



## MONTHLY LAW UPDATE APRIL 2008

[www.dfdlmekong.com](http://www.dfdlmekong.com)

### OUR OFFICES:

#### VIETNAM

##### - HANOI

Melia Hanoi Office Building  
9th floor  
44B Ly Thuong Kiet Street  
Hanoi, Vietnam  
Tel: +84 4 936 6411/2  
Fax: +84 4 936 6413  
[Vietnam@fdlmekong.com](mailto:Vietnam@fdlmekong.com)

#### VIETNAM

##### - HO CHI MINH CITY

PetroVietnam Tower, 8th floor  
1-5 Le Duan Street, District 1  
Ho Chi Minh City, Vietnam  
Tel: +84 8 910 0072  
Fax: +84 8 910 0073  
[Vietnam@fdlmekong.com](mailto:Vietnam@fdlmekong.com)

#### CAMBODIA

45 Suramarit Boulevard  
(PO Box 7)  
Phnom Penh, Cambodia  
Tel: +855 23 210 400  
Fax: +855 23 428 227  
[Cambodia@fdlmekong.com](mailto:Cambodia@fdlmekong.com)

#### LAO PDR

Parkview Executive Suites  
Block A, Luang Prabang Road  
(PO Box 2920)  
Vientiane, Lao PDR  
Tel: +856 21 242 069  
Fax: +856 21 218 422  
[Laos@fdlmekong.com](mailto:Laos@fdlmekong.com)

#### THAILAND

Dusit Thani Building, 9th Floor  
946 Rama IV Road, Silom  
Bangkok, 10500 Thailand  
Tel: +66 2 636 3282  
Fax: +66 2 636 3290  
[Thailand@fdlmekong.com](mailto:Thailand@fdlmekong.com)

#### MYANMAR

(Through Of Counsel)  
8c Bogyoke Museum Road  
Bahan Township  
(Box 729 GPO)  
Yangon, Myanmar  
Tel: +951 540 995, 557 896  
Fax: +951 548 835  
[Myanmar@fdlmekong.com](mailto:Myanmar@fdlmekong.com)

### IN THIS UPDATE

Welcome to this edition of DFDL Mekong Vietnam's Law Update. In this update we present some Vietnam regulations and information touching on the following matters:

- the establishment, operation and state administration of, and policies applicable to, industrial zones, export processing zones and economic zones;
- the employment and administration of foreigners working in VN

### DECREE 29

In order to control the rampant development of industrial zones and economic zones and to plan the establishment of new industrial zones and economic zones, the Government has issued Decree No. 29/2008 ND-CP dated March 14, 2008 ("**Decree 29**") on the establishment, operation and state administration of, and policies applicable to, industrial zones ("**IZs**"), export processing zones ("**EPZs**") and economic zones ("**EZs**").

Decree 29 is in line with the Law on Investment, the Law on Enterprises as well as the Law on Commerce and addresses the following provisions:

- (i) Conditions for establishment and expansion of IZs, EZs;
- (ii) Order and procedures for establishment of IZs, EZs;
- (iii) Applicable policies; and
- (iv) State administration.

### Conditions for establishment and expansion of IZs, EZs

Under Decree 29, the establishment of IZs and EZs must be consistent with the approved master plan for the development of IZs and EZs and the following specific conditions are as follows:

#### 1. IZs

In order to establish a new IZs in a province, at least 60% of the total aggregate area of existing IZs must be leased or sub-leased to registered investment projects. The ratio of 60% also applies to expansion of IZs.



IZs occupying 500 hectares or more (in which numerous investors participate in investment and construction and commercial operation of infrastructure in separate areas or attached to another urban area or concentrated business area in an overall plan or those located near national highway, defense zones or historical sites) are required to have guidance on elaboration of the general plan or written consent of the Ministry of Construction before such plans are approved by the provincial People's Committee.

Conditions for development of an IZ include:

- (i) Having a reserve land fund for development and conditions for uniting the surrounding IZs into a complex of IZs;
- (ii) Having the ability to attract investment capital from both foreign and domestic investors;
- (iii) Having the workforce sufficient to supply and satisfy requirements; and
- (iv) Ensuring consistency with local defense and security planning.

## 2. EZs

Similar to IZ regulations, the following conditions are required for establishment of EZs:

- (i) Occupying a land area of 10,000 hectares or more and satisfying requirements for general development of the EZ;
- (ii) Being situated in a geographical location favorable for regional economic development.

Under Decree 29, a border gate economic zone ("BEZs") must be located on or near strategic national highways or hubs for economic exchange with neighboring countries.

The establishment of EZs and BEZs must not cause any harm to natural preservation zones or tangible cultural heritage.

With respect to expansion of EZs, at least 70% of functional land area in the economic zone must first be allocated or leased to organizations and individuals for implementation of projects.

## Order and procedures for establishment of IZs and EZs

### 1. IZs

The procedure for issuance of an investment certificate in respect of investment projects for construction and commercial operation of infrastructure in an IZs shall be carried out in accordance with the law on investment.

The application dossier includes the following:

- (i) Application form;
- (ii) Approval decision of the provincial People's Committee on the detailed plan for construction of the IZ;
- (iii) Investment certificate issued to the investor for implementation of an investment project for development of infrastructure in the IZ;
- (iv) The application dossier shall be made in four (4) copies, including one original copy to be submitted to the management committee for IZ or the Department of Planning and Investment (in the case of localities in which a management committee has not been yet established);
- (v) Within 15 business days from the date of receipt of a valid application dossier, the provincial People's Committee shall issue a decision on establishment (or expansion) of the IZ depicted in the master plan for development of IZs or in the approved general master plan for construction of EZs.

With respect to initial expansion of IZs, of which the expanded area is more than 10% of the area in the approval master plan and exceed 30 hectares, the consideration and decision of the Prime Minister is required.

## 2. EZs

The Prime Minister shall decide the establishment or expansion of an EZ in compliance with the approved master plan for development of EZs.

The application dossier includes the following:

- (i) A project on establishment or expansion of an EZ;
- (ii) A submission from the provincial People's Committee requesting the establishment, expansion of the EZ to the Prime Minister; and
- (iii) Within 45 business days from the date of receipt of the valid application file, the Ministry of Planning and Investment shall submit the application to the Prime Minister for consideration and decision.

### Applicable policies

Under Decree 29, investment projects in the IZs can enjoy preferential investment policies for localities with difficult socio-economic conditions. Such preferential investment policies include, for example a reduction of corporate income tax liabilities, a 50% reduction of personal income tax (offered to Vietnamese and foreigners working in EZs), various favorable conditions for visas, travel, residence and temporary residence, in EZs and IZs.

### State Administration

The Government uniformly exercises State administration of IZs and EZs throughout the nation based of delegating specific duties and powers to each ministry, provincial People's Committee and Management Committee of IZs and EZs.

Decree 29 became effective on April 10, 2008 (repealing Decision No. 53/2001/QĐ –TTg dated 19/4/2001, Decision No. 273/2005/QĐ- TTg dated 31/10/2005).

## DECREE 34

The employment of skilled foreign citizens has become essential to the development of numerous industries in Vietnam. However, the limitation on hiring foreign employees (to comprise no more than 3% of each company's employees) has resulted in a shortage of skilled workers.

In order to implement Vietnam's commitment to WTO accession on the presence of natural persons, the Government has issued Decree 34/2008/NĐ-CP dated March 25, 2008 on employment and administration of foreigners working in VN ("Decree 34").

Decree 34 details the following issues

- (i) Conditions for working;
- (ii) Form of working of foreigners; and
- (iii) Work permit procedures.

### Conditions for working

As in the previous Decree, the criteria for foreign citizens working in VN including (i) 18 years and older, (ii) in good health as necessary to satisfy the job requirements, (iii) no previous convictions on infringement against national security, not be subject to criminal prosecution in accordance with

the law of Vietnam and foreign laws, (iv) must have a work permit issued by competent authority of Vietnam, and (v) must be managers, executive directors or experts.

Under Decree 34, the managers, executive directors, or experts are already defined as follow:

- Manager or executive director means a person (i) who directly manages a foreign company which has established a commercial presence in Vietnam, (ii) is only subject to general supervision or direction by the Board of Management or shareholders of the company or equivalent level, and (iii) is not directly carrying out work related to provision of services by the commercial entity.
- Experts means (i) persons who have advanced technical qualifications regarding services, research, technical knowledge or management of equipment, and (ii) person who have considerable experience in an occupation, trade, operating production, business, or managerial work.

### **Work methods**

Decree 34 stipulates the methods of working for foreign citizens as follow:

- (1) Pursuant to a labor contract;
- (2) Pursuant to internal transfer within the company;
- (3) To perform contracts (other than labor contracts) i.e. economic, commercial, financial, banking, insurance, scientific and technical, cultural, sports, educational, medical health contracts and services; and services providers pursuant to a contract;
- (4) To work in order to offer service; and
- (5) Being representatives of foreign non-Governmental organization ("NGOs") permitted to operate pursuant to the law of Vietnam.

Before commencing work, foreign citizens are required to obtain a work permit except for method (4). Companies, representatives of foreign companies having the commercial presence in Vietnam, Vietnamese partners and representatives of permitted NGOs in Vietnam are required to conduct procedures for issuance of a work permit 20 days before the starting date.

A minimum of 20% of the total number of managers, executive director and experts of each company with a commercial presence in Vietnam must be Vietnamese. However, each foreign company shall be permitted to have a minimum of three foreign managers, executive directors and experts.

With respect to service providers, they must have worked for a foreign company without a commercial presence in Vietnam for at least two years.

### **Work permit procedures**

As mentioned above, foreign citizens working in VN are required to obtain a work permit except from the following seven (7) cases.

- (i) Working in Vietnam for less than 3 months;
- (ii) Being a member of a limited liability company with two members or more;
- (iii) Being an owner of a one member limited liability company;
- (iv) Being a member of the management board of a joint stock company;
- (v) Entering Vietnam to offer service;
- (vi) Entering Vietnam to resolve emergency cases which cannot be resolved by Vietnamese or to reside foreign experts for less than three months;
- (vii) Registered foreign lawyers who are granted a practice license by the Ministry of Justice.

An application file for the issuance of a work permit shall comprise:

- (i) Standard form requesting issuance of a work permit;
- (ii) Standard form of registration slip for recruitment of the foreign citizens (only applied for foreign citizens working under Vietnamese labor contracts);
- (iii) Criminal record issued by foreign competent authority, in case of residence in Vietnam more than six (6) months, a criminal record issued by VN competent authority is required;
- (iv) Standard form of CV of the foreign citizens;
- (v) Health examination certificate issued overseas or issued by recognized Vietnamese hospitals;
- (vi) Copies of certificates of specialist or other technical qualifications of the foreign citizens. In case of absence of such certificate, at least 5 years working experience (certified by foreign competent authority is required); and
- (vii) Three color passport photos (3cm x 4cm size) taken within the last 6 months.

Depending on the method of working in Vietnam, one of the following documents is required to be included in the application file for the issuance of a work permit.

- (i) Letter of appointment of foreign company for the foreign citizens working in Vietnam (Form 2); and
- (ii) A contract signed between the Vietnamese party and the foreign party (Form 3).

The term of a work permit may not exceed 36 months and extendable. The Service of Labor Invalid and Social Affairs of the province issues work permits to foreign citizens within 15 working days of the date of receipt of valid application file. In case of rejection, a written response is provided specifying the reasons for rejection.

Decree 34 became effective on April 12, 2008 and replaced Decree 105/2003/ND-CP dated 17/9/03 and Decree No. 93/2005/NĐ-CP dated 3/7/2005.

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## Our advisers

**L-Martin Desautels (Martin)**

**Partner - Head of the Vietnam Practice.** Martin is a qualified lawyer from the Bar of the Province of Québec in Canada. He has advised investors and local governments in the Mekong Region (Cambodia, Vietnam, Laos and Thailand) for close to 5 years as Managing Director of DFDL Mekong and for 3 years with the largest international French law firm, Gide Loyrette Nouel. Languages: English, French, basic Vietnamese and Khmer.  
M: +84 903 088 630  
E: [Martin.Desautels@dfdlmekong.com](mailto:Martin.Desautels@dfdlmekong.com)

**Thierry Gougy (Thierry)**

**Partner - Head of Hanoi Office.** Thierry is a French qualified lawyer with over 13 years of experience on M&A and privatization, infrastructure projects, taxation and technical assistance to local governments. He has worked in Asia for 8 years among which 5 years in Vietnam, first with Gide Loyrette Nouel and then with PricewaterhouseCoopers Legal. Before joining DFDL Mekong, Thierry was the managing lawyer of the Hong Kong and Guangzhou offices for a French law firm. Languages: French, English, basic Vietnamese and Chinese.  
M: +84 904 555 565  
E: [Thierry.Gougy@dfdlmekong.com](mailto:Thierry.Gougy@dfdlmekong.com)

**Edwin Vanderbruggen (Edwin)**

**Senior Tax Advisor, Head of Indochina Tax Practice** Edwin advises multi-national enterprises and international organizations in the field of taxation. He specializes in the Indo-China region and inter-national tax planning. Languages: Dutch, German, English, French, Thai.  
M: +855 12 355 684  
E: [Edwin.Vanderbruggen@dfdlmekong.com](mailto:Edwin.Vanderbruggen@dfdlmekong.com)

**Isabelle Robineau (Isabelle)**

**HCMC Branch Manager - Senior Advisor** She has worked with DFDL Mekong for the last 4 years in the Mekong Region advising clients in Laos and Vietnam. Prior to joining DFDL Mekong, she practiced law in France, Singapore and Vietnam. In Vietnam, she worked for the Legal Institution of Cooperation between the Vietnamese and French Ministries of Justice. Languages: English, French and Vietnamese.  
M: +84 902 204 242  
E: [Isabelle.Robineau@dfdlmekong.com](mailto:Isabelle.Robineau@dfdlmekong.com)

**Daniel Chernov (Daniel)**

**Senior Legal Adviser** - Daniel recently joined the Firm as Senior Legal Adviser and brought with him a diverse range of legal experience gained in the Asian region. Daniel has practiced law for more than 20 years in Washington, D.C., Tokyo, Bangkok and Ho Chi Minh City. He specializes in foreign direct investment, mergers and acquisitions, international commercial transactions, property, and international litigation/alternative dispute resolution. Languages: English, Japanese and Thai.

**Hoang Phong Anh (Phong Anh)**

**Lawyer - Senior Associate.** Phong Anh is a qualified Vietnamese lawyer, a member of the Hanoi Bar Association. He has advised both investors and governmental agencies in Vietnam for around 12 years with the largest international French law firm, Gide Loyrette Nouel. Languages: Vietnamese, English and French.

**Huynh Dai Thang (Thang)**

**Lawyer - Senior Associate.** Thang is a qualified Vietnamese lawyer, a member of the Hanoi Bar Association. Thang has practiced law for nearly eight years at two international law firms namely Gide Loyrette Nouel and PricewaterhouseCoopers Legal in Hanoi. He advised foreign investors on the implementation of investment projects in Vietnam. Languages: Vietnamese and English.

**Tran Thi Vu Hanh (Hanh)**

**Lawyer.** Hanh is a qualified Vietnamese lawyer, a member of the Hanoi Bar Association with 9 years experience from practicing commercial and corporate law with international firms and organizations in Vietnam. Hanh's practice areas cover corporate law, project finance, and inbound investment. Languages: Vietnamese, French and English.

**Tran Thanh Nguyen (Nguyen)**

**Legal Advisor** - Nguyen has over 8 years experience in human resources management in foreign investment organizations and was in-house counsel to several organizations. She received her law degree from Ho Chi Minh City Law School (LL.B) and is a member of Human Resource Association, Intellectual Property Associate of HCMC (IPA). Languages: Vietnamese and English.

**Ha Thuc Minh Trang (Trang)**

**Legal Advisor** - Trang has over 7 years experience particularly in the areas of compliance, labor issues and IP. She holds a Bachelor of Law from Ho Chi Minh City University of Law. Languages: Vietnamese, English and French.

