

HUMAN RESOURCE SUB-WORKING GROUP'S POSITION PAPER

*Prepared by
Human Resource Sub-Working Group
Vietnam Business Forum*

EXECUTIVE SUMMARY OVERVIEW REPORT ON HR WORKING GROUP'S WORK PROGRESS

We sincerely thank the government's consideration of our recommendations on the revision of the labour code, increases in the overtime cap, positive discussion on minimum wage increases, plus the support in the establishment of an HR Institute.

We would like to highlight some opportunities to enhance the implementation of some current human resources related laws.

We wish to clarify if social security participation for foreign workers is voluntary, especially in the case of intra-corporate transferees.

We recommend that foreigners are not obliged to participate in social security as this would deter foreign investment and be difficult to administer.

Foreigner work permit administration clarification remains to have opportunities for improvement.

We recommend an optional fast track work permit service that companies could use for their executives for an additional processing charge

Firstly, I would again like to thank the Ministry of Labor, Invalids and Social Affairs for the excellent corporation with the HR sub working group and the business community.

Very positive progress has been made on a number of topics, including labour code revision, minimum wage increases, overtime caps and the formation of a national Human Resources Institute. Updates and thoughts on these topics are covered towards the end of this position paper.

As the theme topic this year is enhancing efficiency in implementation and enforcement of current laws, we would like to focus on two particular areas – social security and foreigner work permits.

1. Social Insurance for foreign workers

Regarding to the Draft Decree that regulates the compulsory social insurance for foreign workers, Japanese Business Association (JBAV) has several comments:

- The Social Insurance Law no. 58/2014/QH13 regulates that the participation of foreign workers in social security is “voluntary” hence, JBAV hopes the Decree to clearly state as “voluntarily participation”.
- Although the Social Insurance Law mentions as above, there are many cases, which many agencies misunderstand that foreign workers must have “obligation to participate” hence, we hope the Government as well as MoLISA’s web portal announce the correct understanding of this.

1.1. About “voluntary participation”

Clause 1, Article 2 of the Social Insurance Law regulates that “compulsory social insurance participants”, which do not include foreign workers. Regarding to foreign workers, Clause 2 of this Article mentions that “according to regulations of the Government, workers, who are foreigners, are entitled to join in compulsory social insurance.”

“Join” means “able to participate” and has different meaning from the words using in Clause 1 of this Article. Hence, participating in compulsory social insurance for foreign workers clearly is “voluntary”.

On the other hand, Clause 1 of Article 2 of this Draft Decree states that “foreign workers are subjected to compulsory social insurance” therefore, the “voluntary participation” for foreign workers is not clear. This not only violates Clause 2, Article 5 of the Law on the Promulgation of Legal Document, but also leads to the misunderstanding that foreign workers have “obligation to participate” due to the similarity with the term “participant” in Clause 1, Article 2 of Social Insurance Law no. 58/2014/QH13.

In order to avoid this, JBAV hope the Decree will clearly mention “voluntary participation” for foreign workers.

In addition, Social Insurance Law regulates the foreign workers’ participation of compulsory social insurance is voluntary while this Decree is a sub-law, which regulates this is an “obligation”, is a contrary to the scope of the Decree (guide to implement the law), and also violates Clause 1, Article 11 of the Law on the Promulgation of Legal Document. Moreover,

Clause 1, Article 14 of this law also explicitly prohibits any issuance of official dispatches in contravention of legal documents, which is issued by senior state agencies.

1.2. Transferee definition issue

As the Japanese Business Association have also said in their position paper, the new draft decree could be clearer about the definition of intra-corporate transferees.

Draft Decree article 2 clause 1 defines the objectives as "foreign employee who have signed labour contract in Vietnam...". However, it's not clear that the foreign employee who is transferred from foreign company or organization is objective or not. The similar problem found in Medical Insurance Law (No. 46 / 2014 / QH13) article 12, hence local authorities make different decisions on them.

Transferred employee joins the Social Insurance and Medical Insurance in their home country. If they are the objectives of Social Insurance and Medical Insurance, they have to pay additional fee besides fee in home country. Employers also have to pay unnecessary fee in VN. On the other hands, Tax office request to show the labour contract of transferred employee in VN in order to regard their salary as deductible expenses.

JBAV request to add the stipulation as "Regardless of the presence or absence of labour contracts, transferred employee from foreign companies or organization are excluded from Social Insurance". In addition, to issue the official document stipulate the same in Medical Insurance.

1.3. About announcing correct understanding

Although Social Insurance Law has above regulation, in reality there are many cases that administrative agencies explain that "foreign workers have obligation to participate in compulsory social insurance". Regarding to this matter, we would like the Government or MoLISA's web portal to announce the correct understanding to all administrative agencies.

2. Work Permits

2.1. Intra-corporate transferees requested by DeLISAs to work under local labour contract

As per decree 11 and related circular 40 in the scheme of Intra-company transfer:

The assignment letter shall be issued (signed and sealed) by the Investor (owner or shareholder) of Vietnam host entity and it need to be notarised, translated and legalized.

Impact: Many MNCs have a process in place for intra-company transfer where assignment letters are issued by the Global Mobility or HR department of the company's headquarter or group, which is not necessarily the entity indicated as the owner or shareholder of the local host company. DeLISA no longer accepts such assignment letters for intra company transfers and request that the assignment letter is issued by the foreign entity owner/shareholder of the VN host entity which is often a subsidiary of the group of company and which is not able to sign assignment letter for intra-company transferees.

The Intra company transferee shall have been employed by the Investor (owner or shareholder) of the Vietnamese entity for at least 12 months prior to such transfer by the foreign enterprise.

Impact: All MNCS offer to their employees the opportunity to move within the group, from one

subsidiary to another, from one country to another and the experience of a transferee is not necessarily with the Investor (owner or shareholder) of the Vietnamese entity. But DeLISAs do not accept the applicant's experience with company(ies) that are part of the group, other than the company indicated as the owner/shareholder of the Vietnamese Host entity.

Companies are therefore forced to lodge work permit applications for many of their intra corporate transferees under local hires with a local labor contract, which has several implications on the relationship between the employee and the employer.

DOLISAs should accept assignment letters and transferee's work experience as long as the company issuing the letter is part of the group of company in which the investor of the Vietnamese host entity belongs to.

2.2. Processing time

VBF recognizes and appreciate the effort that the MOLISA has done to reduce the work permit processing time to 7 working days. However, the time required to prepare a work permit application still range between 2 to 3 months due to the procedure and the long list of documents required which take a long time to be procured. The preparation time for work permit in Vietnam is one of the longest in the ASEAN region and no fast track option is offered. Also we would like to propose a fast track option at least for top management positions work permit applications, with higher government fees to be paid. That would reduce the inconvenience of having to wait weeks for some local documents to be procured such as the local police clearance certificate and the job position approval.

2.3. Changes in definitions per Decree 11/ND-CP/2016 and related circular 40/2016/TT-BLDTBXH

For many years, the regulations on the management of foreigners working in Vietnam have differentiated three categories of foreign workers:

- Managers and Executive Directors
- Experts and specialists
- Technicians

Each of the three categories has to meet different qualification requirements to qualify for work permit. Decree 11 has changed the definition of "Manager and Executive" by referring to the law on enterprises. Therefore, as per the new decree 11, a manager who is not a person entitled to enter into the company's transactions on behalf of the company according to the company's charter (in other words not a legal representative) is not considered as a Manager but as an expert /specialist instead.

Several companies have reported issues at provincial department of labor invalids and social affairs as they could not apply for work permit under Managers & Executives for positions such "Director of Finance", "CFO" and many other Managerial positions because applicant's name didn't appear on the company's charter (which is common). Companies were requested to apply under Expert & specialist and as a result amend the job title to match with that category. That doesn't seem correct and has raised concerns from companies' top management. Furthermore, this creates one additional qualification documents required (university degree in addition to a work testimonial).

The same has applied for middle managers (i.e.: line/department manager) as well as to those

already holding a work permit at the time of renewal. Foreigners who hold work permit issued under previous decree may no longer be eligible upon work permit renewal process or would struggle to provide additional qualification documents from a former employer in overseas.

2.4. Qualification requirements

In July 2014, the government has approved resolution 47/NQ-CP in which was agreed to adjust the conditions for foreign Experts and Technician to obtain a work permit. The resolution only requested that those satisfy the requirements for professional training qualifications OR working experience letter in the field that they are expecting to work in Vietnam.

Decree 11 is a step backward as it requires experts and specialists (as well as non-legal representative Managers as explained above) and technicians to meet both requirements.

2.5. Local police clearance certificate requirement

For many years now the foreign business community has raised the issue of having to apply for local police clearance certificate as soon as a foreigner has an entry stamp to Vietnam on his/her passport whatever the duration of their stay in Vietnam.

This issue was clearly identified as being a misinterpretation of the regulations which, since decree 46/2011/ND-CP stipulates that a Local police clearance certificate is required for work permit if a foreigner “has stayed in Vietnam before” **without mentioning any duration**.

Foreign chambers of commerce and VBF have requested several times to clarify this requirement being for those who have stayed in Vietnam for more than 6 months (like it was before decree 46). Unfortunately decree 102 and now decree 11 remains vague on this point and provincial DeLISAs continue to request a local police clearance certificate to those who only stayed in Vietnam a couple of days (i.e.: on pre-assignment trip or for tourism). This useless requirement delays by up to 4 weeks the overall processing time for work permit. This process also requires obtain temporary stay confirmation from the local police of the location where applicant stayed (usually hotel) and this is often difficult and time consuming to obtain.

2.6. Lack of guidance

Article 3.3.a of decree 11/2016/ND-CP refers to “a certificate from an agency, organization or enterprise overseas confirming that he/she is an expert”. The draft circular recently released doesn’t provide any detail on this certificate requirement, issued by which agency, organization or enterprise? Nobody knows what “certificate” would or would not be accepted. Provincial DeLISA are also unable to answer on this.

3. Labor Code Revision

The VBF were very honored and encouraged to be able to contribute our opinions to the current revision of the labor code. We thank the Ministry of Labor and the National Assembly committees especially for hearing our presentations. We have collected technical suggestions from many countries and submitted these last year, which we hope are useful input for drafting the new laws.

We are very happy that the new labor code drafts are clarifying the issue of illegal strikes, which had been of particular concern to Japanese and Korean export manufacturing investors.

The topics are too many to detail here, but we would like to repeat our offer of advice and assistance in any way we can. As always, we look forward to being kept informed as to the progress of these new laws.

4. Minimum Wage Increase

As with last year, we recommend that along with wage increases, we would also encourage introduction of general policies which improve labour productivity, such as public investments in education and health, as well as physical infrastructure in order that foreign and domestic private sectors could share the burden of the need to improve living standards of the Vietnamese people and workers. We recommend a more prudent increase for the following same reasons

- Companies are already facing increased employment costs from higher security, trade union contributions and more generous statutory benefits, which should be factored in.
- Minimum wage can be varied by industry.
- The Government can provide more guidance materials about future plans for many years to reassure foreign enterprises in Vietnam.

The Japanese Business Association (JBAV) in particular proposes their ideas and proposals regarding to 2018 regional minimum wage as follows:

4.1. Overview

According to the General Statistics Office, proportion of labour population by industry in 2016 (estimated value) is as follow: “agriculture, forestry and fishery” is 41.9%, “industrial and construction” is 24.7%, “services” is 33.4%. In the other hand, the proportion of Vietnam’s GDP in 2016 (estimated value) is as follow: agriculture, forestry and fishery” is 16.3%, “industrial and construction” is 32.7%, “services” is 40.9%, and “product tax” (excluding product allowance) is 10.1% (figure 1).

“Industrial and constructional sector” generates one third of GDP with the participation of approximately 20% of the working-age population, thus it is showing the contribution level of this sector to Vietnam economy is significant, is the source that pushes the economic growth. On the other hand, for example, Thailand – a country in the process of industrialization in Southeast Asia, similar to Vietnam, “industrial and construction” occupies more than 20% of the working-age population and generates more than 50% of GDP (figure 2), has confirmed the indispensable contribution of this sector to the sustainable economic development.

Figure 1: Working-age population and GDP structure by region in 2016 of Vietnam

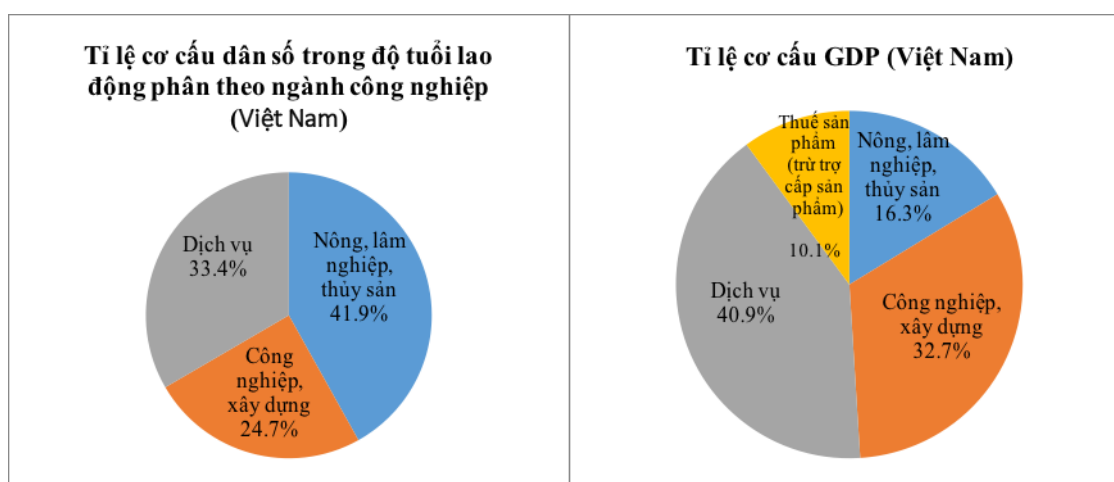
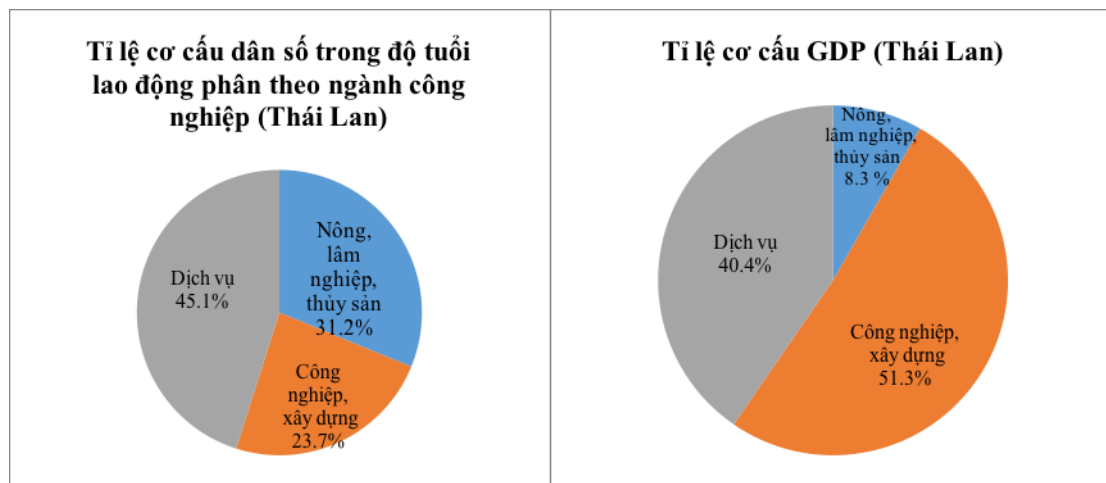


Figure 2: Working-age population and GDP structure by region in 2016 of Thailand



In the recent years, Vietnam Government has been implementing aggressive trade policies, including the formal signing of Vietnam-EU Free Trade Agreement (VEFTA), and the accession of “ASEAN Economic Community (AEC)”. Thanks to the development of a series of agreements, the conditions of exporting to large consumption markets, like Europe, America and Japan have become more favorable. Moreover, Vietnam has better labour resources and stable macro-economic situation than other countries. Vietnam is expected to become a very attractive investment destination for the export processing industry. Especially, this is a unique opportunity for large export industries, which currently hold a strong position in Vietnam, such as garment and footwear.

On the other hand, due to the reduction in tariffs by the FTA, Vietnam will enter into a fierce competition with other countries in Southeast Asia. In the situation that the industrial foundation is not completed, Vietnam Government needs to build a mechanism to attract foreign investment. In particular, from January 2018, the import tariff of the ASEAN Trade in Goods Agreement (ATIGA) is expected to be terminated, in that situation, it is important for the Vietnam Government to quickly improve, maintain an internationally competitive business environment for manufacturing, which is the key sector for attracting foreign investment. Without a business environment with international competitiveness, it is difficult to develop Vietnam industrial business, unable to provide career support for the future generation of youth, as well we unable to improve quality of life.

Last year, Vietnam reconsidered minimum wage and increased it by 7.3%. This is very much higher than the increase of CPI by 2.6% (figure 3, 4). We do not disagree with letting Vietnamese people to have better lives, and do not negate that this is an essential factor to the domestic development. On the other hand, in the future, the garment, footwear and manufacturing, exporting manufacturing industries will be expected to take the lead in the economic development of Vietnam and it will be also a fact that these industries will be sensitive to labour costs.

In the questionnaire for Japanese enterprises, which operate in Asia and Oceania region, 75.5% of enterprises in Vietnam responses: “increase in wages has an impact on the economy”, the high wage is only after Indonesia, China sees this as a biggest business challenge (figure 5, 6). The proportion of enterprises, which are attempting to promote plant automation to cut costs, is also higher than other countries (figure 7).

The adjustment of yearly minimum wage should be based on the actual situation of the domestic and international economy, but it also needs to carefully consider factors to build reasonable standards to not to reduce international competitiveness.

Figure 3: Minimum wage in Vietnam and CPI, GDP growth rate

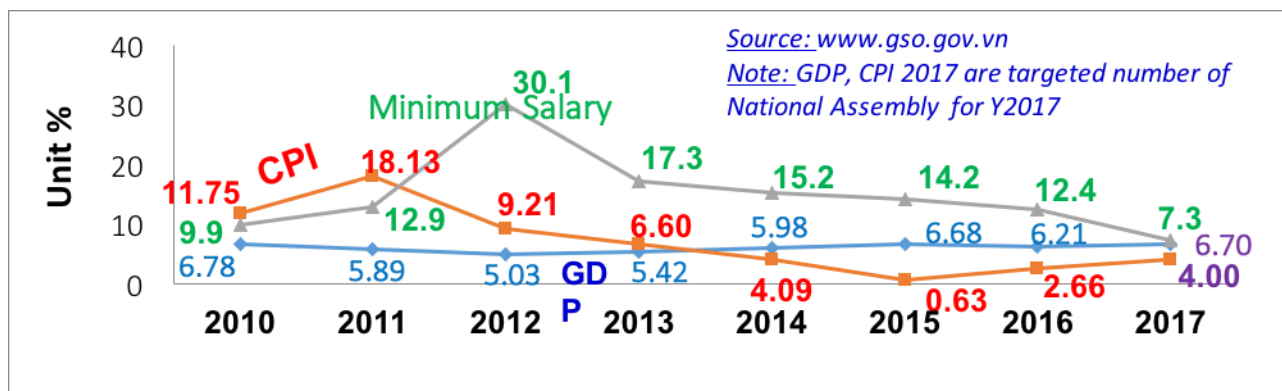


Figure 4: Minimum wage in Vietnam and the process of change in CPI, GDP (compared to 2010)

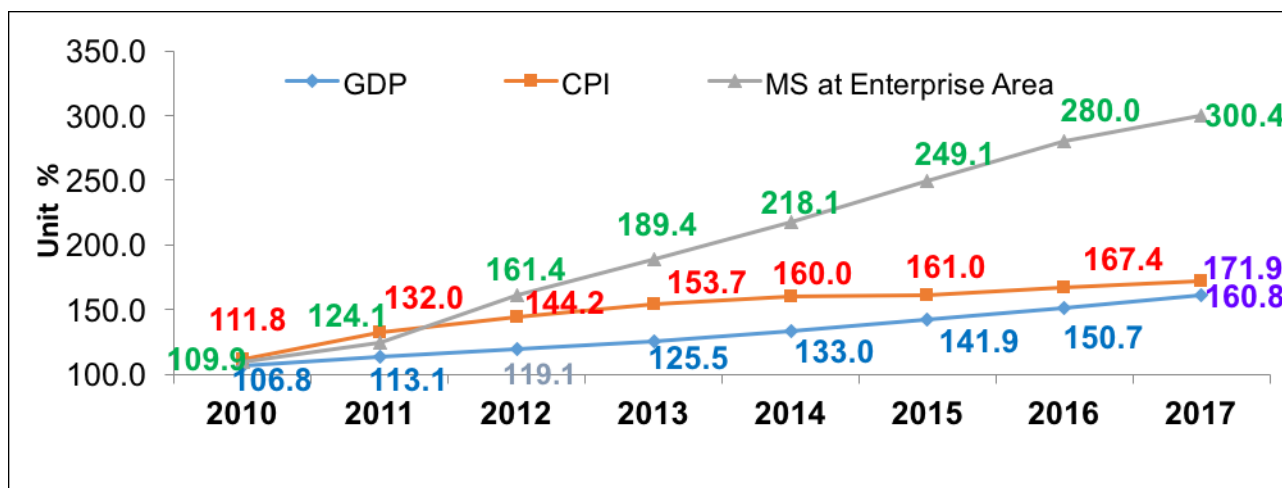


Figure 5: Proportion of Japanese enterprises responses to wage increase is a business issue (According to JETRO investigation in 2016)

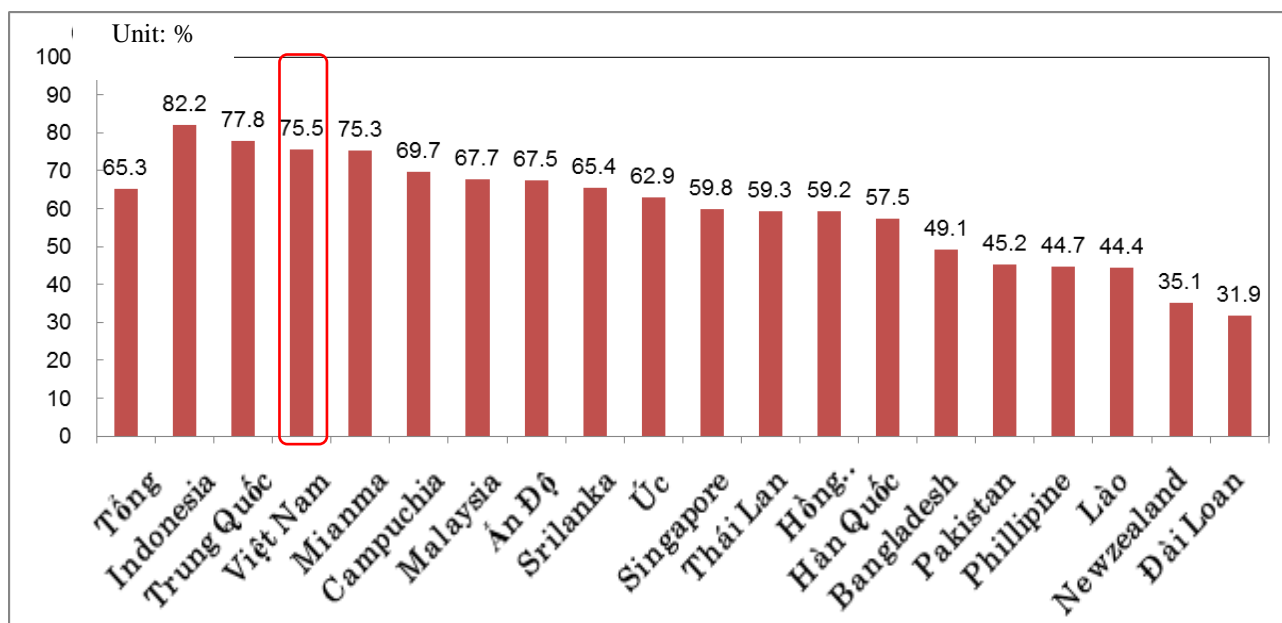


Figure 6: Business challenge for Japanese enterprises investing in Vietnam (According to JETRO investigation in 2016)

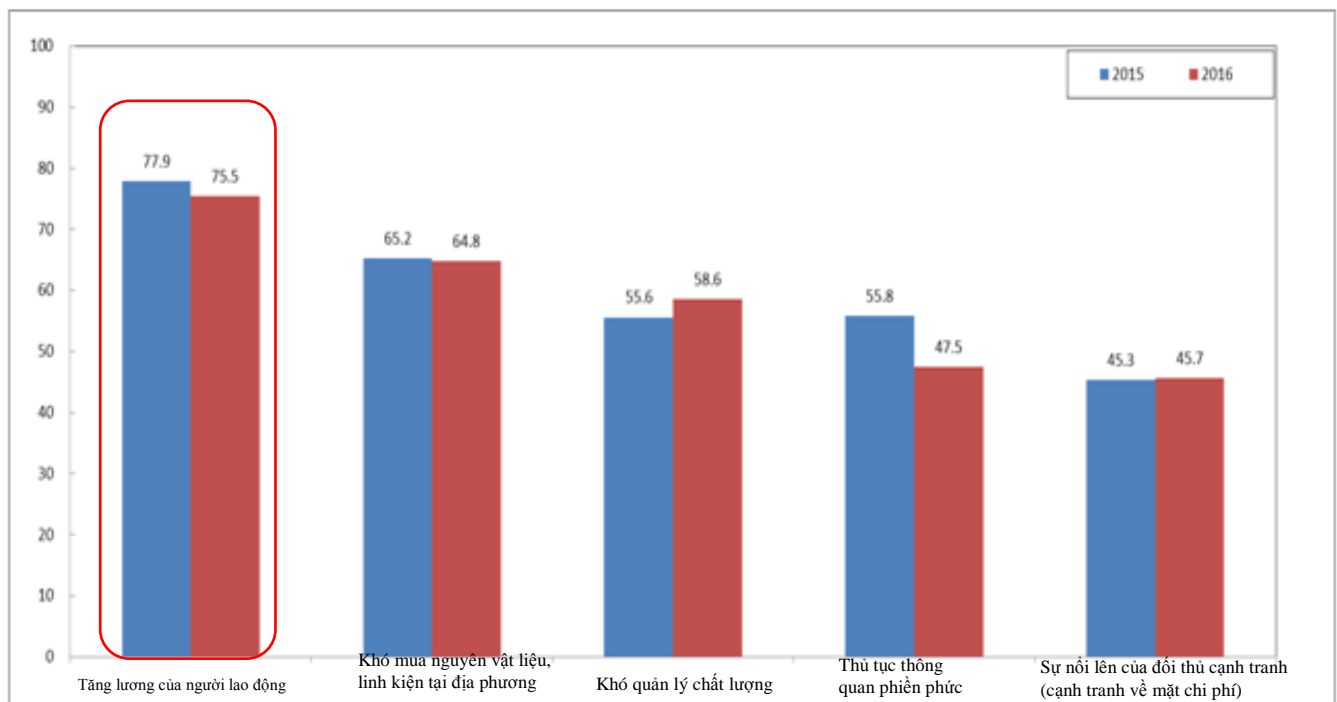
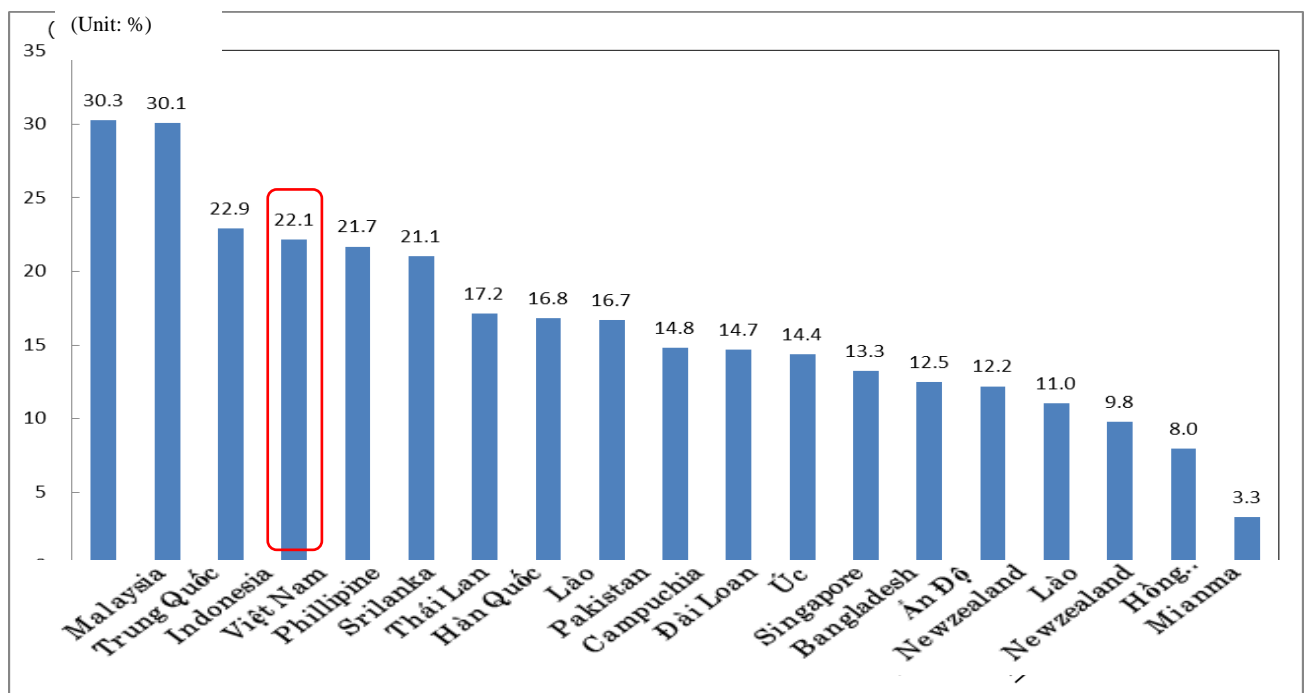


Figure 7: Proportion of enterprises applying the solution for wage increase problem through plant automation (According to JETRO investigation in 2016)



We understand that this is the Government's minimum wage increase policy, which is based on criteria from other Southeast Asian countries, such as Malaysia, Indonesia, Thailand, etc.

However, region 1 of Vietnam currently has minimum wage that exceeds the minimum wage for key industrial regions of Philippines; in the recent years, Malaysia and Thailand have been limiting the increase of minimum wage hence, the gap with Vietnam has been narrowed down

(figure 8). In addition, the cost that employers pay, including social security and union fee on top of minimum wage, has caught up with Thailand (figure 9).

Figure 8: Comparison of changes in minimum wage (compared to Malaysia, Thailand and Philippines)

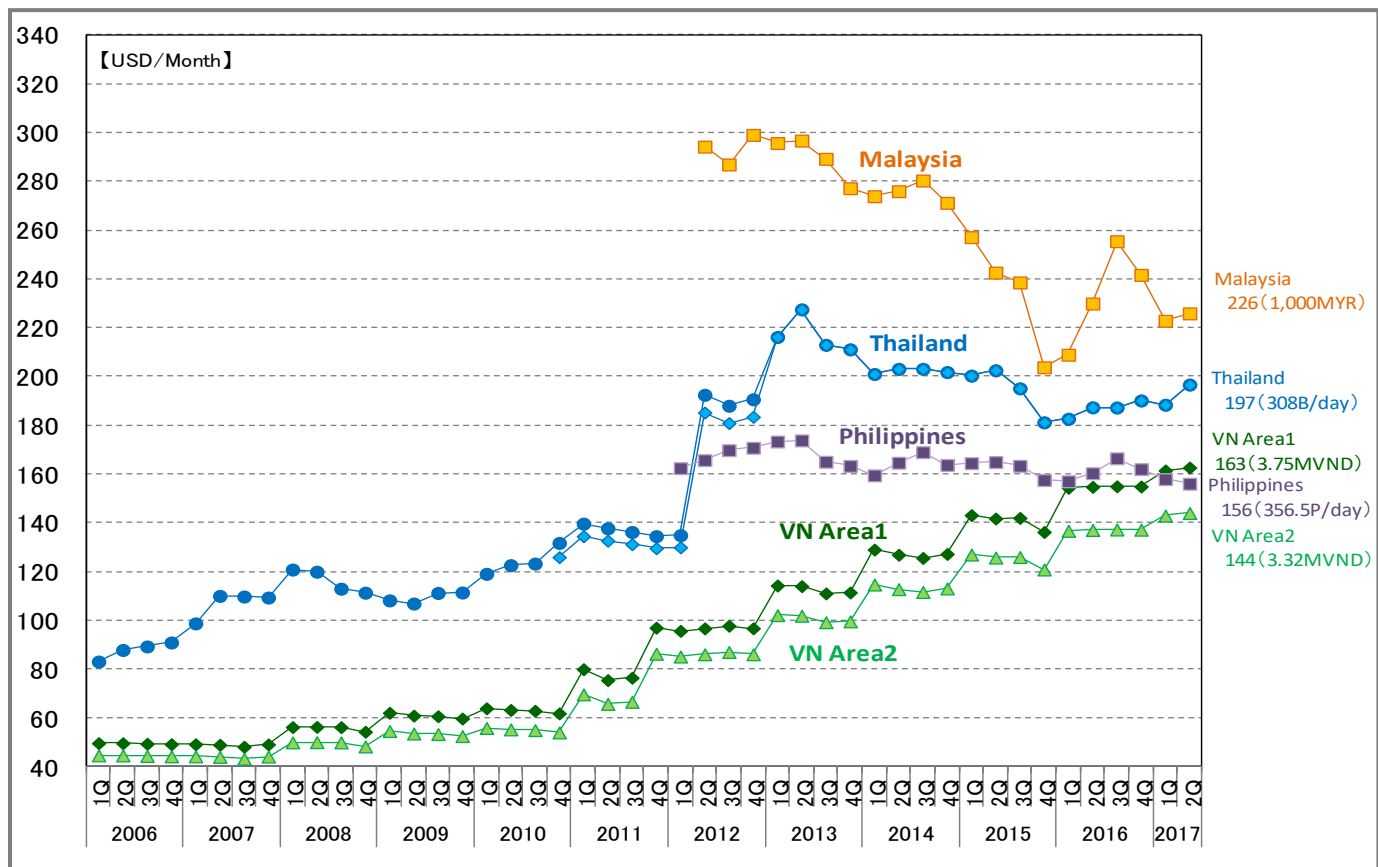
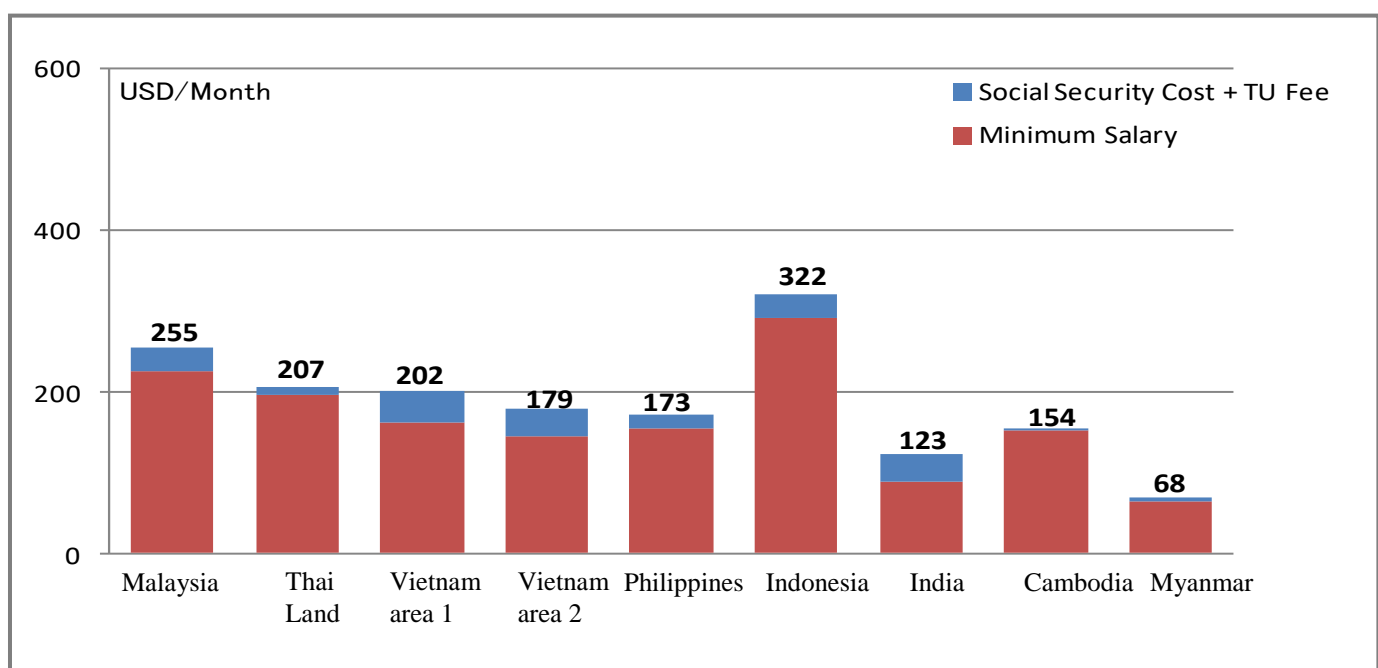


Figure 9: Comparison of minimum wage + cost of social security, union fee (at April 2017)



Looking at the economic indicators, which can be seen from 2013, thanks to the economic policy of the Government so that the increase in CPI is controlled at a low increase rate (figure 10). On the other hand, Vietnam's GDP per capita is still low, and the growth is slow (figure 11). The supporting industrial sector is under-developed, industrial foundation, which produces added value, is still weak and is considered to be one of the causes of this situation. In addition, the decreasing of labour cost advantage compared to other Southeast Asian countries is also a fact.

We think there should be a limit in the increase of minimum wage and focus on improving industrial foundations to maintain export competitiveness and actively attract foreign investment towards "Industrialization in 2020", which is initiated by the Government.

Figure 10: Comparison the growth of CPI (compared to 2010)

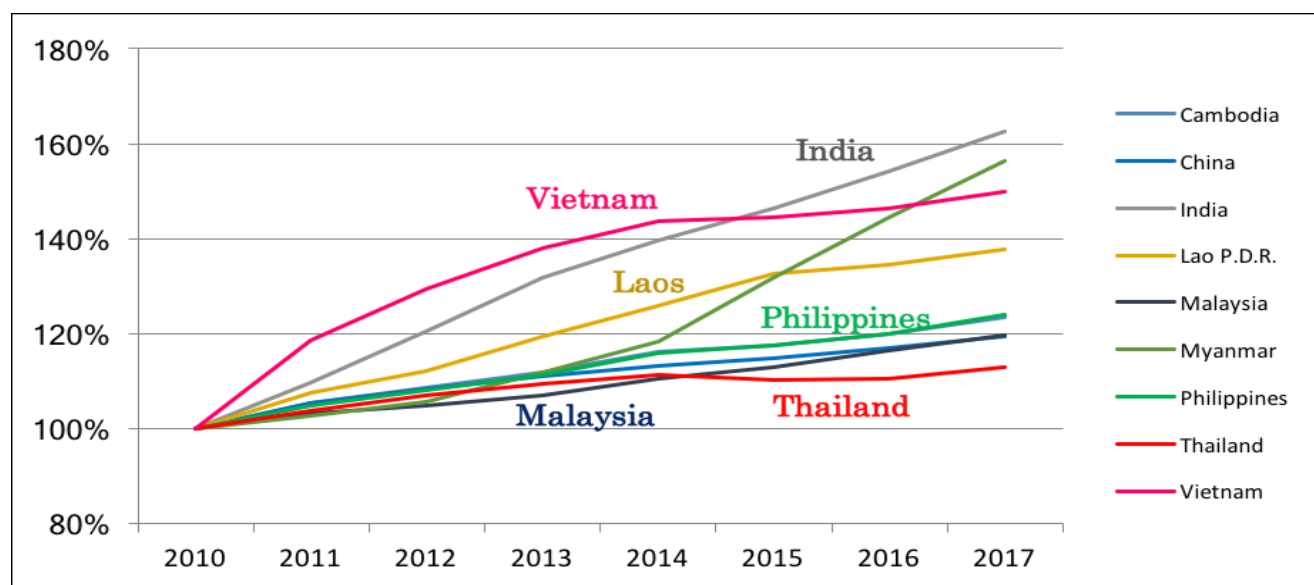
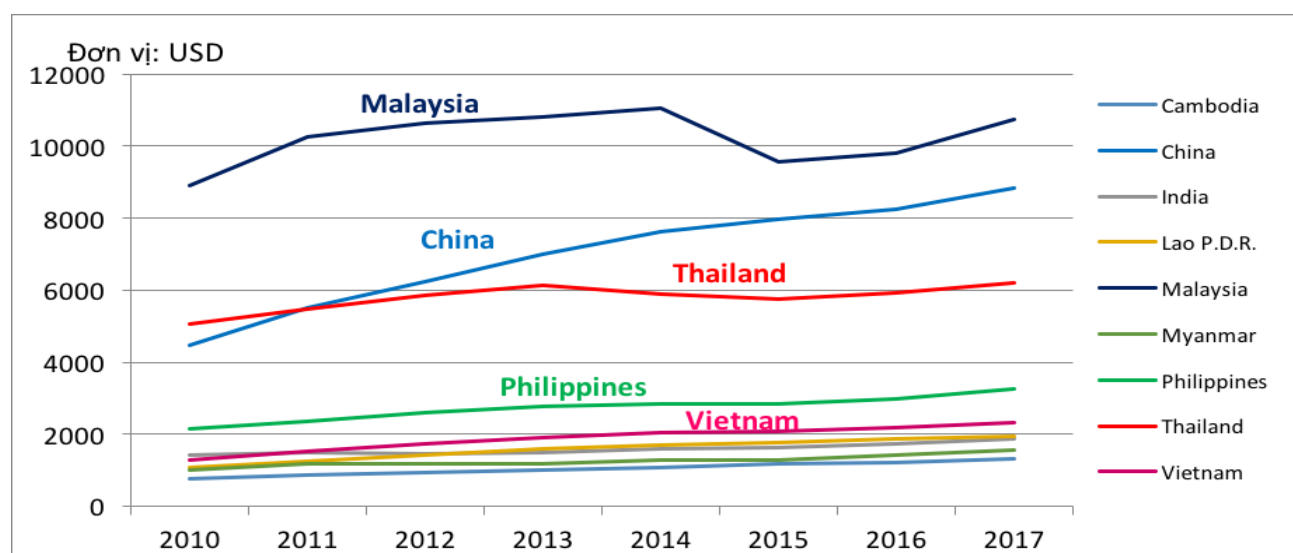


Figure 11: Comparison of GDP per capita



4.2. Comments on 2018 minimum wage aspirations and consideration of the National Wage Council

Expectation for 2018 minimum wage:

- The Government is developing a minimum wage schedule that sets a medium-term goal value however, the fluctuations in domestic and international economic conditions are extremely intense hence, it is difficult to predict. Minimum wage should be determined based on economic indicators and annual economic trends. Setting medium-term goals are not appropriate.
- Minimum wage increase based on formula “CPI + Alpha” is appropriate. From 2012, the minimum wage increase is unreasonably higher than “CPI + Alpha” so there is no need to increase minimum wage in 2018.
- In the proposed amendment, “minimum living standards of employees and their families” are considered to be one of the factors of calculating minimum wage. In other words, in the definition of minimum wage besides basic wage should include “salary based on position and work is paid monthly with fixed amount, position allowances, grants and other allowances”, I hope this definition is specified in the Revised Labour Code and Ordinance on annual minimum wage.
- In addition, to avoid unnecessary chaos, such as strikes, we hope the Government will publicly announce and thoroughly the Circular with the content of: Circular about minimum wage only sets the level with absolute value, in case of satisfying the minimum wage, the wage increase will be decided by the enterprise itself based on the business situation.

4.3. Feedback on the consideration of the National Wage Council

We hope that the National Wage Council will grasp the situation accurately and improve the review process based on actual situation of both employers and employees.

- To add representatives of common interest to the Board members. Besides the representatives of employers and employees, we hope to add to the National Wage Council a representative, who is neutral on the point of view, such as economist, lecturers, lawyers, to enhance the view of macroeconomic and appropriate review process, & conduct fair discussion.
- Investigation method about necessary living standards and publish investigation content. Until last year, the generalization of investigation has not been fully disclosed hence, it is not convincing. In the future, we hope that the investigation method and content will be publicized so that we can participate in the constructive discussion.

4.4. AmCham comments on social security

The American Chamber of Commerce (AmCham) adds some further relevant comments in relation to social security increases specifically.

Maintaining wage competitiveness and improving productivity are crucial for Vietnam's continued success in international markets. Resolution 35, Chapter II, Section 4 c) directs MOLISA to - To review and adjust the regional wage levels in conformity with the labor productivity, economic growth, competitiveness of enterprises and the labor demand of laborers and to review, propose the social insurance system in a reasonable and harmonious way for the interests of workers, enterprises and society. However, recently the World Bank reported that Vietnam's minimum wage levels are high, far outstripping productivity growth, which has been practically nil. And MOLISA reported that the 2017 minimum wage adjustment would cause labor intensive enterprises' expenditures to increase sharply because it would also push up

mandatory contributions to social insurance, health insurance and unemployment insurances, all of which already combine to add a substantial burden to payrolls. The proposal to extend social insurance to foreign personnel working in Vietnam will only exacerbate this situation.

Experts estimate that these social insurance payment increases could result in the loss of 371,000 jobs. These would be mostly workers in foreign invested enterprises, joint ventures, joint stock companies and limited companies. About 110,000 jobs would be cut in textile & garment sector, 105,000 in manufacturing and 59,000 in service sectors. According to the MDRI (Mekong Development Research Institute), the high required social insurance contribution would lead to employment reduction, product price increases and lower economic growth rate.

5. Overtime

We thank the government and National Assembly for considering to raise the overtime cap. The proposed increase is still below international averages, but is welcome. The increase will assist export manufactures in particular to meet flexible production requirements. We agree with the government that varying overtime caps by industry is a good idea to consider further.

As previously, the Japanese offer technical advice on how a compromise flexible solution could be used. This follows their experience of their 'Article 36' law in Japan, which regulates a voluntary overtime.

6. Vietnam HR Institute

The HR management and development professions themselves need to develop rapidly to drive forward labour productivity. The private sector cannot do this alone – the government can help with the formation of a National HR Institute similar to what Singapore, the Philippines, Thailand, and most countries have had for many years already. This would include professionalising HR management and development with professional vocational qualifications and standards.

A specific action plan we propose is:

- As proposed by the Ministry of Labour, they will assemble a team within the ministry that can coordinate with the VBF on this initiative. We look forward to receiving details of this from the ministry and as always also look forward to cooperating with them.
- The Ministry of Labour then convenes a discussion of the current private HR associations and invites them to join a new national HR Institute. This would be privately run non-profit but accredited by the government to drive forward national human resources development
- The HR Institute initially draws up vocational training standards within HR that meet international standards, using FDI expertise to benefit domestic SMEs
- The HR institute draws up vocational training standards in coordination with other sectors such as banking, tourism and manufacturing. These vocational qualifications would be aligned with international standards and accredited as official qualifications by the government
- The training and education sectors also are encouraged to align with these new governments recognized standards

- Use technical setup assistance as already offered by the World Bank, the International Labour Organization, the Asia Pacific Federation of Human Resource Management, the Singapore Human Resources Institute and the People Management Association of the Philippines.