced to work, or face clear and direct threats to their life or health, or are sexually harassed in the course of their work; and (ii) exempt from paying social insurance and personal income tax twice (i.e., they need to pay tax in only one of either Vietnam or the host country) if Vietnam and the host country have executed an agreement(s) for the avoidance of double social insurance contributions or taxation.<sup>19</sup>

Under the New Law, workers dispatched overseas (and not their employers) are required to notify the local authority within 15 days from the date of their return to Vietnam.<sup>20</sup>

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<sup>14</sup> Article 23.2(c) of the New Law.

<sup>15</sup> Article 23.3 of the New Law.

<sup>16</sup> Articles 34.1, 34.2, 35.1, 35.3 and 35.4 of the Current Law.

<sup>17</sup> Articles 36.1, 36.3, 37.1 and 38 of the New Law.

<sup>18</sup> Articles 41.2(i) and 48.4 of the New Law.

<sup>19</sup> Articles 6.1(dd) and 6.1(g) of the New Law.

<sup>20</sup> Article 6.2(g) of the New Law.

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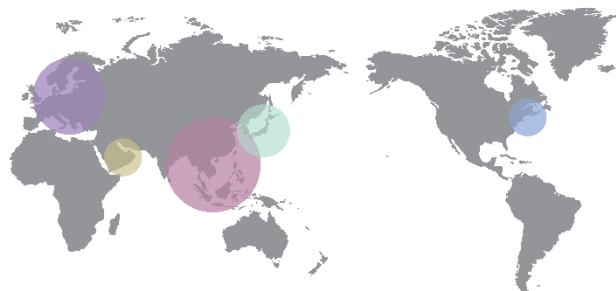


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