

POSITION PAPER OF HUMAN RESOURCES WORKING GROUP

*Prepared by
Human Resources WG*

OVERVIEW ON HR WORKING GROUP'S WORK PROGRESS

- We sincerely thank the government's consideration of our recommendations on the revision of the Labour Code and very effective minimum wage increase negotiations this year.
- We are very keen to offer our recommendations on the upcoming Labour Code revision as soon as official drafts are available.
- We offer our support in facilitating the implementation of the new social security for foreign employees, especially sharing best practice on supplemental tax treaties between Vietnam and the countries of our VBF member chambers.
- We thank MOLISA for the recent clarifications on foreigner work permits.

Firstly, we would as usual 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. The outcome of the minimum wage consultations was particularly efficient and productive this year.

Although the HR Sub Group is not presenting this year, we would like to take this opportunity to respectfully provide some ideas on upcoming proposed legislation.

1. Draft Labor Code 2019

We were honored to be involved in the previous consultations on the revised Labour Code and are keen to provide constructive input again. From our understanding of some of the topics being considered, we would propose some first thoughts on a few articles:

- Article 36: Rights to terminate the labor contract by employer
 - ⇒ Shall be revised as: “employer should terminate employee’s contract based on their job description”.
 - ⇒ Delete the word “always”
- Article 103.c: Salary deduction
 - ⇒ Shall be revised as: “employee tries to damage tools and equipment, disclose confidential information, etc.”
- Article 105: Bonus scheme
 - ⇒ The clause where “employer has to announce bonus scheme to and agree with labor union” is not reasonable.
 - ⇒ Shall be revised as: “where bonus scheme is available, they should be published at management’s discretion to give up bonuses as they see fit based on performance”.
- Article 123: Rules for labor disciplines and forms of dismissal
 - ⇒ Should be revised and add a condition that “in case employer has sent invitation to employee to be present at company’s disciplinary meeting 3 times and employee does not turn up, employer has the right to terminate his/her contract”.

When an official draft of the revised Labour Code is available, VBF could distribute it to a larger audience for comments. We can then prepare a much more comprehensive set of recommendations and thoughts to MOLISA. We also would be very open to the opportunity to present our proposals in a meeting with the drafting committee of MOLISA.

2. Social security for foreign workers: Decree 143/2018/NĐ-CP

The HR Sub-group has previously provided detailed comments when the Decree was at its drafting stage, but in summary our position is:

- We agree with MOLISA’s position that foreign and Vietnamese workers should be treated equally and fairly
- With this agreed mutual position, VBF is keen that double taxation of foreigners does not occur when they are already required to participate in their home country social security scheme and also in Vietnamese social security at the same time
- We are willing to assist however we can in facilitating country by country agreement in avoiding double taxation
- VBF will coordinate with all chambers asking their members for updates their home country bilateral negotiation to avoid double taxation, and will then share best practice to make the process easier for all
- VBF is also as always keen to assist with advice on implementation practicalities on an ongoing basis

3. Foreigner work permits - Decree 140/2018/NĐ-CP

We thank MOLISA for clarifications issued on Oct 8, 2018 to Decree 11 for work permits for foreign nationals:

- The removal of the work permit cancellation procedure during or at the end of the term as well as the acceptance of photocopy of applicant's passport instead of notarized copy are positive directives on administration simplification.
- The availability of online application of work permits in some provinces of Vietnam is another improvement tool, and look forward to this being available soon in all provinces, especially in Ho Chi Minh city.
- We highly appreciate that the processing time for Labor Department to issue work permit has been reduced from 7 working days to 5 working days. However, preparation time is still very time consuming especially the Vietnamese police clearance.

We look forward to the opportunity of a dialogue with the MOLISA to discuss pending issues to continue improving the regulation on work permit for qualified foreign employees and implementation procedures consistently in all provinces of Vietnam.