

Government

SOCIALIST REPUBLIC OF VIETNAM

Independence – Freedom – Happiness

No.: /2013/NĐ-CP

Hanoi, date:

Draft 2

DECREE

Detailing Paragraph 3, Article 54 of the Labor Law on sublease of labor

THE GOVERNMENT

Pursuant to the Law on Organization of the Government dated December 25, 2001;
Pursuant to the Law on Enterprise dated November 29, 2005;
Pursuant to the Labor Law dated June 18, 2012;
At the proposal of the Minister of Labor, War Invalids and Social Affairs,

DECREE

Chapter I GENERAL PROVISIONS

Article 1.Scope of regulation

The Decree details and guilds the implementation of paragraph 3 of Article 54 of the Labor Law on issue of license for operation of labor sublease, the deposit of businesses operating in labor sublease and job categories allowed to perform labor sublease.

Article 2.Application objects

- 1 . Businesses operating in labor sublease;
2. Labor sub-lessee;
3. Leased workers.

Article 3. Interpretation of term

In this Decree, the terms below are construed as follows:

1. *Businesses operating in labor sublease* shall mean an enterprise established and operating under the provisions of law, hiring and using labor according to the labor contract, but then supply their workers to work temporarily for the other employers (hereinafter referred to as the sublease business)

2. *Labor sub-lessee* shall mean businesses, agencies, organizations, cooperatives, households and individuals in need of manpower for a specified time who require the

labor sublease businesses to supply the suitable laborers for use in complement of deficient position of laborers.

3. *Leased workers* shall mean workers covering full civil act capacity, have signed labor contracts with sublease business, to be paid salary by such sublease businesses and ensure other benefits to work under the direction of the labor sub-lessee in a specified time

Where the leased workers are foreigners, in addition to compliance with the provisions of this Decree shall also comply with the conditions stipulated in the Decree No./2013/NĐ-CP of the Government stipulating in detail the implementation of some articles of the Labor Law on employment of foreigners working in Vietnam.

Article 4. The prohibited conduct for activities of labor sublease

1. As to sublease business.

a. Contract of labor sublease, labor contracts include a clause prohibiting employees and the labor sub-lessee officially recruiting workers to work after the expiration of the labor contract.

b. To let other businesses lend his name to operate in the labor sublease

c. To pay salaries and other benefits for subleased workers lower than the content agreed with the labor sub-lessee.

d. To charge on the subleased workers.

đ. The term of labor sublease do not comply with the provisions of Article 28 of this Decree.

e. To conduct operation of labor sublease for the purpose of labor supply between the labor sublease business with other businesses in the parent company-subsiidiary, economic corporations in which the labor sublease business is a member.

2. As to labor sub-lessee.

a. To charge on the subleased workers.

b. To let other employers re-lease of leased workers.

c. To use the leased laborers beyond the sublease term of labor stipulated in this Decree.

d. To use the subleased laborers to do the job for a period of 12 months or more.

If the labor sub-lessee violates points c and d, Clause 2, Article 4 of this Decree, shall not only be handled administrative violations, the labor sub-lessee must agree by a contract of indefinite term with subleased workers while the labor contract by and between the sublease business with subleased employees expires.

Chapter II
CONDITIONS, PROCEDURES AND AUTHORITY FOR ISSUING
LICENSE FOR OPERATING IN LABOR SUBLEASE
SECTION I
CONDITIONS FOR ISSUING LICENSE FOR OPERATING IN LABOR
SUBLEASE

Article 5. Enterprises permitted to do operation of labor sublease while covering all the following conditions:

1. Have a certificate of business registration operating in labor sublease in accordance with law.
2. Deposit made at least 1,000,000,000 (one billion Vietnam dong)
3. Licensed to operate in labor sublease issued by the Ministry of Labor, War Invalids and Social Affairs under the provisions of this Decree.

Article 6. Conditions on legal capital for activities of labor sublease

1. The legal capital for business operating in labor sublease of 2,000,000,000 (two billion Vietnam dong)

The sublease businesses must maintain capital levels not lower than the above-mentioned legal capital during operation.

2. The documents proving legal capital conditions specified in paragraph 1 above, including:

- a) Minutes of the capital contribution of the founding shareholders for joint stock company or the founders for limited liability companies with two or more members; decision of capital allocation of the owner with one member limited liability company; registration of investment capital of business owners for private enterprises and for one member limited liability company owned by an individual.

- b) For capital contributed in cash, it must be certified by the commercial banks licensed to operate in Vietnam in terms of deposits of the founders;

- c) For capital contributed by assets, it must have certificates of organizations, eligible in valuation function in Vietnam for the results of assets valuation as capital contribution. The certificate must be valid up to the date of filing at the competent business registration authorities.

3. In case foreign businesses venturing with domestic enterprises and foreign enterprises, in addition to comply with the provisions of Clause 1, Clause 2 of this Article, such businesses must meet the following conditions:

Foreign business is an enterprise specializing in labor sublease, covering capital and total assets of the business from 10,000,000,000 (ten billion) or more; spent time of continuously business operation for five years or more; certified by the competent authorities of the host country and a representative of enterprise for corporate capital

contribution to the joint venture with enterprises in Vietnam with no violations of the law of the host country or the law of the country concerned.

Article 7: Location of its head office, branches, representative offices of sublease business

1. Location of its head office, branches, representative offices of sublease businesses must be stable and have a term of at least one year or more; in case of house subject to ownership of the person whose name in the business registration, the documents of business registration must have valid papers, if hired, it must have contract of house for lease with the lease term of one year or more.

2. Where the relocation of its head office, branches, representative offices of the sublease business, the head of the branch, representative office must notify in writing to the provincial labor authorities, their subleased workers of place of departure and destination later than fifteen (15) working days before the relocation.

Article 8. Conditions and criteria for the head of the sublease business

The head of the enterprise, branch, representative office of the sublease businesses must meet the following conditions:

1. To have full civil act capacity, good moral character, and clear history
2. Education from a university or higher.

In case work for other sublease business which has been revoked business registration certificate must also satisfy the additional conditions: in the preceding three years not to do or hold the key management of the business which has been revoked business registration certificate.

Article 9. Change of leadership, management and change of authorized capital of business operating in labor sublease

When change of managers and other key positions of enterprise involved in labor sublease operations, changes in authorized capital, the deposit, the sublease businesses must comply with the provisions of the law on business registration and must satisfy the conditions of labor sublease under the provisions of this Decree and shall notify in writing to the business registration authority, the competent labor authority within ten (10) days before the date of change.

Article 10. Organizations and individuals not allowed to establish, manage enterprise involved in labor sublease activities and direct implementation of labor sublease activities

1. Organizations and individuals that the Enterprise Law and other laws prohibit the establishment and management of enterprises.

2. The persons who are subject to administrative sanctions in accordance with the Law on Handling of Administrative Violations; serving non-custodial reform penalty, residence ban, surveillance, suspended sentence in probation or prohibited by a court for practice of labor sublease activities

3. The persons who violate the content specified in Article 4 of this Decree or acts fake application for business registration certificate, license for labor sublease operation within 36 months from the date of penalty by the competent agencies, organizations and individuals authorized to handle violations that repeat offence.

Article 11. Notification of the start time of operation of labor sublease

1. At least ten (10) working days before the start of operation of labor sublease, the head of enterprise must notify in writing to the provincial labor authority to know about its headquarter, location and time of operation, and must provide with certified copies of the License for labor sublease activities and the list of leaders, managers and persons holding key management in the business.

2. In case of relocation of head office, branch, representative office or in case the sublease business registered in this province but open a branch, representative office or carry out regular labor sublease activity in other provinces, later than ten (10) working days before the operation, the head of the enterprise must notify in writing and enclose a list and brief curriculum vitae of those who will come to work in the province for the provincial labor authorities to know.

SECTION II

PROCEDURES AND AUTHORITY FOR ISSUING LICENSE FOR OPERATING IN LABOR SUBLEASE

Article 12. Documents for issue, extension of License for operation in labor sublease

The documents for issue, extension of License for operation in labor sublease include:

1. The document requesting issue of License for labor sublease activities of the enterprise under the form in Appendix 01 to this Decree;
2. Proof of eligibility for funds under the provisions
3. Certificates of deposit made under the provisions of this Decree
4. The curriculum vitae of the leaders of the labor sublease activities certified by the competent authority together with proof of eligibility as defined in Article 8 of this Decree;
5. Extracted list of officers in charge of the apparatus of labor sublease activities certified by the head of the enterprise, including the following details: full name, date of birth, position, qualifications, qualifications of foreign language, tasks assigned.

Article 13. The term of the license

License for operation in labor sublease issued to the enterprise by the Ministry of Labor, War Invalids and Social Affairs with a term not exceeding 36 (thirty six) months.

Each subsequent extension does not exceed 36 (thirty six) months.

Article 14. Competence to issue, renew, revoke licenses.

1. Ministry of Labor, War Invalids and Social Affairs shall decide and takes responsible for issue, renewal, revocation of licenses for labor sublease operation towards sublease businesses.

2. Sublease businesses submit documents under the provisions of Article 12 of this Decree to the Ministry of Labor, War Invalids and Social Affairs to request for extension of license for labor sublease operation.

3. The Ministry of Labor, War Invalids and Social Affairs shall base on the provisions of Section I, Chapter II of this Decree and other provisions related to conduct the consideration of the grant and renewal of licenses for labor sublease operation for labor sublease businesses for a period of thirty (30) working days after receiving complete and valid dossiers according to the form in Appendix 02 of this Decree.

Article 15. The behavior to be revoked licenses for labor sublease operation

1. The sublease businesses violating one of the following provisions will be deprived of the right to use the license

a) Fail to carry out the obligations of the business prescribed by law and this Decree.

b) Fraudulent to workers certified by competent State agencies or in violation of the provisions of paragraph 1 of Article 4 of this Decree.

c) Be administratively sanctioned for violating labor law three times a year, or a violation which is sanctioned for three times.

d) No operation after 6 months from the date of issuance of the license for labor sublease operation or non-payment of additional security deposit after the time limit specified in Article 20 of this Decree without legitimate reason

đ) Fail to deposit in accordance with regulations

e) Termination of operation.

2. In the case the sublease business is revoked license for labor sublease operation, or the license is not renewed or the period of the license for labor sublease operation has expired without the procedure for the extension, the labor contracts signed between the subleased employee and sublease business shall continue to be carried out unless the two parties agree to terminate the labor contract.

The labor sublease business shall pay severance allowance to subleased workers when the two parties agree to terminate the labor contract as provided for in Article 48 of the Labor Code.

Chapter III

DEPOSIT AND MANAGEMENT OF DEPOSIT OF LABOR SUBLEASE BUSINESS

Article 16. Purpose of deposits use

The deposit is used to pay, compensate for the subleased employees in case the labor sublease business violates the contract labor with the subleased workers or damage to the legal rights and interests of the subleased workers.

Article 17. Payment of deposit and procedures for payment deposit

1. The sublease enterprise shall deposit at least VND 1 billion (one billion) of deposits at commercial bank where the sublease businesses open account transactions (hereinafter referred to as the bank)

2. The sublease business shall carry out procedures for payment of deposit under the bank's regulations and comply with the provisions of the current law. After completion of the procedures for deposit payment, the bank shall issue certificate of deposit for such businesses.

Article 18. Interest from deposits

The sublease businesses shall be reaped non-term interest rate and use the interest on bank deposits in accordance with the bank's regulations and the current legislation.

Article 19. Conditions for withdrawal of deposit

The withdrawal of deposits of sublease businesses is only carried out in case of one of the following conditions:

1. Present the documents of the Ministry of Labor, War Invalids and Social Affairs which the sublease business violates contract labor with subleased workers that the sublease businesses fail to pay compensation for them within 60 days from the date of the violation of the business.

2. Present the documents of the Ministry of Labor, War Invalids and Social Affairs (towards labor sublease business) which allow the businesses withdrawing deposit to pay compensation for the subleased employees in case the sublease business is incapable in financial capacity after considering the requirements of the business.

Article 20. Additional payment of deposit

Within 30 days from the withdrawal date of deposit, the sublease businesses must complete additional payment of deposit accounts.

After the time mentioned above, if the business fails to complement the deposit, the bank must notify to the Ministry of Labor, War Invalids and Social Affairs.

Article 21. Refund of deposit

Bank deposits are reimbursed to the sublease businesses in one of the following conditions:

1. Notice of the competent authority that the enterprise is not granted business registration certificates for labor sublease or license for labor sublease operation.

2. Decision of the Ministry of Labor, War Invalids and Social Affairs on the recovery of licenses for labor sublease operation.

3. Decision of business registration authority in reference to the recovery of business registration certificate of labor sublease business.

Article 22. Case of withdrawal, withdrawal procedures, refund of deposit

1. Case of deposit withdrawal:

a) The sublease businesses violating the labor contract with the subleased employee that can not afford to pay compensation in accordance with law.

b) The sublease businesses do not pay salary for subleased employees after a period of 30 days from the date of salary payment.

c) Fail to pay, delay in payment of social insurance, health insurance for three consecutive months or other types of insurance as prescribed by law, or under agreement between the sublease business and the subleased employees, the business shall be obliged to perform.

d) The subleased workers suffer from labor accidents, occupational diseases that the sublease businesses do not have the ability to pay, return, reimburse to them.

In case the subleased workers suffer from labor accidents, occupational diseases in the course of performing the task of subleased labor from the lessee, on which the sublease businesses have withdrawn deposits but still not enough to pay, return, compensate for the subleased employees, the lessee is responsible for compensation for the subleased workers under the provisions of Article 145 of the Labor Law.

2. Procedures for withdrawal and refund of deposits of the sublease business shall be carried out in accordance with the provisions of the Bank and the current legislation.

Article 23. Authority and responsibility of the state authorities to deposit

1. The Ministry of Labor, War Invalids and Social Affairs is capable to request the bank for withdrawal of deposit of the sublease business to pay, compensate to employees in case the sublease business do not pay, compensate to subleased employees when getting the decision of the Ministry of labor, War Invalids and Social Affairs.

2. The sublease business is not withdrawn deposits for their business operation or use for other purposes. The Bank is not allowed the labor sublease businesses to withdraw the deposit before presentation of documents of the Ministry of Labor, War Invalids and Social Affairs in accordance with the provisions of Article 19 and 21 of this Decree.

Article 24. Responsibility of the Bank

1. To instruct the sublease businesses to comply with the regulations on account open, payment of deposit to account, use of account and the provisions related to the account.

2. To blockade the business deposits for labor sublease and perform interest payment on the balance of the deposit under the non-term interest rate at banks. At the

end of every month, the bank shall calculate interest payment for business and enter into account of deposit or pay in cash.

3. To issue certificate of business deposit for labor sublease (attached as Appendix 3 to this Circular)

4. In case the sublease business violates contract labor with the subleased workers or cause damage to the legitimate rights and interests of the subleased laborers with the decision of the competent State agencies (Ministry of Labor, War Invalids and Social Affairs or the court) forcing the businesses to pay damages, the Bank is entitled to withdraw from the deposit account to make the payment, after deducting the bank charges.

5. Require the enterprises to pay full additional amount deposited within 30 days (from the date the amount is deducted from the deposit account to pay for compensation). After this period, the enterprise is not pay full additional amount of deposit, the bank shall notify to the Ministry of Labor, War Invalids and Social Affairs to take remedial measures.

6. Quarterly, on the 15th day of the first month of the following quarter, the Bank receiving the deposit business for labor sublease must prepare and submit a report to the Ministry of Labor, War Invalids and Social Affairs, the State Bank (state Bank Inspectorate) on reception of business deposits of labor sublease of its banking system (attached as Appendix 4 to this Circular)

Chapter IV

JOB TO BE PERMITTED FOR LABOR SUBLEASE

Article 25. The purpose of the labor sublease

1. In order to meet a sudden temporary increase in manpower to make certain orders in the specified period.

2. Replace employees on maternity leave, accidents or to perform civil duties or reduction of work hours.

3. Need employees with high technical quality.

Article 26. The labor sublease not to be done in the following businesses:

1. Enterprises are faced with labor disputes and strikes unresolved or to replace the workers in their exercise of the right to strike.

2. To replace workers who resign from jobs because economic reasons, restructuring, technology or merger, consolidation, split of business.

3. To hire laborers to do work in areas where harsh living conditions according to the list published by the Ministry of Labor, War Invalids and Social Affairs and the Ministry of Health, unless the employee has lived in the area for 03 years or more

Article 27. List of jobs permitted for labor sublease

1. The labor sublease is only carried out towards the job in the list allowed for labor sublease in Appendix 05 attached to this Decree and correspond to the contents prescribed in Article 25, 26 of this Decree.

2. In case the task of labor sublease is in the list of occupation, hard work, hazardous or dangerous and extremely heavy, hazardous or dangerous work promulgated by the Ministry of Labor, War Invalids and Social Affairs, shall not be permitted to carry out such labor sublease.

Article 28. Term of labor sublease

The term of labor sublease is prescribed in Clause 2, Article 54 of the Labor Law.

Where expiry of labor sublease, the labor sublease enterprise is not continuously allowed to sublease workers with the sub-lessor where the subleased workers has expired the term mentioned above.

Chapter V Implementing Provisions

Article 29. Responsibilities of the Ministry of Labor, War Invalids and Social Affairs

1. Implementation of state management in the field of labor sublease in the country.
2. To assume the prime responsibility and coordinate with the State Bank instructing the deposit and management of deposit of the labor sublease business.
3. Coordinate with the concerned ministries and branches stipulating the places not allowed to use subleased laborers.
4. Inspect the observance of labor law and this Decree in the lease and sublease businesses.
5. Grant, renew and revoke licenses for labor sublease operation of the business.
6. Regulate, guild the irregular and periodical annual report of labor sublease businesses.
7. Coordinate with ministries, ministerial-level agencies dealing with issues related to the labor sublease.

Article 30. Effect of implement

1. This Decree takes effect from 01/05/2013.

Within 06 months from the effective date of this Decree, organizations and individuals operating in sublease of employees shall prepare the procedure for granting licenses for labor sublease operation under the provisions of this Decree.

2. The Ministry of Labor, War Invalids and Social Affairs shall assume the prime responsibility and coordinate with concerned ministries and branches to guide the implementation of this Decree.

3. Ministers, heads of ministerial-level agencies, the heads of the agencies under the Government, Chairmen of the People's Committees of provinces and cities directly under the Central Government shall have to implement this Decree.

Recipients:

- Secretariat of the Party Central Committee;
- Prime Minister, the Deputy Prime Ministers;
- The ministries, ministerial-level agencies, Government agencies;
- People's Councils, People's Committees of provinces, Cities under the Central Government;
- Central Office and the Committee of the Party;
- Office of the President;
- National Council and the Commission of the National Assembly;
- Office of the National Assembly;
- Supreme People's Court;
- Supreme People's Procuratorate;
- State Audit;
- Central agencies of mass;
- Government Office: Chairman, Deputy Chairmen
- Website of the Government, the Prime Minister's spokesman, departments, units, - Gazette ;
- Save: Archives.

**ON BEHALF OF THE GOVERNMENT
THE PRIME MINISTER**

NGUYEN TAN DUNG

Appendix 01

(Issued together with the Decree No. / 2013/ND-CP dated of the Government)

MINISTRY OF LABOR, WAR INVALIDS AND SOCIAL AFFAIRS No. /LĐTBXH-GP	SOCIALIST REPUBLIC OF VIETNAM Independence - Freedom – Happiness Hanoi,
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LICENSE FOR LABOR SUBLEASE OPERATION**MINISTER OF MINISTRY OF LABOR, WAR INVALIDS AND SOCIAL AFFAIRS**

- Pursuant to Labor Law dated June 18, 2012 ;
- Pursuant to Decree No. / 2013/ND-CP dated, 2013 of the Government detailing Clause 3, Article 54 of the Labor Law on labor sublease ;
- At the proposal of the (business representative) : and Director of the Legal Department,

DECIDES:**Article 1.** It is to allow ... *(name of enterprise)*

Transaction name:

Number of business registration certificate:

Date of issue: Place of issue:

Address of the head office of the enterprise:

Tel: Fax: Email:

Operating in labor sublease .

Article 2. ... *(name of enterprise)*

Take responsible for full implementation of the current provisions of the labor law.

Article 3. This license takes effect from the date of signing**MINISTER***(or authorized person)*

Appendix 02

(Issued together with the Decree No./2013/ND-CP dated of the Government)

Name of enterprise

SOCIALIST REPUBLIC OF VIETNAM
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_____, date ...

APPLICATION**For issue of licenses for labor sublease operation**

Attention: Ministry of Labor, War Invalids and Social Affairs

1. Name of enterprise:

Transaction name:

2. Address of head office:

Tel:; Fax:; E-mail:

3. Name of the legal representative of the enterprise:

4. Legal capital at the time requesting issue of license:

Kindly request the Ministry of Labor, War Invalids and Social Affairs granting License for labor sublease operation.

We commit to fulfill responsibilities and obligations in accordance with the law on sending laborers to work overseas

Attached documents include:

1.

2.

3.

.....

GENERAL DIRECTOR
OR DIRECTOR OF ENTERPRISE
 (Signature, official stamp and full name)

Appendix 03

(Issued together with the Decree No. / 2013/ND-CP dated of the Government)

SOCIALIST REPUBLIC OF VIETNAM
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, *date*:.....

CERTIFICATE OF BUSINESS DEPOSIT FOR LABOR SUBLEASE

Pursuant to Decree No. / 2013/ND-CP dated / / 2013 of the Government detailing Clause 3, Article 54 of the Labor Law on labor sublease

Name of Bank (Branch)

Address:

Tel:

To certify the enterprise:

Address of the head office:

Account holder:

Title of Account holder:

paid the deposit for a total amount of:

Amount in words:

At Bank

On (date)

Account

To be reaped the interest rate: non-term deposit

Bank (Branch).....

Director

(Signature, stamp and full name)

Appendix 04

(Issued together with the Decree No./2013/ND-CP dated of the Government)

**REPORT ON RECEPTION OF BUSINESS DEPOSIT FOR LABOUR
SUBLEASE**

(Report of Quarter Year.....)

Attention: - Ministry of Labor, War Invalids and Social Affairs

- State Bank of Vietnam (State Bank Inspectorate)

Name of bank

Address:

Tel:

Fax:

Name of enterprise (Account holder)	Amount of deposit
The enterprise operates in labor sublease:	
1.	
2.	
...	
Total	

General Director (Director)

(Signature and Stamp)

Note: In case branches of commercial bank have received the business deposit for labor sublease, it shall also prepare and submit this report to the Commercial Bank (Head Office) to review and submit a report to the Ministry of Labor, War Invalids and Social Affairs, the State Bank

*Appendix 05***JOBS TO BE PERMITTED FOR LABOR SUBLEASE**

(Issued together with the Decree No. /2013/ND-CP dated of the Government)

No.	Job
1	Interpretation
2	Secretaries and administrative assistants
3	receptionist
4	Tour guild
5	Sales support
6	Project support
7	Office computing
8	Accountant
9	Electricity and electronics
10	Professional care and hygiene man
11	Teaching
12	Business
13	Marketing
14	Guard