

No. 35/2016/TT-BCT

Hanoi, December 28, 2016

CIRCULAR

**ON IDENTIFICATION OF FOREIGN WORKERS WHO ARE ELIGIBLE FOR WORK
PERMIT EXEMPTION AND INTERNALLY REASSIGNED BY ENTERPRISES
OPERATING WITHIN ELEVEN SERVICE SECTORS SPECIFIED IN VIETNAM'S WTO
COMMITMENTS ON SERVICES**

Pursuant to the Government's Decree No. 95/2012/ND-CP dated November 12, 2012, defining the functions, rights, responsibilities and organizational structure of the Ministry of Industry and Trade;

Pursuant to the Government's Decree No.11/2016/ND-CP dated February 03, 2016 on elaboration of a number of Articles of the Labor Code in respect of foreign workers in Vietnam;

The Minister of Industry and Trade hereby issues this Circular stipulating regulation on identification of foreign workers who are eligible for work permit exemption and internally reassigned by enterprises operating within eleven service sectors specified in the Vietnam's WTO Commitments on services.

Article 1.Scope and subjects of application

1. This Circular stipulates identification of foreign workers who are eligible for work permit exemption and internally reassigned by enterprises operating within eleven service sectors specified in the Vietnam's WTO Commitments on services.
2. This Circular applies to foreign workers internally reassigned within their enterprises including managers, chief executives, specialists and technicians, foreign employers and relevant entities.

Article 2. Commercial presence

Commercial presence is defined by clause 1 Article 3 of the Government's Decree No.11/2016/ND-CP dated February 03, 2016 on elaboration of a number of Articles of the Labor Code in respect of foreign workers in Vietnam (hereinafter referred to as Decree No.11/2016/ND-CP) and is presented in the following forms:

- a) Foreign-invested business organizations;
- b) Representative offices and branches of foreign traders in Vietnam;

c) Executive offices of foreign investors as stipulated business cooperation agreements.

Article 3. Basis for identification of foreign workers who are eligible for work permit exemption and internally reassigned by enterprises operating within eleven service sectors specified in the Vietnam's WTO commitments on services

1. Grounds for identification of foreign managers, chief executives and specialists who are eligible for work permit exemption and internally reassigned by enterprises operating within eleven service sectors specified in the Vietnam's WTO commitments on services as stipulated in point a clause 2 Article 7 of the Decree No.11/2016/ND-CP include :

a) Foreign enterprises having their commercial presence in Vietnam;

b) Commercial presences of foreign enterprises in Vietnam operating in services prescribed in Annex I attached hereto;

c) A foreign worker recruited by a foreign enterprise in at least 12 months prior to reassignment to the commercial presence in Vietnam.

2. Grounds for identification of foreign technicians who are eligible for work permit exemption and internally reassigned by enterprises operating within eleven service sectors specified in the Vietnam's WTO commitments on services as stipulated in point a clause 2 Article 7 of the Decree No.11/2016/ND-CP include:

a) Foreign enterprises having their commercial presence in Vietnam;

b) Commercial presences of foreign enterprises in Vietnam operating in services prescribed in Annex II attached hereto;

c) A foreign worker recruited by a foreign enterprise in at least 12 months prior to allocation to the commercial presence in Vietnam.

Article 4. Identification of foreign workers internally reassigned by enterprises operating within eleven service sectors specified in the Vietnam's WTO commitments on services

1. Documentary evidence that a foreign worker is eligible to be exempted from work permit as prescribed in point c clause 3 Article 8 of the Decree No.11/2016/ND-CP includes:

a) The foreign enterprise's written document on worker reassignment to its commercial presence in Vietnam which specifies job positions, title and working time;

b) Documentary evidence that the foreign worker is a specialist as stipulated in clause 2 Article 6 of the Circular No. 40/2016/TT- BLDTBXH dated October 25, 2016 by the Ministry of Labor, War Invalids and Social Affairs providing guideline for a number of Articles of the Decree No.11/2016/ND-CP (hereinafter referred to as "Circular No.40/2016/TT-BLDTBXH);

c) Documentary evidence that the foreign worker is a technician as stipulated in clause 3 Article 6 of the Circular No.40/2016/TT- BLDTBXH;

d) Documentary evidence that the foreign worker has been recruited by the foreign employer in at least 12 months prior to allocation to the commercial presence in Vietnam under clause 4 Article 6 of the Circular No.40/2016/TT-BLDTBXH;

dd) One of the following documentary evidence that the foreign enterprise's commercial presence in Vietnam operates in one or some of eleven services as prescribed in Annex I attached hereto: the enterprise registration certificate or the equivalent, permit to establish the representative office and permit to establish the branch issued by a Vietnamese competent authority.

2. Identification of foreign workers who are eligible for work permit exemption and internally reassigned by enterprises operating within eleven service sectors specified in the Vietnam's WTO commitments on services shall be carried out in accordance with the Decree No.11/2016/ND-CP and Circular No.40/2016/TT- BLDTBXH.

Article 5. Entry into force

1. This Circular enters into force from February 10, 2017.

2. This Circular annuls the Circular No. 41/2014/TT-BCT dated November 05, 2014 by The Ministry of Industry and Trade stipulating basis and procedure for identification of foreign workers who are exempted from work permits and internally reassigned by enterprises operating within eleven services specified in the Vietnam's WTO commitments on services.

3. Any issue arising in connection with the implementation of this Circular should be promptly reported to the Department of Planning- Ministry of Industry and Trade. /.

MINISTER

Tran Tuan Anh

ANNEX I

LIST OF ELEVEN SERVICE SECTORS IN VIETNAM'S WTO COMMITMENTS ON SERVICES FOR FOREIGN WORKERS AS MANAGERS, CHIEF EXECUTIVES AND SPECIALISTS

(Enclosed with Circular No.35/2016/TT-BCT dated December 28, 2016 by the Ministry of Industry and Trade)

I. NOTATION

For the purpose of this Annex, symbol (*) and (**) indicates that the service which is marked with is a part of a specific service sector.

1. The service marked with (*) is considered as a component of a service sector covering a larger scope or having a broader connotation but its CPC code is still not identified. E.g.: The convention service coded as 87909* is considered as a component of a service sector classified in the central product classification and this sector may cover a larger scope or have broader connotation than the convention service.

2. The service marked with (**) is considered as a component of a service sector having a larger scope or broader connotation but its CPC is clearly identified. *The CPC is not marked with (**)*. E.g. Voice mail service coded as 7523** indicates that voice mail service is a part of the data transmission service (CPC 7523).

II. LIST OF ELEVEN SERVICE SECTORS

1. BUSINESS SERVICES

A. Professional services

a) Legal services (CPC 861 excluding: participation in legal proceedings in the capacity of defenders or representatives of their clients before the courts of Viet Nam; legal documentation and certification services of the laws of Viet Nam).

b) Accounting and auditing and bookkeeping services (CPC 862)

c) Taxation services (CPC 863).

d) Architectural services (CPC 8671).

dd) Engineering services (CPC 8672).

e) Integrated engineering services (CPC 8673).

g) Urban planning and urban landscape architectural services (CPC 8674).

B. Computer and related services (CPC 841- 845, 849)

C. Research and Development Services

R&D services on natural sciences (CPC 851).

D. Rental/Leasing Services without Operators

Relating to aircraft (CPC 83104).

DD. Other business services

- a) Advertising services (CPC 871, excluding advertising for cigarettes).
- b) Market research services (CPC 864, excluding 86402).
- c) Management consultant services (CPC 865).
- d) Services related to management consulting (CPC 866, except for CPC 86602 and arbitration and conciliation services for commercial disputes between businesses (CPC 86602**))
- dd) Technical testing and analysis services (CPC 8676, excluding conformity testing of transport vehicles and certification of transport vehicles)
- e) Services incidental to agriculture, hunting and forestry (CPC 881).
- g) Services incidental to mining (CPC 883) , excluding supply of equipment, materials and chemicals, supply base services, offshore/marine support vessels, accommodation and catering, helicopter services.
- h) Services incidental to manufacturing (CPC 884 and 885).
- i) Related scientific and technical consulting services (CPC 86751, 86752 and 86753 only).
- k) Maintenance and repair of equipment (not including maritime vessels, aircraft or other transport equipment) (CPC 633).

2. COMMUNICATION SERVICES

A. Courier Services (CPC 7512)**

*Express delivery services consist of collection, sorting, transport and delivery, whether for domestic or foreign destination:

- a) Written communication, on any kind of physical medium, including: hybrid mail service and direct mail.

Except for the handling of items of written communication the price of which is less than:10 times the tariff for the handling of a standard domestic letter in the first weight level for domestic shipments; US\$9 for international shipments provided that the gross weight of these items is less than 2,000 grams;

b) Parcels and other goods.

* Handling of non-addressed items

B. Telecommunication's services

Basic telecommunication services

a) Voice telephone services (CPC 7521).

b) Packet-switched data transmission services (CPC 7523**).

c) Circuit-switched data transmission services (CPC 7523**).

d) Telex services (CPC 7523**).

dd) Telegraph services (CPC 7523**).

e) Facsimile services (CPC 7521** + 7529**).

g) Private leased circuit services (CPC 7522** + 7523**).

h*) Other services:

- Videoconference services (CPC 75292);

- Video transmission services, excluding broadcasting.

- Radio based services, including:

+ Mobile telephone (terrestrial and satellite);

+ Mobile data (terrestrial and satellite);

+ Paging;

+ PCS;

+ Trunking;

- Internet Exchange Service (IXP).

- Virtual Private Network (VPN).

Value-added services

- a) Electronic mail (CPC 7523**).
- b) Voice mail (CPC 7523 **).
- c) On-line information and database retrieval (CPC 7523**).
- d) Electronic data interchange (EDI) CPC (7523**).
- dd) Enhance/value-added facsimile services, including store and forward, store and retrieve (CPC 7523**)
- e) Code and protocol conversion.
- g) On-line information and data processing (incl. transaction processing) (CPC 843**).
- h) Other services

Internet access services IAS

C. Audiovisual Services

- a) Motion picture production (CPC 96112, excluding video tape)
- b) Motion picture distribution (CPC 96113, excluding video tape).
- c) Motion picture projection service (CPC 96121).
- d) Sound recording

3. CONSTRUCTION AND RELATED ENGINEERING SERVICES

A. General construction work for building (CPC 512)

B. General construction work for civil engineering (CPC 513)

C. Installation and assembly work (CPC 514, 516)

D. Building completion and finishing work (CPC 517)

DD. Other (CPC 511, 515, 518)

4. DISTRIBUTION SERVICES

A. Commission agents' services (CPC 621, 61111, 6113, 6121)

B. Wholesale trade services (CPC 622, 61111, 6113, 6121)

C. Retailing services (CPC 631+632, 61112, 6113, 6121)

D. Franchising services (CPC 8929)

5. EDUCATIONAL SERVICES

A. Secondary education services (CPC 922)

B. Higher education services (CPC 923)

C. Adult education (CPC 924)

D. Other education services (CPC 929 including foreign language training)

6. ENVIRONMENTAL SERVICES

Sewage Services (CPC 9401)

B. Refuse disposal services (CPC 9402)

C. Other services

- Cleaning services of exhaust gases (CPC 94040) and noise abatement services (CPC 94050)

- Environmental impact assessment services (CPC 94090*).

7. FINANCIAL SERVICES

A. Insurance and Insurance-Related Services

a) Direct insurance:

- Life insurance, excluding health insurance services;

- Non-life insurance services.

b) Reinsurance and retrocession.

c) Insurance intermediation (such as brokerage and agency).

d) Services auxiliary to insurance Services auxiliary to insurance

B. Banking and Other Financial Services

a) Acceptance of deposits and other repayable funds from the public.

b) Lending of all types, including consumer credit, mortgage credit, factoring and financing of commercial transaction.

c) Financial leasing.

d) All payment and money transmission services, including credit, charge and debit cards, traveller's cheque and bankers drafts

dd) Guarantees and commitments.

e) Trading for own account or for account of customers, whether on an exchange, in an over-the-counter market or otherwise, the following:

- Money market instrument (including cheques, bills, certificates of deposits);

- Foreign exchange;

- Exchange rate and interest rate instrument including products such as swaps, forward rate agreements;

- Bullion.

g) Money broking.

h) Asset management, such as cash or portfolio management, all forms of collective investment management, pension fund management, custodial, depository and trust services.

i) Settlement and clearing services for financial assets, including securities, derivative products, and other negotiable instruments.

k) Provision and transfer of financial information, and financial data processing and related software by suppliers of other financial services.

l) Advisory, intermediation and other auxiliary financial services on all activities listed in subparagraphs from (a) to (k), including credit reference and analysis, investment and portfolio research and advice, advice on acquisitions and on corporate restructuring and strategy

C. Securities

a) Trading for own account or for account of customers, whether on an exchange, in an over-the-counter market or otherwise, the following:

- Derivative products including futures and options;

- Transferable securities;

- Other negotiable instruments and financial assets, excluding bullion.

b) Participation in issues of all kinds of securities incl. under-writing and placement as an agent (publicly or privately), provision of services related to such issues

c) Asset management, such as portfolio management, all forms of collective investment management, pension fund management, custodial depository and trust services.

d) Settlement and clearing services for securities, derivative products, and other securities-related instruments.

dd) Provision and transfer of financial information, and related software by suppliers of securities services.

e) Advisory, intermediation and other auxiliary securities-related excluding (a), including investment and portfolio research and advice, advice on acquisitions and on corporate restructuring and strategy (for other services under (e), refer to (e) under banking sector).

8. HEALTH RELATED AND SOCIAL SERVICES

A. Hospital services (CPC 9311)

B. Medical and dental services (CPC 9312)

9. TOURISM AND TRAVEL RELATED SERVICES

A. Hotel and restaurant including:

- Lodging services (CPC 64110).

- Catering food (CPC 642) and drink services (CPC 643).

B. Travel agencies and tour operator services (CPC 7471)

10. RECREATIONAL, CULTURAL AND SPORTING SERVICES

A. Entertainment services (including theatre, live bands and circus services) (CPC 9619)

B. Other services

Electronic games business (CPC 964**).

11. TRANSPORT SERVICES

A. Maritime Transport Services

a) Passenger transportation less cabotage (CPC 7211).

b) Freight transportation less cabotage (CPC 7212).

c) Maritime Auxiliary Services

- Container handling services (CPC 7411);

- Customs Clearance Services;

- Container Station and Depot Services

B. Internal Waterways Transport

a) Passenger transportation (CPC 7221).

b) Freight transportation (CPC 7222).

C. Air Transport Services

a) Sales and marketing air products services.

b) Computer reservation services.

c) Maintenance and repair of aircraft (CPC 8868**).

D. Rail Transport Services

a) Passenger transportation (CPC 7111).

b) Freight transportation (CPC 7112).

DD. Road Transport Services

a) Passenger transportation (CPC 7121+7122).

b) Freight transportation (CPC 7123).

E. Services Auxiliary to all Modes of Transport

a) Container handling services, except services provided at airports (part of CPC 7411)

b) Storage and warehouse services (CPC 742).

c) Freight transport agency services (CPC 748).

d) Other (part of CPC 749). /.

ANNEX II

LIST OF ELEVEN SERVICES IN THE VIETNAM'S WTO COMMITMENTS ON SERVICES FOR FOREIGN WORKERS AS MANAGERS, CHIEF EXECUTIVES AND SPECIALISTS *(Enclosed with Circular No.35/2016/TT-BCT dated December 28, 2016 by the Ministry of Industry and Trade)*

I. NOTATION

For the purpose of this Annex, symbol (*) and (**) indicates that the service which is marked with is a part of a specific service sector.

1. The service marked with (*) is considered as a component of a service sector covering a larger scope or having a broader connotation but its CPC is still not identified. E.g.: The convention service coded as 87909* is considered as a component of a service sector specified in the central product classification and this sector may cover a larger scope or have broader connotation than the convention service.

2. The service marked with (**) is considered as a component of a *service sector having a larger scope or broader connotation but its CPC is clearly identified. The CPC is not marked with (**)*. E.g. Voice mail service coded as 7523** indicates that the voice mail service is a component of the data transmission service (CPC 7523).

II. LIST OF ELEVEN SERVICES

1. BUSINESS SERVICES

A) Professional services

a) Legal services CPC 861, excluding: participation in legal proceedings in the capacity of defenders or representatives of their clients before the courts of Viet Nam; legal documentation and certification services of the laws of Viet Nam)

b) Taxation services (CPC 863).

c) Architectural services (CPC 8671).

d) Engineering services (CPC 8672).

dd) Integrated engineering services (CPC 8673).

e) Urban planning and urban landscape architectural services (CPC 8674).

B. Computer and related services (CP 841- 845, 849)

C. Research and Development Services

R&D services on natural sciences (CPC 851).

D. Rental/Leasing Services without Operators

DD. Other business services

a) Services related to management consulting (CPC 866, except for CPC 86602 and arbitration and conciliation services for commercial disputes between businesses (CPC86602**))

b) Related scientific and technical consulting services (CPC 86751, 86752 and 86753 only).

2. COMMUNICATION SERVICES

A. Telecommunication's services

Basic telecommunication services

a) Telex services (CPC 7523**).

b) Telegraph services (CPC 7523**)

c) Facsimile services (CPC 7521** + 7529**).

Value-added services

d) Enhance/value-added facsimile services, including store and forward, store and retrieve (CPC 7523**)

dd) Other services

B. Audiovisual Services

A) Motion picture projection service (CPC 96121).

b) Sound recording

3. CONSTRUCTION AND RELATED ENGINEERING SERVICES

Installation (CPC 514)

4. DISTRIBUTION SERVICES

Franchising services (CPC 8929)

5. EDUCATIONAL SERVICES

Higher education services (CPC 923)

6. ENVIRONMENTAL SERVICES

Environmental impact assessment services (CPC 94090*).

7. FINANCIAL SERVICES

Non-life insurance services.

8. HEALTH RELATED AND SOCIAL SERVICES

Medical and dental services (CPC 9312)

9. TOURISM AND TRAVEL RELATED SERVICES

Travel agencies and tour operator services (CPC 7471)

10. RECREATIONAL, CULTURAL AND SPORTING SERVICES

A. Entertainment services (including theatre, live bands and circus services) (CPC 9619)

B. Other services

Electronic games business (CPC 964**).

11. TRANSPORT SERVICES

Sales and marketing air products services.

*This translation is made by **LawSoft** and for reference purposes only. Its copyright is owned by **LawSoft** and protected under Clause 2, Article 14 of the Law on Intellectual Property. Your comments are always welcomed*