Labour Matters

Legislation

In replacement of the former Labour Codes of 2012, the current Labour Code which was passed by the NA on 20 November 2019 and took effect on 1 January 2021 (“Labour Code 2019”), currently serves as the principal legal base for all the labour matters in Vietnam. The Labour Code 2019 applies to both employee and employer including foreign organizations that employ local and foreign staff working in Vietnam.

Since November 2019, many decrees, decisions, circulars, directions and other regulations have been issued from time to time, by the GoV and various ministries and agencies, to replace those guiding for the implementation of the former Code and bring the provisions of the Labour Code 2019 into practice.

Recruitment

Formerly, foreign invested enterprises must recruit employees first from individuals recommended by the local labour supplier(s). Now, foreign invested enterprises, and foreign traders’ representative offices and branches when the time-limit of 15 working days is expired but the Vietnamese employee recruiting agencies cannot select and introduce any Vietnamese employee at their request, can do direct recruitment.

Employees must be at least full 15 years old, except for certain jobs provided for by the MOLISA. Employee who is a foreigner entering Vietnam to work must satisfy the following conditions:

(i) The worker is a full 18 years of age and has full legal capacity for civil acts;
(ii) The worker has professional qualifications, technical and

other skills, work experience and good health as stipulated by the MOH;
(iii) The worker is a manager, chief executive officer, expert or technician;
(iv) The worker is not a person currently serving a sentence or with a criminal conviction which has not yet been absolved/removed from the record, and not subject to prosecution for criminal liability in accordance with the law of the foreign country or the law of Vietnam;
(v) The worker obtains a work permit issued by a competent State authority of Vietnam, except for cases exempted from work permit.

Preference in employment should be given to Vietnamese citizens. However, if a Vietnamese person with appropriate qualifications is not found, foreign employees can be hired. The employer is responsible to determine the demand for foreign workers for every job position in which Vietnamese workers are incompetent and send explanation of such demand to the MOLISA or the Department of Labour, War Invalids and Social Affairs ("DOLISA") of the province or centrally-run city where the planned working place of foreign workers is located (hereinafter referred to as "State management authority on labour") in order to obtain the latter's written approval for the recruitment of foreign worker for every job position.

It is worthy of note that according to Decree No.152/2020/ND-CP dated 30 December 2020 of the GoV, on foreign workers working in Vietnam, and recruitment and management of Vietnamese workers working for foreign employers in Vietnam, as amended by Decree No.70/2023/ND-CP dated 18 September 2023 ("Decree 152/2020"), the foreign workers are exempt from work permits in the following cases:

(i) Capital contributing member or owner of a limited liability company with a value of his or her capital contribution of at least VND3 billion;

(ii) Chairperson or member of the board of management of a joint stock company with a value of his or her capital contribution of at least VND3 billion;
(iii) Head of a representative office or of a project or person mainly responsible for the operation of an international organization or foreign non-governmental organization in Vietnam;
(iv) Entering Vietnam for a period under 3 months in order to offer services;
(v) Entering Vietnam for a period under 3 months in order to resolve an incident breakdown or technically or technologically complex situation arising and affecting, or with the risk of affecting production or business, with which Vietnamese experts or foreign experts currently in Vietnam are unable to deal;
(vi) A foreign lawyer issued with a certificate to practice law in Vietnam in accordance with the law on lawyers;
(vii) Other cases in accordance with an international treaty to which Vietnam is a member;
(viii) Foreigners married to Vietnamese and living in the territory of Vietnam;
(ix) The workers are internally reassigned in the companies which engage in 11 service industries in the Vietnam's WTO commitments on services, including: business, communication, construction, distribution, education, environment, finance, health, tourism, culture, entertainment and transportation;
(x) The workers enter Vietnam to provide professional and technical advisory services or perform other tasks serving the research, construction, appraisal, assessment, management and execution of programs and projects funded by ODA according to the International Treaties on ODA between the competent authorities of Vietnam and other countries;
(xii) The workers are issued with the licenses for the practice of communications or journalism in Vietnam by the Ministry of Foreign Affairs ("MOFA");
(xiii) The workers are appointed by foreign agencies or organizations to teach or to work as a manager or executive

director at an educational institution proposed to be established in Vietnam by a foreign diplomatic mission or intergovernmental organization; or of a facility or organization established under an international treaty to which Vietnam is a signatory or participant;
(xiv) The workers are volunteers who are unpaid foreign workers who voluntarily work in Vietnam to implement an international treaty to which Vietnam is a signatory and have obtained the certification of the foreign diplomatic missions or international organizations in Vietnam;
(xv) The workers enter Vietnam to hold the positions of experts, managers, chief executive officers or technicians for a period of under 30 days and up to 3 times a year;
(xvi) The workers enter Vietnam to implement international agreements to which central or provincial agencies and organizations are signatories in accordance with the law;
(xvii) A student studying in Vietnam at a foreign school or training institution which has a probation agreement with an agency, organization or enterprise in Vietnam; or a probationer or apprentice on a Vietnam sea-going ship;
(xviii) Relatives of members performing their functions in foreign missions in Vietnam, who are exempted from work permits under the international treaties to which Vietnam is a signatory;
(xix) Workers are holders of official passports for working in the State agencies, political organizations or socio – political organizations;
(xx) Workers are responsible for establishing commercial presence;
(xxi) Foreigners certified by the Ministry of Education and Training ("MOET") as a foreign worker entering Vietnam to do the following jobs: (a) teaching and research; (b) working as a manager, executive director, principal, or vice principal of an educational institution proposed to be established in Vietnam by a foreign diplomatic mission or intergovernmental organization.

From 1 January 2024, announcement of recruitment of Vietnamese workers for positions expected to recruit foreign workers will be made on the digital portal of the MOLISA (Department of Employment) or the digital portal of the Employment Service Centre established according to decision of the Chairman of the People's Committee of the province or centrally-run city at least 15 days before the required explanation reporting to the State management agency on labor. The content of the recruitment announcement includes job position and title, job description, quantity, requirements on qualifications, experience, salary, working time and location. After failing to recruit Vietnamese workers for positions for which foreign workers will be recruited, at least 15 days before the planned use of foreign workers, the employer (except for contractors) is responsible for determining the need to employ foreign workers for each job position of which the requirements are not met by Vietnamese workers and report according to a standard form to the State management authority on labour. The State management authority on labour must issue a written approval or disapproval of the use of foreign workers for each job position within 10 working days from the date of receipt of the explanatory report or the explanatory report on changes in the need to use foreign workers. During the implementation process, if there is a change to position, job title, quantity or location in the need to use foreign workers, the employer must report according to the standard form to the State management authority on labour at least 15 days before the planned employment of foreign workers. The State management authority on labour must issue a written approval or disapproval of the use of foreign workers for each position within 10 working days from the date of receipt of the explanatory report or the explanatory report on changes in the need to use foreign workers. If the foreign workers fall into the following categories (i), (ii), (iii), (iv), (v), (vi), (viii), (x), (xi), (xiii), (xiv), (xv), (xvi), (xvii), (xviii) or (xx), employers are not required to determine the need to employ foreign workers.

The employer shall request the State management authority on labour to certify that such foreign workers are eligible for exemption from work permits at least 10 working days before the day on which they start to work. Within 5 working days from the day on which the satisfactory application is received, the State management authority on labour shall send a written certification to the employer, which is valid for up to 2 years but coincides with the validity period of any relevant contract, agreement, document, license, etc. in the cases mentioned above; and may be re-issued for up to 2 years more.

However, for any of cases stated in (i), (ii), (iv), (vi), (xiv) and (xvii) above, employer is not required to apply for certification of exemption from work permit for foreign employee but it must report the State management authority on labour at least 3 days before such foreign worker starts to work in Vietnam as planned, on the following: full name, age, nationality, passport number, name of employer, start date and completion date of work.

For remaining cases, at least 15 days before the day on which the foreign worker starts his/her work in Vietnam as planned, the employer; Vietnamese agencies, organizations, enterprises; or foreign organizations or enterprises operating in Vietnam where foreign workers, foreign employees entering Vietnam to offer services, persons responsible for establishing commercial presence come to work shall submit an application for the work permit to the State management authority on labour. Within 5 working days from the day on which the satisfactory application is received, the State management authority on labour shall issue the work permit to the foreign worker. The duration of a work permit coincides with the validity period of any relevant contract, agreement, document, license, etc. in the cases mentioned above but shall not exceed 2 years. After foreign worker is issued with work permit, employer and the foreign worker shall sign a written

labour contract in accordance with the Vietnam law before the intended working day of such foreign worker. For foreign workers performing a labour contract, after the foreign worker is granted with a work permit, the employer and the foreign worker must enter into a written labour contract in accordance with Vietnamese labour laws prior to the planned commencement date of employment, then the employer and the employer must send the original or a certified copy of the signed labour contract to the State management authority that issued such work permit.

In the case where a foreign worker works for an employer in many provinces or centrally-run cities, within 3 working days from the date the foreign worker starts working, the employer must report according to standard form in the electronic environment to the State management authority on labour.

Before July 5 and January 5 of the following year, the employer shall submit report of the first 6 months of the year and annual report according to standard form on the status of using foreign employees. The time for closing the data for the first 6 months of the year is calculated from 15 December of the year before the reporting period to 14 June of the reporting period, the time for closing the data for the annual report is calculated from 15 December of the year before the reporting period to 14 December of the reporting period.

Labour Contracts

A labour contract must be in writing and directly signed in 2 originals by the employee and the employer’s legal representative, the head of the agency/organization with legal status or their authorized person as prescribed by law; the employee shall keep 1 original and the employer shall keep 1 original; except for the case employment which will last less than one month the parties may conclude verbal contracts in eligible circumstances. A labour contract entered into by electronic means in the form of data messages in accordance

with the law on electronic transactions has the same value as a written labour contract. A labour contract entered via electronic means in the form of a data message in accordance with the laws on electronic transactions has the same value as a written labour contract.

Entering into the labour contract must obtain a written consent from his/her legal representative if the worker is from full 15 years up to under 18 years of age; and signatures of the worker under 15 years old of age and his/her legal representatives.

A group of workers who are full 18 years of age may authorize one of the workers in their group to enter a written labour contract for a seasonal work or specific job with a duration of less than 12 months and in this case, the labour contract has the same validity as if it was signed with each worker.

A labour contract must be entered into in either of the following types: Definite term labour contract being a contract in which the two parties fix the term and the time of termination of the validity of the contract which must not exceed thirty six (36) months from the effective date of the contract; or Indefinite term labour contract being a contract in which the two parties do not fix the term nor the time of termination of validity of the contract. The term of the labour contract signed with the foreign worker working in Vietnam must not exceed the term of the work permit.

A labour contract must be in conformity with the Vietnamese laws, labour collective agreements (if any), and social ethics with maximal two definitive term contracts to be first permitted, then indefinite term contract to be applied, except for the cases of (i) labour contracts with persons hired as directors in the State-owned enterprises, elderly employees (i.e. persons who continue to work after the statutory retirement age), foreign workers working in Vietnam, and (ii) extension of expired term of labour contracts to the end of

the office term for employees who are members of the leadership of the organization representing workers at the grassroots level during his/her office term.

A labour contract must have main clauses relating to: Name and address of the enterprise, and full name and title of the signatory on the employer's side; Full name, date of birth, sex, residential address, and number of identity card/ citizen's identification card/ passport of the signatory on the employee's side; Job and workplace; Term of the labour contract; Wage rate in accordance with the job or title/position, method of and time of payment of wages, allowances and other additional payments; Schedule for wage increases and promotion; Working hours and breaks; Personal protective equipment of the employee; Social, health and unemployment insurances for the employee; Training and skill improvement for the employee.

An addendum to a labour contract may elaborate in detail or may amend or add some of the articles to the labour contract, but may not amend the term of the labour contract.

When an employee does a job, which is directly related to business or technological secrets as defined by law, the employer has the right to a written agreement with the employee on contents and term of confidentiality of business secrets and protection of technology, of interests or benefits and compensation if the employee breaches such agreement.

Employers and employees can agree on the contents of probation that can be included in the labour contract or enter into a probationary contract. The main contents of the probationary contract include: Name and address of the employer and the full name and title of the person entering into the labour contract on the employer's side; Full name, date of birth, gender, place of residence, number of citizen's identification card, identity card or passport of the person entering into the labour contract on the employee's side; Work and place of

work; Probationary period; Salary according to job or title, form of salary payment, time limit for salary payment, salary allowances and other additional amounts; Working time, rest time; Labour protection equipment for workers.

Probationary agreements may be separate from or included in the labour contracts. The probationary length varies, and subject to the nature and complexity of assigned jobs; but there may only be probation on one occasion for one job, and the probationary period must not exceed:

(i) 180 days in the case of the job being enterprise manager pursuant to the Law on Enterprises, and the Law on Management and Use of State Capital Invested in Production and Business in Enterprises;
(ii) 60 days for working in a position requiring high level specialized or technical expertise;
(iii) 30 days for working in a position requiring intermediate level specialized or technical expertise or for technical workers and professional staff; and
(iv) 6 working days for other work.

The wage of an employee during a probationary period shall be as agreed by the two parties but must be at least 85% of the wage rate for the relevant working position/job.

An employee working pursuant to a labour contract with a term of less than 1 month is not engaged in a probationary period of work.

Statutory Minimums

Normal working hours are limited to 8 hours per day and 48 hours per week. Employers have the right to stipulate that employees work on an hourly or daily or weekly basis but must notify the employee thereof; if on a weekly basis, then normal working hours must not exceed 10 hours in one day and must not exceed 48 hours in one week. Working hours and breaks for workers who perform the works having special characteristics

in some areas; seasonal production work, processing work according to orders; work must be on duty 24/24 hours; other works of special nature prescribed by the Government; shall be specified by the management ministries and branches after reaching agreement with the MOLISA.

Working hours may be extended by mutual agreements on overtime hours, location and job; however, provided that (i) total daily overtime shall not exceed 50% of the normal working hours in 01 days; (ii) in case of application of working regulation on weekly or part time basis, the total normal working hours and the overtime hours shall not exceed 12 hours in a day; (iii) the total overtime hours shall not exceed 12 hours in one day when working overtime on public holidays or weekly days off, 40 hours in 01 months, or 60 hours in case where the employer is allowed to use the employee to work overtime for a maximum of 300 hours/year; and 200 hours in 01 year, or 300 hours in 01 year in some industries, occupations, jobs or cases allowed by the Government and the employer must notify in writing thereof to the DOLISA; but do not apply to: Employees from under 15 years old to under 18 years old, except for employees from full 15 years old to under 18 years old in some occupations, jobs according to the list issued by the Minister of MOLISA; the employee is a mildly disabled person with a working capacity decrease of 51% or more, a severe disability or a particularly severe disability, unless agreed by the employee; female employees are pregnant from the 7th month or from the 6th month if working in highland, remote, border or island areas; female employees who are raising children under 12 months old, unless agreed by the employee. However, the employer has the right to request the employee to work overtime on any day without being limited to the above-mentioned overtime hours and the employee cannot refuse in certain cases as provided for in the Labour Code.

Employees who have worked in the enterprise for 12 months in full are entitled to have a fully paid annual leave in

accordance with the wage stated in labour contract, which shall be:

(ii) 12 working days for employees working in normal conditions,
(iii) 14 working days for employees doing heavy, toxic or dangerous occupations or works, or those working in the places with harsh living conditions according to a list issued by the MOLISA after presiding over coordination with the MOH, and minor or handicapped labour, or
(iv) 16 working days for employees doing extremely heavy, toxic or dangerous works, or those working in the places with specially harsh living conditions according to a list issued by the MOLISA after presiding over coordination with the MOH.

An employee who has worked in the enterprise for less than 12 months is entitled to annual leave at the ratio corresponding to the number of months for which he or she worked.

For every full 5 years working for the employer, the number of annual leave days of the employee as mentioned above shall be increased by 1 day.

An employee may reach agreement with the employer on taking annual leave in instalments or combining leave for a maximum 3 years at one time.

Female employees are entitled also to prenatal and postnatal leave of six months in which the maximum period of prenatal leave shall be 2 months, with an allowance funded by social insurance agency and equal to 100% of salary. If a female employee gives birth to more than one child at the one time, she is entitled to an additional 1 month’s leave for each child counted from the second child.

Salary rates must conform to the collective labour agreement (if any) and must not be less than the legally-regulated minimum regional wage rates in accordance with Decree No.74/2024/ND-CP dated 30 June 2024 of the GoV, regulating

minimum wage levels for labourers working under labour contracts (“Decree 74/2024”). According to which, there are currently four levels applicable to employees, which come down from

(i) VND4,960,000 (about USD198.4) regarding enterprises, agencies and organizations operating in Region I, including: the inners and most of suburb of HCMC; the inners and the mains of suburb of Hanoi and Hai Phong; Hai Duong city of Hai Duong province; Ha Long, Uong Bi, Mong Cai and Dong Trieu cities, and Quang Yen town, of Quang Ninh province; Bien Hoa and Long Khanh cities and some rural districts of Dong Nai province; Binh Duong province; Vung Tau city and Phu My town of Ba Ria – Vung Tau province; and Tan An city and 3 rural districts of Long An province;
(ii) VND4,410,000 (about USD176.4) regarding those operating in Region II, including: Can Gio district of HCMC, the remaining districts of suburb of Hanoi and Hai Phong and of Dong Nai province, the inner of Can Tho city; some smaller cities, for example: Lao Cai (Lao Cai province), Thai Nguyen, Song Cong and Pho Yen (Thai Nguyen province), Cam Pha (Quang Ninh province), Viet Tri (Phu Tho province), Thai Binh (Thai Binh province), Ninh Binh (Ninh Binh province), Dong Hoi (Quang Tri province), Hue (Thua Thien – Hue province), Hoi An and Tam Ky (Quang Nam province), Nha Trang and Cam Ranh (Khanh Hoa province), Phan Thiet (Binh Thuan province), Da Lat and Bao Loc (Lam Dong province), Ba Ria (Ba Ria – Vung Tau province), My Tho (Tien Giang province), Rach Gia, Ha Tien and Phu Quoc (Kien Giang province); Long Xuyen and Chau Doc (An Giang province), Tra Vinh, Bac Lieu, Ca Mau of provinces with the same names; and some cities, towns and rural districts of Hung Yen, Hai Duong, Vinh Phuc, Bac Ninh, Bac Giang, Hoa Binh, Nam Dinh, Thanh Hoa, Nghe An, Khanh Hoa, Tay Ninh, Binh Phuoc, Long An, Tien Giang, Ben Tre to Vinh Long provinces;
(iii) VND3,860,000 (about USD154.4) regarding those operating in Region III, including: the other provincial cities; suburbs of Can Tho city; and the remaining rural districts of Hung

Yen, Nam Dinh and Tay Ninh provinces; towns of Ky Anh (Ha Tinh province), Song Cau and Dong Hoa (Phu Yen province), Duyen Hai (Tra Vinh province); and a number of towns and rural districts of Lao Cai, Hai Duong, Phu Tho, Vinh Phuc, Bac Giang, Quang Ninh, Thai Binh, Nam Dinh, Ha Nam, Ninh Binh, Thanh Hoa, Nghe An, Quang Binh, Thua Thien – Hue, Quang Nam, Quang Ngai, Khanh Hoa, Kon Tum, Lam Dong, Binh Thuan, Binh Phuoc, Ba Ria – Vung Tau, Long An, Tien Giang, Ben Tre, Vinh Long, Kien Giang, An Giang, Hau Giang, Bac Lieu to Ca Mau provinces; and
(iv) to VND3,450,000 (about USD138) regarding those operating in Region IV: the rest.

Based on the production organization, labour organization, enterprises will formulate and decide:

(i) the wage scale & payroll for labourers, meeting certain statutory requirements on the lowest wage level and gap between two consecutive wage grades;
(ii) the labour norms formulated on the basis of the job or title ranks and in compatibility with the levels and trained qualifications of labourers, technological process, and technical standards of machines, equipment and ensuring the labour standards; notified to labourers at least 15 days before applying experimentally; applied experimentally for a duration of not more than 3 months before being officially promulgated;

The wage scale & payroll and labour norms must be provided to obtain favourable opinions from all employees in the enterprise and organizations representing employees at grassroots level (if any) when being prepared or amended; and publicly published at the working places of labourers before implementation.

Collective Labour Agreement

Representatives of both employer and labour collective in a foreign-invested enterprise may negotiate and sign a

collective labour agreement (“CLA”). The labour collective’s representative at grassroots level is the executive committee of the enterprise’s grass-roots trade union or of a direct superior trade union when the grassroots trade union is not yet established.

Contents of a CLA must not be contrary to the laws and be more favourable for the employees than the provisions of the laws. A CLA shall have the effective date depending on the parties’ agreement recorded in the CLA. If the parties are unable to reach agreement, then the effective date of such CLA shall be the date of signing. Before signing/executing, the draft CLA negotiated by the parties must be provided to obtain favorable opinions from all the employees in the enterprise. An enterprise CLA may only be entered into when more than 50% of the employees of the enterprise vote in favor of it. The employer must notify all employees of the signed CLA and send a copy of the CLA to the provincial-level State management authority on labour within 10 days from the date of signing. Employees are allowed to inspect and supervise the CLA implementation.

The term of the collective labor agreement is from one to three years. The parties may reach agreement on different effective terms for different contents of a CLA.

Within 90 days prior to the expiry of the CLA, both parties may negotiate to extend the term of such CLA or sign a new CLA. If the term is extended, then favorable opinions from the employees must be obtained as described above. When a CLA expires and the parties are continuing to negotiate, the old CLA shall continue to be implemented for a period not to exceed 90 days after the date of expiry of such CLA, unless otherwise agreed by the parties.

Internal Working Rules

Every employer must provide their own internal working rules

issued or amended to obtain favourable opinions from all the employees in the enterprise and the organization representing the employees at the grassroots level in the cases where such an organization has been established in the enterprise.

Internal working rules must contain compulsory items such as working hours and breaks; rules and order in the work places; occupational safety and hygiene in the work places; prevention of sexual harassment in the workplace; and the order and procedures for dealing with a breach being an act of sexual harassment in the workplace; protection of assets and confidentiality of business secrets, technological secrets and intellectual property of the employer; cases in which an employee may be temporarily transferred to undertake work different from that specified in his or her labour contract; conducts which are in breach of labour rules, and penalties imposed for those breaches; liability for material damage; who is the person authorized to impose disciplinary penalties.

A foreign-invested enterprise employing 10 or more employees must have its written internal working rules registered with provincial-level State management authority on labour in the locality where the employer registers the business or the specialized labour agency of the district-level People's Committee authorized by the specialized labour agency of the provincial-level People's Committee within 10 days after the date of issuing such rules. An employer with a branch, unit or production and business establishment in a different locality shall send the registered internal working rules to the provincial-level State management authority on labour in the locality of such branch, unit or establishment.

Within 7 working days after the date of receipt of the application for registration of the internal working rules, if such rules contain any provision contrary to law, the provincial-level State management authority on labour shall notify and guide the employer to amend such rules and re-register them.

The internal working rules will take effect 15 days after the competent State agency receives a complete application for registration of the internal working rules. In the case where the employer employs less than 10 employees and promulgates the written internal working rules, the effectiveness shall be decided by the employer in such internal working rules.

After being issued, the internal working rules must be sent to each employee representative organization at the grassroots level (if any) and be notified to all employees and at the same time, its main contents have to be displayed at necessary locations in the work places, and shall be the legal basis for employees to follow and for employer to apply disciplines in case of violation.

Written regulations are not required if the employer has fewer than 10 employees, but labour discipline and material responsibility must be included in labour contracts.

17.7 Social, Healthcare, Occupational Accidents & Diseases, and Unemployment Insurances, and Trade Union Expense and Fee

The compulsory insurances have recently been merged into one system being managed by the social insurance agency. These insurances cover illness, pregnancy, retirement, death, occupational accidents and diseases; medical examination and treatment expenses; and unemployment.

Foreign-invested enterprises are required to comply with the social insurance scheme. In general:

(i) employers must pay 3% of total wages to the illness and pregnancy fund, 0.5% of total wages to the occupational accidents & diseases fund, and 14% of total wages to the retirement and death fund; and Vietnamese employees working under definite-term labour contracts with a term of full 1 month or more or indefinite-term labour contracts will make a payment of 8% of their monthly wages (including wages and salary allowances; and other allowances & subsidies) to the

retirement and death fund; and
(ii) employers must pay 3% of total wages to the illness and pregnancy fund, 0.5% of total wages to the occupational accidents & diseases fund, (and 14% of total wages to the retirement and death fund from 1 January 2022); and foreign employees working under definite-term labour contracts with a term of full 1 year or more as from 1 January 2022 make a payment of 8% of their monthly wages (including wages and salary allowances; and other allowances & subsidies as from 1 January 2018) to the retirement & death fund.

With respect to health insurance, both sides of employer and employees (regardless of being Vietnamese or foreigners working under definite-term labour contracts with a term of full 3 months or more) have to pay to the health insurance fund, of which 3% of total wages are paid by employers and 1.5% of the monthly wages are paid by employees.

Unemployment insurance is effective from 1 January 2009, which requires 1% of total wages to be paid by the employer and 1% of monthly wage to be paid by the Vietnamese employee working under definite-term labour contracts with a term from full 12 months to 36 months or indefinite-term labour contract. Having benefit from this type of insurance, the employee shall not be beneficial in terms of time for calculation of the job loss allowance or severance allowance when the employment relation is terminated.

Trade Union Expense payable by the employer would be 2% of the total payroll of the Vietnamese employees, and Trade Union Fee payable by the Vietnamese employees who are trade union members would be 1% of the monthly salary.

Labour Disputes

It should be first noted that Vietnamese laws allow employees to go on strike against employers. Before holding a strike, the organization representing the employees with the right to

conduct collective bargaining, which is one of the parties to the collective labour dispute, shall be entitled to organize and lead the strike and shall be responsible to obtain opinions from all of the employees or from members of the leadership of the organizations representing employees participating in the collective bargaining. The organization representing the employees shall decide on the time, location and method for obtaining opinions on the strike, and must provide at least one day’s advance notice thereof to the employer. When there are opinions in agreement from more than fifty per cent (50%) of the employees on the proposal to strike, then the organization representing the employees shall issue a written decision to strike.

With some exceptions, attempts must be made to settle labour disputes through conciliation between the employer and employee held by a labour conciliator or labour arbitration council.

For individual labour disputes and collective labour disputes about rights, they must pass through procedures for conciliation by a labour conciliator prior to a petition to the labour arbitration council or a court to resolve the dispute, except for certain cases. If the dispute cannot be settled through conciliation, or if one of the parties fails to implement the agreement set out in the minutes of successful conciliation, or if on expiry of the time-limit of 5 working days after receipt of a party request for dispute resolution, the labour conciliator has not conducted a conciliation; then, the parties in dispute have the right to request on the basis of consensus a labour arbitration council or to petition a court to resolve the dispute. If such request is made, the parties are not permitted to also petition a court to resolve the matter, except in the following cases: (i) If the time-limit of 7 working days after receipt of a request to resolve a dispute expires without a tribunal being established or the time-limit of 30 days after a tribunal

establishment expires without a decision on resolution, or (ii) If one of the parties fails to enforce [comply with] the decision resolving the dispute made by the labour arbitration tribunal, then the parties have the right to petition a court to resolve the dispute.

For collective labour disputes about interests, they must be resolved via conciliation procedures of a labour conciliator prior to requesting the labour arbitration council to resolve the matter or before going on strike. If the conciliation is unsuccessful or if on expiry of the time-limit for conciliation within 5 working days after receipt of a party's request for dispute resolution, the conciliator has not conducted a conciliation or one of the parties has failed to implement the agreements set out in the minutes of successful conciliation, then the disputing parties may select either of the following methods to resolve the dispute: (i) Request on the basis of consensus a labour arbitration council to resolve the dispute; or (ii) The organization representing employees has the right to hold a strike. Where the parties select the dispute resolution via the labour arbitration council, the organization representing employees is not permitted to hold a strike while the labour arbitration council is resolving the dispute. If on expiry of the time-limit of 7 working days after receipt of a request the tribunal has not been established; or if on expiry of the time-limit of 30 days after its establishment, the tribunal has not issued a decision resolving the dispute; or the employer being a party to the dispute has failed to implement a decision resolving the dispute by the tribunal, then the organization representing employees being a party to the dispute has the right to hold a strike.