

REPORT FROM HUMAN RESOURCES SUB WORKING GROUP

*Prepared by
Mr. Colin Blackwell
Human Resources Sub-Group*

EXECUTIVE SUMMARY

- We are very encouraged by the government's initiative to update the labour code
- We have submitted very detailed opinions and are eagerly awaiting news of the outcomes
- Foreigner work permit administration clarification could be a relatively easy potential improvement
- Illegal strikes remain a concern especially to foreign manufacturing investors
- The most recent minimum wage increases were very reasonable and positive for attracting investment
- Overtime remains an outstanding issue, which we recognize is a complex subject.

Firstly, we 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. We would like to draw your attention to a few remaining topics;

1. Labour Code Revision

According to the Official Letter no. 1617/LDTBXH-PC dated 12th May 2016 from the Prime Minister, we were asked to provide comments on the current Labour Code. With the cooperation and contribution from chambers of commerce and many local and foreign companies in Vietnam (e.g. Korean, Japan, American, European, Taiwan, Canada, UK and Malaysia), we submitted a report of 100 pages of comments on the current Labour Code issues. We also had a highly appreciated and productive technical meeting with the MOLISA and MPI to discuss these issues and the following is some of the topics that were discussed:

Social Security

The general approach of the government appears to be following the best international practice. We understand there have been some communication issues with the business community about the changes. Going forward, we offer to assist MOLISA in preparing and implementing the draft Decree on social security.

Mechanisms for dialogue between the business community and regulatory agencies

These are very good opportunities for dialogue between the business community and government. There are however a large amount of pending comments and inputs from different commercial associations. We are exploring more effective mechanisms for dialogue to facilitate more open discussions.

We hope that MOLISA can provide a specific focal contact from the MOLISA side to allow more convenient communication and exchange.

Other issues related to the Labour Code

There are other issues on the Labour Code which are great concerns for local and foreign companies, such as sub-leasing, employment contracts and annual leave compensation. We hope to have opportunities to cooperate with the regulation drafting team when the Labour Code is reviewed and adjusted.

TPP-related issues

The TPP union issue we regard as a Vietnam – USA bilateral non-business matter and therefore the VBF as an international business forum does not take any position on the topic. We will watch any developments with interest should they have any business consequences in the future.

2. Work Permits

Decree 11/2016/ND-CP was implemented on April 1, 2016 and until now no guiding circular was issued creating discrepancies among the department of labor on how the decree is implemented.

Changes in definitions

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 as “Managing Director” or “CEO” 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.

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.

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 to 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.

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. Illegal Strikers

Punishment provisions against leader of an illegal strike were updated in the amended Labor Law, however, the regulation is not clear and it is not strict enough in comparison with the damage caused to the enterprises.

It is understood that compensation for Chinese companies which experienced severe losses on property and operation caused by the anti-Chinese strikers has not been indemnified yet. As it can similarly occur to other foreign-direct invested companies in Vietnam, practical measures should be devised in order to prevent such kind of incidents in the coming years.

The Japanese suggestion on this is that the business community can help by focusing on more frequent communication between employers and employees. However, companies should have the right to ask the People's Committees for help to stop the strikes and the People's Committees should support companies on this.

4. Minimum Wage Increase

We found the most recent increase of 7.3% is very reasonable and we thank the government for their excellent organisation.

We also propose that future increases are at a similarly reasonable rate for the following reasons:

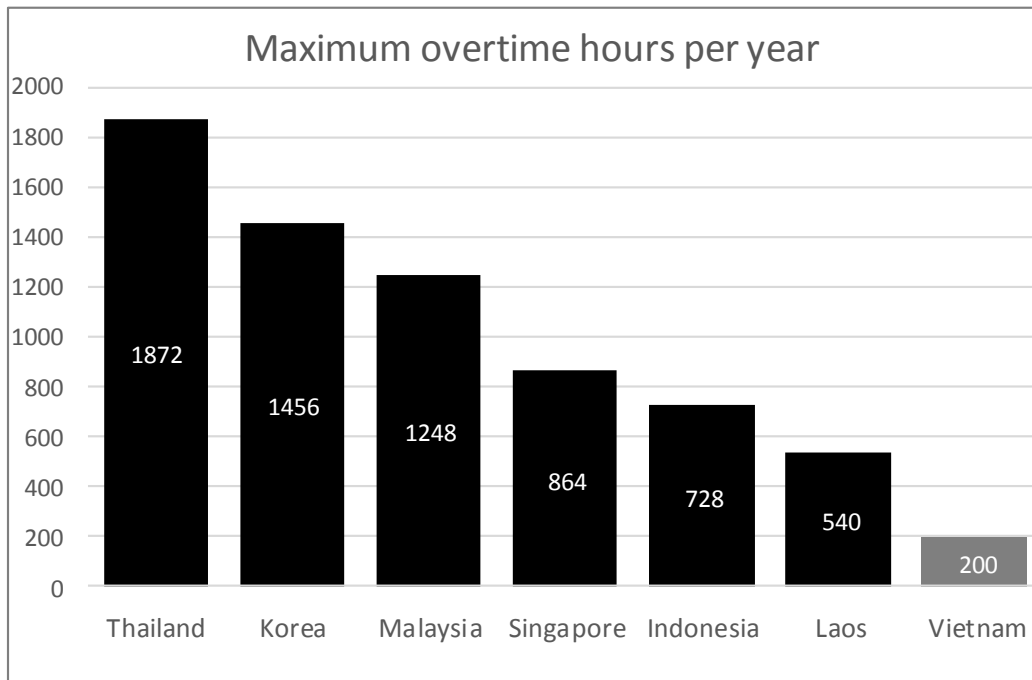
- Foreign investment in manufacturing is very competitive in the region. And to remain competitive in global markets, the pay rise rate should not be set relative to worker's productivity.
- A significant pay rise may trigger higher inflation.

Future minimum wage increases should take into consideration other increases in employment costs for companies. There have been significant cost increases in social security costs due to raised contribution levels and more benefits becoming taxable. Potential further future increases to social security are concerning for the business community and we would request consultation on this topic so that businesses can better adjust to cost increases. Changes to the labour code have also increased other employment costs. According to the World Trade Organization, unequal pay rise in the private sector may be detrimental to the public sector.

This combination poses many challenges to foreign investors to keep their labour costs in Vietnam competitive in comparison to the region. This is particularly of concern to the export manufacturing sector who have to be able to export at competitive prices.

5. Overtime

We understand that overtime is a sensitive issue. Without repeating all of our previous position papers, we would like to remind that Vietnam's overtime cap is much stricter than anywhere else in the region.



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.