



Human Resources Working Paper on Labour Sub Leasing

1. Introduction

It is estimated that only 54%¹ of workers employed in FIEs are literate enough to be able to read and understand their labour contract. It is reported that more than 65%² of Vietnam's workforce is either unskilled or skill-strapped with 75% of these being 20-24 years old. At present, Vietnam has over a million people, predominantly which are students, joining the workforce each year.

Vietnam's economy is moving towards higher value-added, technical and capital-intensive industries and service sectors over the next five years. For that reason Vietnam needs to adapt its workforce to be equipped for this changing environment. At the moment at least 50%³ of all employment in Vietnam is still based in the informal sector and payment below minimum wages and no social and health insurance provided. Within ASEAN, Vietnam ranks in the lower half of human resources development. Therefore, improving and upgrading the skills of its workforce is one of Vietnam's key tasks to meet the needs of rapidly changing labor market. At the same time, moving people from the informal to the formal sector should be high on the agenda.

EuroCham acknowledges that Vietnam has realized the urgency of improving its labor force and also addressing several key issues in the economy. However, we note that despite ongoing reform efforts, they do not take in consideration the rapidly changing face of the workforce, investor's needs and keeping Vietnam's competitiveness within the region.

In light of the above and severe shortage of a skilled workforce, the introduction of an Employment Law and Decree /2013/ ND/CP currently being proposed which will govern and regulate this new form of work is welcomed by its members. EuroCham wishes to assist in the administration, compliance and to ensure the ability of Vietnam to remain competitive in the market and attractive for foreign investors.

The recently amended Labour Code being adopted in May 2013, will allow an enterprise licensed to sub lease shall have the right to sub lease employees to other enterprises under labour sub lease contracts between the two enterprises and according to the agreement by the employees.

EuroCham supports the MOLISA to introduce Labour Sub Lease into Vietnam but would recommend that Vietnam takes international practices, terms and definitions agreed by the Private Employment Agencies industry in Vietnam encompassing over 20 of the largest Private Employment Agencies in Vietnam, and open the labour market for different types of work. EuroCham would be happy to input on this consultation working with MOLISA.

This is a working paper which contains some general information and several recommendations in light of introduction of the following terms under the Labour Code of Vietnam and The Proposed Employment Law, and Decree /2013/ND/CP.

Private Employment Agencies and the Labour market

Over the last 10 years there has been an increasing need to provide more flexible work force solutions to enterprises globally and private employment agencies have paid an important part in the solutions to these enterprises. As Vietnam has moved from an agricultural to manufacturing based economy this need for a flexible workforce is more prevalent.

Private Employment Agencies have been able to assist public employment services that struggle with the changing needs to enterprises and well as the labour workforce. Various organisations including the ILO under the Convention No 181 (1997)⁸ recognised that private employment agencies can contribute to the functioning of the labour market and sets general parameters for the regulation, placement and employment of workers by private employment agencies, in particular temporary workers.

We believe that the MOLISA should opt internationally recognised principles governing these private employment agencies namely the ILO Convention No 181 (1997) and internationally recognised CIETT Code of Conduct, which has over 70,000 members. EuroCham recommends opening the labour market for Contingency staffing, Outsourcing, Contracting and Managed Business Services.

¹ USAID/ VCCI The Vietnam Provincial Competitiveness Index 2010

² MOLISA/ European Union / ILO Vietnam Employment Trends 2010

³ MOLISA/ European Union / ILO Vietnam Employment Trends 2010



By allowing these types of services in Vietnam, which worldwide employs 9.5 million people, with over 700,000 jobs created through the use of temporary workforce this could employ 70% of the 18 – 24 years entering the work place market in Vietnam yearly. Also research shows the higher the temporary work penetration rate the lower the level of informal employment in the country. Also allowing the new workforce to gain in valuable work based experience thus improving the skills set in Vietnam can offer to new high value added investment projects, with EuroCham members requesting these services in Vietnam.

2. Definitions

These are the internationally recognised definitions of the industry namely ILO and CIETT as whole to be sure of the exact definitions and have a clear framework. Namely the definitions below agreed by the leading Private Employment Agencies in Vietnam, which also include several members of CIETT globally and the world's largest Private Employment Agencies.

Contingency staffing: A workforce that fills up the shortages of labour that arises due to business needs or staff shortage. While these workers may have full-time or part-time jobs with companies, they are paid by Private Employment agencies which recruit and place these contingency staff. The companies using the contingency staff pay fees to these agencies. All statutory insurances and benefits are accrued and charged back to the client. The employment relationship that exists is between the “employees” and employment agency. Minimum durations normally apply that the contingency staff is made aware of and is guaranteed a minimum duration term.

Temporary Agency Workers: Workers with either a contract either for service or of employment with an agency, which finds them work in user enterprises on a temporary basis.

Outsourcing: This is the transfer of a business function to an external Private Employment Agency and its personnel. This is also called Business Process Outsourcing. The agreement is normally made on Service Level Agreements on production, output, headcount, limitations and liabilities etc. Outsourcing involves an organization passing the provision of a service or the execution of a task previously undertaken in-house to a third party to perform on its behalf. The client and the Private Employment Agency have a service level agreement which clearly defines the employment related responsibilities of each party. The Private Employment Agency carries the entire employment responsibility.

Contract Employees / Dispatched Workers: Contract employees are hired to perform specific functions in a contractual relationship and for a defined period of time. Day to Day management is by the client on site. Contract employees can be hired through Private Employment agencies.

Managed Business services: This is the practice of transferring day-to-day related management responsibility as a strategic method for improved effective and efficient operations. The person or organization that accepts and provides the managed service is regarded as the Private Employment Agency. Typically, the client remains accountable for the functionality and performance of managed service and does not relinquish the overall management responsibility of the organization or system.

3. Positives of introducing Full Temporary Services to Vietnam

At present the education system is facing a major crisis which is affecting the current workforce and talent being produced. The present curricula and teaching methods within Vietnamese schools and universities have created a discord between skills that enterprises required and students entering the workforce. As the highest unemployment rate is in the 20–24 years age range, due to the fact as they do not have the skills that companies need. The workforce required for Vietnam's future development is not being produced through the state managed educational system.

This is reflective in a recent MOET⁴ survey that shows around 60% of recent graduates are in need of retraining to meet the requirements of future employers in terms of knowledge, attitudes and skills. Due to the lack of satisfaction with general and vocational training, nearly 40%⁵ of FIEs operations feel the need to invest in onsite training which is a massive burden on companies seeking to invest in Vietnam. MOET⁶ concluded that higher education in Vietnam needs to make significant contributions to producing skilled graduates in productive sectors which determine the economic growth and distribution of welfare in the country.

⁴ NUFFIC Strengthening Profession Orientated Higher Education in Vietnam

⁵ USAID/VCCI The Vietnam Provincial Competitiveness Index 2010

⁶ NUFFIC Strengthening Profession Orientated Higher Education in Vietnam



In 2009, there were 2.1⁷ million high school graduates in Vietnam, but only 250,000 students attended institutions of higher learning, which is leading to a shortage of qualified workforce in the market. There are currently not enough students that can afford to attend universities thus creating issues for employers who wished to engage the workforce. By allowing Temporary work, students could gain invaluable experience and also afford to go to Universities.

Private Employment Agencies if effectively registered play an important part of contributing to a labour market free from exploitative conditions such as informal employment. Research published in *Adapting to Change*⁹ stated that by providing people with decent work and exposure to labour market private employment services increase the wider employability and mobility of workers. They provide or facilitate both vocational and on the job training which can be used as a stepping stone to other work.

4. Recommendations on Industry governance

We suggest that these Private employment services work with the MOLISA on self governance and a code of conduct namely:

- **Ethical and Professional Conduct**
- **Respect for Laws**
- **Transparency of Terms of Engagement**
- **Free-of-charge provision of services to jobseekers**
- **Safety at Work**
- **Worker's Rights**
- **Confidentiality**
- **Professional Knowledge and Quality of Service**
- **Fair Competition**

5. Recommendations from Vietnam Private Employment Agencies Sector

- Correct definitions for this supply of services should be adopted from the start. At national level we are strongly looking to “move away” from any “commodity driven” language relating to our Industry, and unfortunately “sub leased “ as a term would embed a “labor = product” notion. Eurocham recommends the use of Temporary Workers or Dispatched Workers.
- Private Employment Agencies General Directors have to undertaken a Foreign Corruption Practice Certification or equivalent to ensure the highest level of compliance (no forced labor, bribery, payment for contracts awarded, charging workers etc)
- Modernizing of the labour market to all services mentioned and regulated making it fit for the requirements of the changing world of work
- Establishment of Private Employment Agencies as a recognized sector in Vietnam.
- Allow in all industries / sectors but make conditional some sectors for Health & Safety reasons
- Private Employment Agencies should be allowed to perform training services to client and potential employees making them readily available to work
- Working with MOLISA, VCCI, VGLC, ILO and other Stakeholders and Social Partners
- Private Employment Agencies to be governed by CIETT body in Vietnam
 - Code of Conduct to be adhered to and Convention 181 adopted
 - Private Employment Agencies have to be trained and certified
- Regulate the relationship to allow for introduction of these services but ensure if is financial viable to do this service for Private Employment Agencies
- Licence & Permit to be issued
- Strong penalties & enforcements of rouge agencies by MOLISA
- Only Private Employment Agencies to perform these services
- Private Employment Agencies must be allowed to decide fair market value of salaries and services to be charged based on the complexities and nature of the service being offered to Clients. To ensure competitiveness in the market and to be able to deliver these Private Employment Agencies should ensure all employees are protected under the Labour Code of Vietnam, but to pay decent wages. It is up to the Private Employment Agencies to provide the service.

⁷ MOLISA/ European Union / ILO Vietnam Employment Trends 2010

⁸ ILO/ConventionNo.181(1997)

⁹ Adapting to Change CIETT 2011



- Private Employment Agencies should have clear internal policies and grading on levels and promotions, roles etc on their internal collective labour agreements and policies, which should be made available to all employees.
- Within all these agreements the Private Employment Agencies holds the employment responsibility; Employment relationship is the between the employee and the payee (Private Employment Agencies).
- Private Employment Agencies will not charge the employee any fees for introduction of employment
- Employee agrees to a labour relationship with the Private Employment Agencies that includes following the User Enterprises work rules and training is given on OHS.
- User Enterprise and Private Employment Agencies agree commercial terms of service that include labour protection clause;
- Clarification that the User Enterprise holds required licenses to do business and that the Private Employment Agency agrees to abide by the rules of these licenses (e.g.; mandatory staff safety training etc.);
 - Description of Job, location of employment and details/ lengthen of contract
 - Wage payment and overtime
 - Other items under Labour Code should be compassed.
 - Minimum standards of professionalism, with full disclosure to both clients and workers to exact nature of work and duration whether hourly, daily, weekly or monthly basis.
 - Responsibilities of all parties concerned

6. Conclusion

Eurocham believes by opening this market it will benefit Vietnam and its expanding workforce in the following ways:

- Allow client to have a flexible workforce to adapt to production trends
- Allow freedom to workers to decide when and where they work, enabling a stepping stone for permanent employment.
- Improving labour markets fluidity in an emerging market
- Allows companies to seek additional support to attract workers
- Mainly international client outsource these functions to ensure that they can concerted on their core functions, allow experts to manage these services for them

At present Vietnam has a high unskilled and untrained workforce but allowing the above services the labour force will become more ready at an earlier age by having had work experience in the various methods as above.

The services above create new jobs in the market and a more accessible workforce. These Private Employment Agencies can also assist in ensuring labourers rights are strictly adhered as many are servicing clients where this off an utmost importance. Private employment abstains from all illegal practices which ensure the safety and right of workers to move from one agency to another.

7. Next Steps

Eurocham suggests the following next steps with consultation with MOLISA

- Affiliation to CIETT for Private Employment Agencies to be adopted by an working group within Eurocham and one of the international Private Employment Agency
- Set of a Working group with MOLISA, VGCL, VCCI on implementation and best practices
- Grading in the industry of Private Employment Agencies which has to be clearly registered on website to inform clients and candidates of status.



8. In relation to the new Decree we have the following comments:

Article 3.2

Meaning of “deficient” in Vietnam

Recommendations:

Private Employment Agencies should be allowed to provide services under any circumstances expect as stated in Article 26.1 & 3.

Article 4.1.c

Subleasing companies are prohibited to pay salaries and other benefits for subleased workers lower than the content agreed with the labour sub-lessee.

Recommendations:

This needs to be very clear on terms of salaries and benefits. CIETT recommends fair pay not equal pay. This is especially in the case of Vietnam where this type of work will train the workforce.

Article 4.2.d

Labour contract and service contract can only be up to twelve months restriction seems unnecessarily tight.

Recommendations:

24 months would be more practical and also recommendations of set benefits for Associates, also unclear if can be 12 months or not. Most companies prefer to sign a 24months Service Agreement with Private Employment Agencies so they do not have to change every year, this also then always for more secure work for the Sub leased employee. Private Employment Agencies providing the service as this allows for a partnership approach. Private Employment Agencies should be able to sign up to 36 months contracts with clients and also up to 36 months with sub leased employees.

Article 5.2

1,000,000,000 (One billion) VND deposit in bank.

Recommendations:

Escrowed deposit as per the Decree 71 on employment placement. Or require Private Employment Agencies to secure one month total employee costs from the client as part of the service. 1,000,000,000 (One Billion) VND is extremely high and will not be suitable for most local companies.

Article 6.1

Charter Capital has to be 2,000,000,000 (Two Billion) VND.

Recommendations:

This is again extremely high for local enterprises wanting to perform this service as will restricted growing a good local Private Employment Agencies Industry.

Article 6.3

Foreign registered companies must have assets and capital 10,000,000,000 (Ten Billion) VND of business and been operating for 5 years.

Recommendations:

Should be the same as local companies as foreign companies more likely to be financial secure and have best practices in place. To improve/ lead this market foreign companies are more likely to be members of CIETT and offer better conditions to sub leased employees. Technically there should be no difference between foreign and local companies.

Article 13

Term of licence to be issued only 36 months.

Recommendations:

Should be 72 months considering the investment that is required to perform and also getting the licence for this service. As this is a huge investment for any company to do.

Article 26.2

Only allowed in these sectors (as below)

Recommendations:

Needs to be boarder list of sectors or more detail as very vague and open to interpretation.



No.	Job
1	Interpretation
2	Secretaries and administrative assistants
3	Receptionist
4	Tour Guide
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