

THE

CORPORATE  
IMMIGRATION  
REVIEW

SEVENTH EDITION

Editor  
Chris Magrath

THE LAWREVIEWS

# THE CORPORATE IMMIGRATION REVIEW

The Corporate Immigration Review

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# PREFACE

Who would have thought it? Twelve months ago we considered a most unlikely scenario whereby the UK votes to leave the European Union and Donald Trump is elected President of the United States. This presented fascinating material for journalists to debate and for lawyers to analyse as a theoretical outcome – but hardly likely to trouble the status quo in reality. This ‘double whammy’ started the year as a fanciful possibility and yet became, over time, a harsh reality. 2016 was certainly eventful. Momentous may be a better word.

For UK immigration practitioners, the Brexit vote has been both a gift and a curse. Endless hours have been spent discussing the Article 50 process, the content of the negotiations that follow and the potential outcome for Britain’s new place in the world. Will we opt for a Norway-type solution – ‘EU light’ with access to the single market and the retention of free movement? Or is a hard Brexit the only way of bringing back control and assuaging popular concerns around excessive immigration? The Prime Minister has made it clear, both in her Lancaster House speech and subsequent Brexit White Paper that cake cannot be both had and eaten – immigration control in respect of EU migrants has been mandated by the people and we will not therefore seek to remain in the single market. Forty years of hard work by successive British Prime Ministers, both Labour and Conservative, has been dismissed in a single letter to the President of the European Council.

If change and uncertainty is good for lawyers, then Brexit is all of our Christmases at once. We have written copious articles, addressed endless conferences, published briefings, updates, articles and alerts, advised our clients on their Brexit action plans and tried to mollify disgruntled EU workers with talk of residence documentation, retained rights and certification of permanent residence. And yet one truth remains: nothing has in fact changed (yet) and nobody knows what the final outcomes will be in terms of immigration control, least of all the government.

Theresa May has been clear that the rights of EU migrants to remain in the UK, and British migrants on the continent, must be a priority in the discussions. She had hoped to deal with this issue even before Article 50 was invoked but was rebuked by her EU counterparts. Now that the Article 50 process has started, the issue will be at the top of her agenda. For EU leaders, however, the primary topic will be financial – how much does the UK have to pay for this divorce? A figure of about £50 billion has been posited as the starting point.

There is no doubt that a sensible, calm, ordered solution will have to be found to the position of those EU migrants who may not have been exercising treaty rights for a full five years once the UK eventually leaves (we can call it B-day). To require large numbers of EU migrants, quietly exercising their rights to work, study or be self-sufficient, to suddenly leave the UK would be both politically toxic and administratively impossible. Furthermore, EU migrants are a fundamental part of the UK’s working economy across a wide range of sectors

and regions – the hospitality and catering sector in London is just one example of supreme reliance on young EU workers.

It is likely that an agreement will be reached enabling EU workers to settle in the UK on condition that they were in the country exercising a treaty right prior to the Brexit date. Indeed it is entirely possible that a further transitional period will apply enabling some form of EU free movement even beyond the date of departure. Businesses across the country rely on EU migrant workers in a range of sectors and a hard landing with an immediate cut off of workers from Europe may not be a workable outcome.

Over the course of the next two years the government must design and implement a completely new immigration regime. This will include new schemes not just for EU workers, the self-sufficient, self-employed and students but is likely to include a substantial review of the existing routes of entry for non-EU (third-country) nationals. Mrs May is already on record as saying that a points-based system, such as the Australian model, will not suffice. This position appears strange given that she has advocated such a system as Home Secretary and Prime Minister since 2010. So what can we expect?

The government is presented with a major challenge: how to reduce net migration to meet the target they have missed by far, while at the same time providing UK businesses with the high and low-skilled workers that are required to fuel the economy? Immigration control necessitates the adjudication of all individual applicants for entry to the country against a set of clear criteria. The design of a new system is a huge undertaking. By the time this new edition of *The Corporate Immigration Review* is published, the government will have launched a consultation, perhaps through the Migration Advisory Committee, on the scope and parameters of new schemes. Initial discussions have focused on the possibility of regional and sectoral schemes. London, for example, will have very different requirements to the south west of England. Hospitality and care sectors have specific requirements. Seasonal programmes, for example in agriculture, may apply. A work permit scheme is likely to follow. Given the enormity of the task of administering a new scheme will the Home Office have the resources, following a period of austerity and public sector cuts, to roll out the new arrangements in 2019?

In the UK one thing is certain: lawyers will have much to discuss and speculate about over the months and years to come.

President Donald Trump. Where do we start? It is often said of politicians that they campaign in poetry and govern in prose. President Trump's campaign rhetoric was anything but poetic. However, his somewhat inarticulate and blunt style certainly struck a chord with voters. Like the UK Brexit vote, a link between immigration and national decline, whether on economic or security grounds, was identified and hammered home. It was suggested that the incumbent administration had lost control of the borders and that a hard nationalist, protectionist approach was the only solution to the country's ills. A suggested link between weak border security, particularly in respect of majority-Muslim countries, and terrorism was the major focus. The fact that scores of innocent Americans had been killed over the preceding eight years as a consequence of the lack of domestic gun control was not mentioned. A wall was to be built on the southern border with Mexico in order to combat illegal entry.

In government, President Trump has found that there is a limit to presidential power and authority. On two occasions his executive orders regarding the ability of individuals from specific Muslim countries to enter the US have been successfully challenged in the courts. At the time of writing, there have been no significant changes to the US immigration framework, although the new President clearly has change in his sights. He will have learned in a sharp

way, however, particularly through his failure to revoke and replace Obamacare, that change often requires compromise and consent. Even with a Republican-controlled Congress he will need to develop pacts and alliances, carefully spending his political capital, if he is to secure fundamental change. Work on the southern border wall is still due to commence.

The outcome of the French presidential election has also created new hurdles for the UK and its Brexit negotiations. President Macron is a committed Europhile and judging by the comments he has already made, he is unsympathetic to Brexit and equally unsympathetic to the UK's apparent negotiating position. Once the issue of British citizens living in EEA countries and EEA nationals living in the UK has been resolved, a 'hard' Brexit deal is more likely than not.

Immigration policy has created major political hurdles for Angela Merkel in Germany. Until recently, Mrs Merkel was considered the unassailable *de facto* president of Europe pushing at the open door of a fourth term as Chancellor. However, her decision to admit one million Syrian refugees into the country and the subsequent difficulties for social cohesion has made her politically vulnerable for the first time. Her language has shifted in respect of immigration and border control and at the time of writing we are several months ahead of the election – the result will be one to watch.

Of course, for immigration practitioners, wherever in the world we practise, much of our focus day to day is on more prosaic matters than sweeping political change. We navigate constantly changing regulations and procedures, we deal with central authorities and anxious clients and we try to innovate and develop new lines of business. Immigration lawyers also collaborate with each other, share information and cross refer clients, perhaps more than in many other legal disciplines. The purpose of *The Corporate Immigration Review* is to share information across borders, identify global trends and provide practical insights into the immigration regimes of many significant jurisdictions. We hope that it is a valuable resource material for practitioners around the globe. We are very grateful again this year to all of our esteemed writers for their hard work and contributions.

**Ben Sheldrick**

Magrath LLP

London

April 2017

# VIETNAM

*Jean-François Harvey and Bastien Trelcat*<sup>1</sup>

## 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 10 million international arrivals in 2016 with tourism making up approximately 6.6 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 Southeast 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 clearly stipulate the legal requirements for foreigners to enter and stay in Vietnam, whether on a short or long-term basis.

As per the Law, all foreigners must obtain a visa before entry to Vietnam with exception for those who can show that they are exempt from such 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.

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<sup>1</sup> 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 23 countries, the majority of whom are members of the Association of Southeast Asian Nations where 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 1 July 2017 (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, upon the sole condition, however, that visitors are planning on visiting Phu Quoc only and have no other destination in Vietnam. This policy took effect in March 2014 and is still in force.

## **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 in order 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 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.

As of today, the World Trade Organization treaty (WTO) and the Association of South East Asian Nations (ASEAN) are two linchpins that have enabled Vietnam's to boost its business climate and economy.

The setback of the Trans-Pacific Partnership (TPP), due to 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 paths and procedures that have been 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. With the aim of creating a single market, ASEAN will celebrate its 50th birthday at the end of this year, and 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, respectively: 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 towards 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 more effectively importing or exporting goods 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.

### ***European Union–Vietnam Free Trade Agreement (EVFTA)***

Europe remains a key and targeted market for developing Asian countries, and on 12 December 2015 the European Union (EU) and Vietnam signed the European Union–Vietnam Free Trade Agreement (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, and agricultural goods, such as cars, machinery, chemicals, textile, alcoholic beverages, food and pharmaceutical products. Concrete commitments have also been made in strategic industries. As an illustration, EU will eliminate all import taxes on textile and footwear within seven years from the date agreement comes into force, and Vietnam has to erase import taxes on wine, alcohol and beer within 10 years.

The EVFTA not only broadens the Vietnamese international treaties' 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 such 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 Trans-Pacific Partnership was considered as an ambitious, ground-breaking partnership. However, this perspective has been scaled down due to the United States withdrawing last January. The lowering of trade, tariff and non-tariff barriers will eventually not be reaped through TPP but might be reached, through another Association: the Regional Comprehensive Economic Partnership (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. More than 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 among the region's territories. The path towards a single market where people could freely settle down, as per the EU market, remains the goal. However, a lot of challenges are still pending before this can become a reality.

In fact, only a few sectors are covered by MRAs and such agreements have done little to overcome other barriers such as country-specific requirements. Qualifications predominate when it comes to crossing borders for employment matters. This demonstrates that in general South East Asia is not yet ready for the implementation of an open borders system. As a result the integration of workforces is impeded, and many ASEAN countries act more as gatekeepers than facilitators of free movement at present.

As of now, only specific types of jobs are being 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 high-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, of which two years involve significant engineering work. Architects must have been in practice for at least 10 years.

While it is crucial to enhancing workers' mobility, the ASEAN states are implementing a slow and step-by-step process when it comes to the free flow of workers. Indeed, most 'free movement' possibilities are only given to skilled workers while 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 or Europe.

Bilateral labour agreements (BLAs) and memoranda of understanding (MOUs) 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**

#### ***New regulations on the process of work permit***

Participation in the AEC has triggered an increase of foreign employees in the Vietnam labour market in 2016. Vietnam has promulgated some new 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 the Decree 11/2016/ND-CP for foreigners working in Vietnam. This Decree came into effect on 1 April 2016 and created several favourable changes in the types of foreigners that were exempted from requiring work permits, and the simplification of requirements for the application of work permits for non-exempt applicants.

#### ***Better protection for workers***

The new Penal Code No. 100/2015/QH13 adopted on 27 November 2015, 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, the illegal dismissal of employees, 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. Although this Penal Code was temporarily suspended due to some technical errors, it is expected that the Code will be amended and come into effect in the near future.

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**

In order 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. 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. However, it is necessary to undergo medical examinations. Effective 1 January 2018, the compulsory social insurance scheme will be extended to foreign employees working in Vietnam.

#### ***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 from the 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 from the date of receipt of a completed application. Where the DOLISA refuses to grant a work permit, a written reply containing the reasons for such rejection shall be provided.

#### ***Permit validity and quotas***

Several factors may influence the initial validity period 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 instances where foreign nationals are exempt from the requirement to obtain a work permit, such as where they are in a managerial position, or are 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, such incentives for highly skilled applicants are meant to ease the administrative burden on enterprises seeking to hire foreign workers.

### ***Intra-company transfers***

In February 2017, Circular 35/2016/TT-BCT (the Circular), introduced by the Vietnam Ministry of Industry and Trade, came into force which addressed 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 Commitments to the World Trade Organization.

In order 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* environmental;
- 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: (1) foreign-invested economic organisations; (2) representative offices or branches; (3) executive offices of business cooperation contracts.

Internal transfers of foreign employees in companies operating outside the provided sectors under the Circular 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 in order 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, War Invalids and Social Affairs (MOILISA) 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 contrary, any foreigner who works in Vietnam without a work permit or certificate of eligibility of exemption from the work permit (illegal worker) shall be expelled. Within 15 working days from the date of pronouncement of any illegal worker, DOLISA will ask the police to expel such illegal worker from Vietnam.

## **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, 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 takes effect only from 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

In order to enter Vietnam for business purposes, a business visitor, including those from one of the 23 countries part of Vietnam's visa-free scheme, must make an application for the relevant business visa including: the DN, LV, DT or NN3 visa. Visa 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 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; 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 parents, spouse or child who is a Vietnamese citizen and has permanent residence in Vietnam; or
- d* any person who is stateless that has had temporary residence in Vietnam since 2000 or earlier.

## **VI OUTLOOK AND CONCLUSIONS**

Vietnam is, and will remain in the coming years, one of the main actors of the ASEAN region. The country enjoys, as of today, 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 such as Danang, Bien Hoa, or Can Tho are witnessing changes in their landscapes due to this modernisation and industrialisation. Aside from these two trends, international treaties play a tremendous role in attracting foreign investments. Indeed, the liberalisation of goods' circulation 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.

During the past two years, FDI inflows have reached record levels, ending at US\$15.8 billion in 2016 against US\$14.5 billion in 2015. As of today, the forecasts for 2017 predict no less than the above figures and experts expect a 6.7 per cent economic growth by the end of 2017. Such a positive environment could not be possible without the implementation of foreign companies embracing the local markets.

As mentioned, the process of setting up a foreign-owned business in Vietnam has been eased by the Vietnamese licensing authorities, however, the current system is expected to be more and 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 and such stability is a real asset in comparison with other states of the South East Asia region. More than stability, the country offers investment incentives even through its local manpower. Its cost production base remains low compared with neighbouring countries and the workforce is growing along with a growing consumer market.

Businesses are allowed to be cost effective and are able to seize the needs of customers and clients through young educated workers with the benefit to be able to easily hire foreign workers. In fact, prior to the workers' mobility set by the ASEAN, foreign employment was already fully implemented thanks to a strong work permit system allowing to welcome foreign workers to Vietnam in a very short period of time.

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, more developments.

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Jean-François Harvey founded Harvey Law Group (HLG) in Montreal, Quebec in 1992. He completed a bachelor of laws degree from the University of Ottawa and was appointed to the Quebec Bar in 1992, and is a member in good standing of both the Quebec and Canadian Bar Associations.

Jean-François is recognised internationally as an expert in immigration law, and he brings a wealth of experience in providing comprehensive immigration law services to corporations and high net worth individuals.

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### **BASTIEN TRELCAT**

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Bastien Trelcat obtained his master in business law and corporate taxation from the Law School of Aix-en-Provence University, France in 2002. During his studies, he was ranked among the 10 best business law students by Freshfields Bruckhaus Deringer in 2001 and won the first edition of the Landwell Award (PwC) in 2002. The following year, in 2003, he received his LLM in international business law from the City University of Hong Kong. In 2004, Mr Trelcat became a member of the Paris Bar.

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