

code, and manufacturer). In such cases, the component certificate granted should be valid for the same period as the locally assembled vehicles (36 months), instead of having the current requirement of testing the components lot-by-lot. On the exhaust emission standards, Vietnamese legislation sets standards which companies cannot comply with.

6.8: HUMAN RESOURCES & TRAINING SECTOR COMMITTEE

The Implementation of ILO's Core Labour Standards

Under Chapter 15 of the EVFTA on Trade and Sustainable Development, each of the Parties commits to implement ILO standards. Article 3 addresses multilateral labour standards and agreements, and Article 3.2 provides that each Party reaffirms its commitments to respect, promote, and effectively implement the principles concerning the fundamental rights at work. These fundamental rights are: a) the freedom of association and the effective recognition of the right to collective bargaining; b) the elimination of all forms of forced or compulsory labour; c) the effective abolition of child labour; and d) the elimination of discrimination in respect of employment and occupation. These rights must be reflected in Vietnamese regulations, in the Labour Code and the Statutes of Vietnamese Trade Unions, and effectively implemented in practice.

a. The right to freedom of association and the effective recognition of the right to collective bargaining (International Labour Organisation ("ILO") Conventions No. 87 & 98)

(i) Freedom of Association

ILO Convention No. 87, addressing the right to freedom of association and protection of the right to organise, has not yet been ratified by Vietnam. However, some of its principles are already reflected in Vietnamese law. Furthermore, Minister of Labour, Invalids and Social Affairs Mr. Dao Ngoc Dung has stated that Vietnam will ratify ILO Convention No. 87 by 2023.

Regarding the establishment of trade unions, according to ILO Convention No. 87, both employers and employees are allowed to freely establish, be subject only to the rules of the organisation concerned, and to join organisations of their own choosing without previous authorisation. Under the Vietnamese Constitution and legal framework, employees may establish, join, and operate trade unions. However, the order and procedures for doing so must comply with the Statutes of the Vietnamese Trade Union. Furthermore, Vietnam is unique in that it generally does not have an industry-wide or trade-specific concept of a union, as in other countries. Currently, there is only one trade union system under the Vietnam General Confederation of Labour Unions (VGCL).

According to ILO Convention No. 87, employees' organisations have the right to draw up their own rules and be subject to such rules, and to join organisations of their own choosing without prior authorisation. They also have the right to organise their administration and activities/programmes. In addition, under Article 5 of ILO Convention No. 87, employees' organisations shall have the right to establish and join federations and confederations and any such organisation, federation, or confederation shall have the right to affiliate with international organisations of employees.

Under Vietnamese law, trade unions are allowed to establish domestic federations and confederations. There are still no provisions permitting Vietnamese employee organisations to affiliate with international representative organisations of employees. However, in practice, the VGCL has partnered with foreign trade union support and solidarity organisations: the German Friedrich Ebert Stiftung ("FES") and the Australian Union Aid Abroad. The VGCL and the FES signed a cooperation agreement to implement the project entitled "Trade Unions in Vietnam and the Empowerment of Workers". Furthermore, the VGCL has been working with the ILO, the Global Union Federations (GUF), and Trade Union Solidarity Support Organisations (TUSSOs) since 2016 to implement other reforms for future industrial and trade relations conditions anticipated to arise from Vietnam entering into the EVFTA and other trade agreements.

In addition to ratifying ILO Convention No. 87, Vietnam intends to amend its legal framework to reflect the full nature of 'freedom of association' and to comply with its EVFTA commitments. Vietnam has already taken significant steps in this regard in the new Labour Code which was adopted by the National Assembly on 20

November 2019 (Revised Labour Code), as it includes provisions on Workers' Representative Organizations (WROs), which are trade unions independent from the VGCL.

Under the Revised Labour Code, the formation of WROs are permitted within one enterprise. WROs will draft their own constitutions, setting out their mandates and purposes, and register with State agencies. The Revised Labour Code also includes numerous amendments to include WROs in the consultation procedures on major labour management steps which presently only require consultation with VGCL trade unions. Activities requiring consultation include the formulation of internal labour regulations (the working rules of the employer), the formulation of a labour usage plan in the case of redundancy and the formulation of a bonus policy.

While these amendments show the Government's clear commitment to implementing the right to freedom of association into law, there is still some preferential treatment given to VGCL trade unions. For example, the founding members of a WRO must not have been convicted of certain criminal offences, whereas this restriction would not apply to a VGCL trade union. Nonetheless, considering the size and well-established nature of the VGCL trade union system, the Government's gradual approach of amending its law to introduce independent trade unions is reasonable and necessary to prevent social upheaval. The amendments included in the Revised Labour Code demonstrate that Vietnam is taking the first important steps towards a full and effective implementation of the right to freedom of association into its legal framework. The Revised Labour Code will come into effect on 1 January 2021.

(ii) Collective Bargaining

Vietnam's current Labour Code reflects many of the key principles of ILO Convention No. 98, and Vietnam has also recently ratified this Convention. On the 14th of June 2019, the National Assembly ratified ILO Convention No. 98, which will enter into force on the 5th of July 2020. Under ILO Convention No. 98, workers shall enjoy protection against acts of anti-union discrimination in respect of their employment, which includes making the employment of a worker conditional upon his or her agreement not to join a union or relinquishing trade union membership or dismissing or prejudicing a worker based upon his or her union membership.

The Labour Code which is currently in effect includes several provisions providing protection to union members. Currently, under Article 8.1 of the Labour Code, employers are prohibited from discriminating against employees on the basis of the employee's act of joining or participating in a trade union. Employers are also restrained in the termination of the labour contracts of employees who are also union officers. If the labour contract of an employee who is a part-time trade union officer expires while such officer is still within his or her term of office, the employer must extend that individual's labour contract until the end of this term. Moreover, employers may only unilaterally terminate or apply disciplinary action against a part-time trade union officer after obtaining the written agreement of the executive committee of either the corporate-level trade union, or upper immediate level trade union (usually the district trade union) where a corporate-level trade union does not exist. If the parties ultimately cannot agree, the employer has the right to make a decision while bearing full responsibility for it. Furthermore, the employer must first notify the labour authority at least 30 days in advance of any action.

The Revised Labour Code includes provisions to strengthen employees' collective bargaining rights to implement this convention. It includes detailed provisions prohibiting the discrimination and harassment of trade union members, and MOLISA has also stated that implementing legislation to be drafted will increase administrative fines for these violations. In particular, the Revised Labour Code prohibits an employer from requesting an employee to leave or refrain from joining a trade union as a condition for their recruitment or extension of their labour contract. It also prohibits an employer from dismissing, disciplining, or unilaterally terminating an employee, and from refusing to extend their labour contract or transferring employees to other jobs due to their trade union participation. Meanwhile, discriminating on the basis of salary, working hours, or other rights and obligations on the basis of trade union participation is also prohibited. In addition, employers are generally barred from creating obstacles and difficulties relating to the employment of trade union members. Employers may face severe consequences if they violate these prohibitions, as employees have the right to strike in this case.

ILO Convention No. 98 also prohibits interference with either workers' or employers' organisations. In particular, acts which are designed to promote the establishment of workers' organisations under the domination of employers or employers' organisations, or to support workers' organisations by financial or other means, with the object of placing such organisations under the control of employers or employers' organisations, shall be deemed to constitute acts of interference. Vietnamese law currently forbids employers from carrying out various acts of

interference with employees establishing, joining, or participating in a trade union. The Revised Labour Code also prohibits interference, and states that employers must not interfere, dominate, or manipulate financial support or use economic measures to influence the process of trade union establishment or otherwise affect elections, the development of a work plan, or other activities of the trade union. There are no provisions similarly restraining workers from interfering with employers' organisations.

The fact that the Vietnamese trade union system allows members of management to participate in the unions has been criticised as constituting an act of employer interference. Vietnam has taken steps to address these challenges. For instance, Guidance No. 238/HD-TLD dated 4 March 2014 on the Implementation of the Charter of Vietnam Trade Union prohibits individuals holding the following positions from joining the trade union:

"Owners of enterprises, chairpersons of boards of directors, chairpersons of boards of members, general directors, directors; persons authorised to manage non-state-owned enterprises or conclude labour contracts with employees working for such enterprises or foreign-invested enterprises, including: vice-chairpersons of boards of directors, deputy general directors, deputy directors or human resources directors".

The provisions of the Revised Labour Code addressing WROs, or trade unions independent from the VGCL, also prohibits employees exercising management functions from participating in WROs. This appears to be a first step in implementing this rule in respect to trade unions in general.

Under ILO Convention No. 98, acts which are considered to be 'interference' include the provision of financial support by the employer to the employees' organisation, with the object of placing such organisations under the control of the employer. Presently, trade unions are funded in Vietnam by a trade union fee paid on a monthly basis by employers. This is equal to 2 percent of the employer's payroll, capped at the same rates for social and health insurance contributions. As of 1 July 2019, this is VND 29.8 million. All enterprises are required to contribute the trade union fee, even if they lack their own corporate-level trade union. The fee must be entirely submitted to the upper-level trade union (i.e. district-level trade union) to fund its operations, or partially submitted in case enterprises have their own corporate-level trade unions. Furthermore, in addition to the trade union fee contribution, to maintain the day-to-day operations of corporate trade unions, participating employees would contribute a "membership due". This due, equivalent to 1 percent of their salaries, is used to determine social insurance contributions to the trade union. The capped contribution amount is 10 percent of the base salary (i.e. general minimum salary) prescribed by the Government, which as of 1 July 2019 is VND 1,490,000 (EUR 58). Such membership dues are managed by the trade unions themselves. Corporate trade unions have their own financial capacity to run their operations, without being funded by employers.

Article 4 of ILO Convention No. 98 requires measures appropriate to national conditions to be put in place to encourage the development and utilisation of mechanisms to facilitate voluntary negotiation between employers' organisations and workers' organisations. Under current Vietnamese law, employers are required to organise periodical employees' dialogue at work, once every quarter, to discuss employment-related issues. The Revised Labour Code reduces the frequency of periodic dialogue sessions to once a year, but otherwise broadens the application of democracy in the workplace. For example, dialogue in the workplace would apply to issues such as redundancy and the drafting of a labour usage plan in addition to others under the amended law. Under the current law, as well as the Revised Labour Code, employers with 10 or more employees are required to formulate and issue regulations for democracy in the workplace. We are also aware of the labour authority focusing on the issue of employer compliance with dialogue in the workplace regulations in labour audits. Due to the application of the new law requiring employers to issue regulations on democracy in the workplace and increased scrutiny by the authorities, more employers are drafting and implementing these policies.

We are also aware that Vietnam is preparing an entirely separate law governing Democracy in the Workplace. Thus, this mechanism to facilitate communication and consensus between employers and employees will be firmly established in the workplace in the coming years.

While under the current Labour Code, arbitration as a dispute resolution procedure is available only where the dispute is interests-based, the Revised Labour Code provides that arbitration may also be used for rights-based disputes as well. Furthermore, the Revised Labour Code eliminates the involvement of the chairman of the district people's committee in the rights-based collective dispute resolution. This streamlining of procedure and introduction of a wider array of dispute-resolution mechanisms would facilitate employee and employer organisations to reach consensus.

In addition, the Revised Labour Code introduces a new approach to collective bargaining which shifts the focus from one negotiation session to an ongoing process. It also links an unsuccessful attempt to collectively bargain to a dispute resolution mechanism. The parties must reach an agreement within 90 days of commencing the collective bargaining process. If they fail to do so, a dispute resolution mechanism will be implemented. This tight time limit will ensure collective bargaining sessions are productive.

The concept of cross-sector and multi-enterprise bargaining is also recognised under the Revised Labour Code. Sectoral-level bargaining would occur at the industry level, while multi-enterprise bargaining would be facilitated through a collective bargaining council. While the Revised Labour Code is not yet in force, multi-employers' collective bargaining is already taking place in Vietnam. There have been some recent multi-employer negotiations in the electronics industry in Hai Phong, tourism industry in Da Nang, and furniture industry in Binh Duong.

b. The elimination of all forms of forced or compulsory labour (ILO Conventions No. 29 & 105)

Vietnam has ratified ILO Convention No. 29 on forced labour but has not yet ratified ILO Convention No. 105. However, Vietnam has committed to do so in 2020.

Under ILO Convention No. 29, forced labour is defined as “all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily”, but includes various exceptions to this definition such as compulsory military service and the normal civic obligations of the citizens to their country. ILO Convention No. 105 includes a stricter definition of forced labour, and defines it as follows under Article 1: (a) a means of political coercion or education or as a punishment for holding or expressing political views or views ideologically opposed to the established political, social or economic system; (b) a method of mobilising and using labour for purposes of economic development; (c) a means of labour discipline; (d) punishment for having participated in strikes; or, (e) as a means of racial, social, national or religious discrimination.

The current Labour Code presently prohibits “labour coercion” and also prohibits labour practices associated with forced labour and human trafficking such as: (i) making false promises or conducting false advertising in order to deceive employees, or taking advantage of employment services or taking workers out of the country under contracts to commit illegal acts; (ii) retaining originals or personal papers, degrees and certificates of employees; and (iii) requiring an employee to provide security measures by way of cash or assets to guarantee performance of the labour contract. Employers who violate items (ii) and (iii) of the foregoing list are liable for an administrative fine ranging from VND 20 million to 25 million.

The Revised Labour Code retains the above prohibitions and adds further content to combat forced labour. Article 127.2 of the Revised Labour Code forbids employers from applying monetary fines to employees, and also prohibits an employer from forcing an employee to perform a labour contract as repayment of a loan. The Revised Labour Code also specifies that the employer is responsible for all recruitment costs, which will help to prevent forced labour, as a practice associated with forced labour is forcing new employees to work as payment for their recruitment costs. Under the Revised Labour Code, in addition to being paid on time, employees must be paid directly and employers must not require employees to purchase their goods or services.

In addition to the Labour Code, regulations are available under other pieces of legislation. Vietnam's Law on Anti-Human Trafficking, effective since 1 January 2012, addresses human trafficking prevention, detection and handling of human trafficking violations and the support and protection of victims.

The new Penal Code, which came into effect on 1 January 2018, also establishes criminal sanctions for forced labour under Article 297. Pursuant to this provision, any person who forces another to work may face a fine ranging from VND 50 million to 200 million, or a prison sentence ranging from three years' community service to 12 years' imprisonment, depending upon the circumstances of the crime.

According to the Revised Labour Code, the requirement for a Labour Inspector to give advance notice before an inspection has been eliminated. This revision will bring the Labour Code regulations into compliance with ILO Convention No. 81 on Labour Inspection. More importantly, it will also enable the Labour Inspectorate to more effectively detect and deter acts of forced labour in addition to other labour violations.

Vietnam has also recently established National Alliance 8.7. Alliance 8.7, or the Global Alliance to Eradicate Forced Labour, Modern Slavery, Human Trafficking and Child Labour, was originally launched in 2016 to assist countries

to abolish forced labour, modern slavery, human trafficking and all forms of child labour, which is the 7th target of Sustainable Development Goal 8, of the United Nations Development Programme. On the 25th of June 2018, Vietnam re-affirmed its commitment to end forced and child labour by establishing National Alliance 8.7 with cooperation from MOLISA and the ILO.

c. The abolition of child labour (ILO Conventions No. 138 & 182)

Regarding the abolition of child labour, Vietnam has ratified the ILO conventions on child labour - Convention No. 138 on minimum age to work and Convention No. 182 on the elimination of worst forms of child labour.

The ILO makes a distinction between the concepts of “child labour” and “child work”. ILO Conventions No. 138 and 182 lack specific definitions of “child labour”. However, the contents of these conventions imply that the term “child labour” is intended to address activities which hinder a child’s education or development. Notably, Article 7.1 of Convention No. 138 states that national laws may permit persons aged 13 to 15 to perform light work which is not likely to be harmful to their health or development, and which will not prejudice their educational opportunities.

At the national level, according to Article 37.1 of the Constitution 2013 of Vietnam, children (under 16 years old) are protected, cared for and educated by the State, family and society. Since 2012 the Vietnamese Government has issued many decisions to reduce child labour. On the 7th of June 2016, Prime Minister Nguyen Xuan Phuc also approved the program to prevent and reduce child labour in the period 2016-2020. This is a demonstration of the political will of Vietnam for the achievement of a better future for children, which was recently re-affirmed on the 25th of June 2018, by the establishment of Alliance 8.7 in Vietnam as described above.

Under Vietnamese law, there is no specific definition of ‘child labour’ but the law states that ‘minor’ employees are under 18 years old. Minor employees are divided into three categories of age groups: (i) 15 to 18 years old, (ii) 13 to 15 years old, and (iii) under 13 years old. The Revised Labour Code integrates and elaborates upon provisions which had previously been set out in decrees directly into the Labour Code itself. Integrating regulations governing child labour directly ensures the stability and permanence of these provisions. In respect to children aged 15-18 years of age, the Revised Labour Code states that their working hours are limited to eight hours per day, and 40 hours per week. Workers from this age group are only allowed to perform overtime work, night work and other jobs set out in a list issued by MOLISA.

In respect of children under 15 years of age, they may only work up to four hours per day and 20 hours per week and are also prohibited from performing overtime or night work. Before employing workers from this age group, employers must also obtain a medical certificate confirming that the work will not negatively affect the child’s health and provide the children with a medical check every six months. Workers from 13-15 years of age may only engage in light jobs, set out in a list issued by MOLISA. Children under the age of 13 years may only be employed for jobs relating to art, physical training, and sports, and their employment is contingent upon the consent of the provincial labour authority. Currently, the list of jobs issued by MOLISA for children aged 13 to 15 years of age reflects traditional work which children would normally do in rural areas in cooperation with their families, and comprises of the following:

Traditional jobs: drawing dots on ceramics, sawing clams, painting lacquer, making poonah paper and conical hats, making incense, drawing dots on hats, mat weaving, drum making, brocade weaving, making rice noodles and bean sprouts, and making rice noodles;

Arts and crafts: embroidery, art wood, make horn combs, weaving net, making Dong Ho paintings, and molding toy figurines;

Wicker, making home appliances, fine art crafts from natural materials such as rattan, bamboo, neohouzeaua, coconut, banana and water hyacinth;

Rearing silkworms and packing coconut candy.

Minors are also prohibited from engaging in heavy, hazardous and dangerous jobs or jobs negatively affecting their personal development under the list issued by the MOLISA in coordination with the Ministry of Health. Employers are also prohibited from employing minors to perform jobs relating to the manufacture and trade in alcohol, wine, beer, tobacco, stimulants and addictive substances. The Revised Labour Code also sets out a list

of prohibited jobs and workplaces for juvenile workers, prohibiting them from being employed in any jobs and workplaces which could be harmful to their health or personal development.

The Children's Law also provides that children have the right to be protected, in any form, from labour exploitation. They are prohibited from working when they are below the legal age stipulated by law and are not permitted to work overtime or do arduous, harmful, or dangerous work as regulated by the law. They are protected from being forced to do jobs or attending workplaces which could have an adverse influence on their personality and comprehensive development. Employers who fail to comply with the above regulations may be subject to an administrative fine or even criminal prosecution. Under labour legislation, an employer could face an administrative fine ranging from VND 10 million to 25 million for violating the above regulations.

Article 296 of the new Penal Code introduces much harsher penalties for breaching obligations on child workers. Article 296 provides that any person employing a person under 16 to do difficult or dangerous work or work that involves contact with harmful substances on the list compiled by State authorities shall be liable for a fine ranging from VND 30 million to VND 200 million or face a sentence ranging from three years' community service to up to 10 years' imprisonment, depending upon the circumstances of the violation. Vietnamese law also compels third parties to report violations of regulations on child workers. Any organisation or individual who is aware of acts harmful to children, which would include the violation of regulations on child workers, must immediately report this to the National Telephone Exchange for Child Protection, MOLISA, or public security agencies of any level or commune-level of the Peoples' Committees of the localities where the cases occur.

d. Elimination of Anti-Discrimination (ILO Conventions No. 100 & 111)

Vietnam has ratified ILO Convention No. 100 on Equal Remuneration and ILO Convention No. 111 on Discrimination (Employment and Occupation). ILO Convention No. 100 provides in Article 2 that each signatory must ensure the application to all workers the principle of equal remuneration for male and female workers for work of equal value. Vietnam has adopted this principle in its Law on Gender Equality and the Labour Code and its implementing legislation. This includes provisions stating that men and women must have equal rights in respect to remuneration, promotions, statutory insurance, and working conditions.

ILO Convention No. 111 defines 'discrimination' as any distinction, exclusion, or preference made on the basis of race, colour, sex, religion, political opinion, national extraction, or social origin, which has the effect of nullifying or impairing equality or opportunity in the treatment in employment or occupation; and any other characteristic as may be determined by the signatories to the convention. 'National Extraction' is defined by the ILO as distinctions made on the basis of a person's place of birth; ancestry or foreign origin; for instance, national or linguistic minorities, nationals who have acquired their citizenship by naturalisation, and/or descendants of foreign immigrants. 'Social Origin' is defined to include social class, socio-occupational category, and caste.

Vietnamese law is quite comprehensive on non-discrimination in respect to employment and occupation. The Labour Code includes many provisions favourable to female, junior, or elderly employees. However, the definition of 'discrimination' stated in Vietnamese law under Article 8.1 of the Labour Code does not cover all items mentioned in Article 1 of ILO Convention No. 111. In particular, protection from discrimination under the ILO's perspective should also include the following grounds, which have not been reflected in Vietnamese regulations: 'political opinion'; and 'any other distinction having the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation'. However, the Revised Labour Code brings Vietnam's prohibitions against discrimination closer into line with those advocated by the ILO. The Revised Labour Code has broadened the grounds of protection from discrimination to include the following new grounds: ethnicity, national extraction, social origin, maternity, and family responsibilities. The Revised Labour Code also provides an actual definition of discrimination to provide further clarity. It defines 'labour discrimination' as:

"An act of discriminating, reducing or creating promotions based on race, color, national origin or social origin, ethnicity, gender, age, maternity status, marital status, religious beliefs, religion, political beliefs, disability, responsibility of the family or HIV status or for establishing, joining or participating in activities of labour union, worker's organisation at the workplace that affects fairness of job opportunities or career development. The acts of discriminating, reducing or creating promotions coming from characteristics of the job or acts of maintaining and protecting jobs for vulnerable workers are not considered as discriminatory."

Vietnam's legal framework is particularly supportive of eliminating discrimination towards women. The Law on Gender Equality provides a framework to ensure gender equality in all fields of politics, economy, culture, society, and family. Furthermore, the Labour Code and its implementing legislation include numerous provisions to create positive working conditions for women and to accommodate the demands of motherhood. The Labour Code also encourages employers to prioritise the hiring and advancement of female employees. Vietnam has also issued a national strategy on gender equality until 2020 to improve public awareness, close the gender gap, heighten women's status, protect women's rights, and fight discrimination against women.

The Revised Labour Code also includes several provisions to combat sexual harassment faced by women in the workplace. Under the Revised Labour Code, 'sexual harassment' is defined broadly, as: "all the sexual acts of any person to others at workplace without the person's desire or acceptance". 'Workplace' is defined as "any place where the employee actually works under the agreement or assignment of the employer." Employers are required to develop and implement solutions to prevent sexual harassment in the workplace and include procedures for the same within their internal labour regulations. Sexual harassment has also been added as a ground for dismissal, which is a positive development because it is presently effectively impossible to dismiss an employee for sexual harassment. To dismiss an employee in Vietnam, the employee's conduct must be specifically listed in the Labour Code or cause monetary damage beyond a threshold stated in the employer's internal labour regulations. As it is generally not possible to demonstrate monetary damage arising from sexual harassment, and as this misconduct was not previously listed within the Labour Code, employers would not be able to dismiss employees for sexually harassing other employees. This change in the Revised Labour Code, coupled with the new obligations for employers to take measures to prevent sexual harassment, will deter this practice in the workplace and help women to advance in their careers.

Another major development in the Revised Labour Code is the obligation for employers to ensure salaries are set at rates which ensure gender equality and are non-discriminatory in respect to sex. The gender wage-gap has been identified as a problem worldwide, so it is impressive that Vietnam has actually taken steps towards legislating against the gender wage-gap.

e. Updates on working hours and overtime limits

Regarding normal working hours, the Revised Labour Code retains almost all current regulations, stating that the normal working time must not exceed 8 hours a day and 48 hours a week.³⁹ In case of working on a weekly basis, the normal working time must not exceed 10 hours a day and 48 hours a week. The only amendment is the provision requiring employers to restrict their employees' working time during which they are exposed to dangerous or hazardous factors according to relevant technical regulations.⁴⁰ The VGCL had previously proposed that normal working hours should be reduced to a maximum of 44 hours a week. However, this proposal has been removed from the Revised Labour Code since, at this time, it seems not to suit the current Vietnamese social-economic conditions and situations.

Meanwhile, the Revised Labour Code supplements the two following important points to the current Labour Code's regulations on the overtime cap: (i) maximum monthly overtime must not exceed 40 hours a month rather than the current monthly cap of 30 hours per month; and (ii) an expansion of the specific circumstances allowing overtime working hours from above 200 hours to 300 hours a year upon the consent of the provincial labour authority.⁴¹

f. EuroCham's activities and other relevant developments

EuroCham has been active in promoting the ratification of EVFTA. In October 2018, EuroCham sent a delegation including members from its Human Resources & Training Sector Committee ("HR&T SC") to meet with several EU Commissioners to discuss positive changes in Vietnam's labour law and its commitment to workers. The HR&T SC has also been involved in Vietnam's ratification of the outstanding core ILO conventions. On the 5th of December 2018, the Co-Chairwoman of HR&T SC attended a consultation session hosted by MOLISA on Vietnam's ratification of ILO Convention No. 98 and on the 10th of July 2019, attended a consultation session hosted by MOJ entitled "Conference to Collect the Opinions for the Labour Code (Amendment)".

³⁹ Article 105.1, Revised Labour Code

⁴⁰ Article 105.3, Revised Labour Code

⁴¹ Article 107.1, Revised Labour Code

EuroCham is also working on a project with the ILO, entitled “Responsible Supply Chains in Asia”, which focuses on improving labour conditions within the seafood and forestry sectors. EuroCham has supported this project by co-hosting several events with the ILO, including the “Corporate Social Responsibility - Joint Effort, Joint Development” on the 17th of January 2019, and another related workshop on the 24th of April 2019. The HR&T SC will also co-host a “Responsible Business Week” event, comprising a two-day event in HCMC and one-day event in Hanoi in late November 2019 and February 2020.

The HR&T SC has also placed a significant focus on Corporate Social Responsibility (“CSR”) and advancing the position of women and other groups in the workplace. In October 2018, the HR&T SC hosted two workshops called “Breaking the Bamboo Ceiling” which focused on women’s empowerment and leadership in the workplace. This was followed by the “Diversity in the Workplace” event, a workshop discussing the cost of discrimination, particularly against women, members of the LGBT community, and the elderly.

The HR&T SC has been actively involved in EVFTA events. It participated in an event hosted by the ILO and EU Delegation to Vietnam, entitled “EVFTA - The Importance of Trade and Sustainable Development” on the 13th of May 2019 discussing the labour and environmental obligations under the EVFTA. This event was immediately followed by a related event on the 14th of May 2019 attended by the HR&T SC and hosted by the FES and EU Delegation to Vietnam entitled “Stakeholders’ Engagement in the EU-Vietnam Free Trade Agreement” when HR&T SC was invited to join the meeting to discuss the works of future Domestic Advisory Group (DAGs). The HR&T SC also participated in a related event hosted by the FES, entitled “UN Guiding Principles on Business and Human Rights (UNGP) in Supply Chains in Vietnam,” on the 28th of May 2019.

The HR&T SC also participated in MOLISA’s dialogue on child labour prevention on the 6th of August, sharing CSR experience towards combating child labour in the supply chain in the context of the EVFTA and international integration. On the 17th of September, HR&T SC also supported an event hosted by the Vietnam Chamber of Commerce and Industry entitled: “The EVFTA: Opportunities and Challenges for the Vietnamese Workforce”.

Furthermore, HR&T SC founded the “EuroCham Women’s Working Group”, which focuses on events and initiatives to advance women’s position in the workplace and society in general. The group holds regular women’s networking sessions, focusing on issues such as the impact of new social insurance laws on women and sexual harassment in the workplace. The group also plans to form a women’s business club. This club will hold workshops teaching practical business skills while also holding social events, such as group dinners. The aim of the club will be to create a safe environment for women to practice their business skills and build their confidence.

The HR&T SC notes that MOLISA is in the process of implementing many positive developments. These include the right of employees to form their own independent trade unions, granting more rights for both employers and employees to terminate labour contracts, a broadened definition of non-discrimination, an increase in overtime hours, improving the employee dialogue process, and – while not required under the EVFTA - the inclusion of arbitration, in addition to mediation, as a means of dispute resolution. The Sector Committee has been active in working with MOLISA to revise the Labour Code and proposing the incorporation of international standards. Over the years, HR&T SC has provided comments and recommendations to MOLISA on issues related to labour legislation such as work permits for foreign workers in Vietnam, revision of the Labour Code, regional minimum wage, trade union, visa, and social insurance for foreign workers. In addition, our members have also joined other associations such as the Vietnam Business Forum (VBF) and VCCI to hold dialogues with respective Ministries to raise and follow up on their positions related to the Labour Code and human resource issues.

With the aim of raising the awareness of the Ministries about our concerns and proposals, the HR&T SC also speaks at various workshops and conferences of MOLISA which consults the opinions of business associations. The Sector Committee itself has also held many events to disseminate the new regulations (on visas, work permits, insurance policies, etc.) to update EuroCham members.

Besides the matters mentioned above, we also see that there are other positive developments in social aspects. Vietnam has issued a new Law on Religions and Beliefs dated 18 November 2016 and valid from 1 January 2018, which protects an individual’s right to freedom of religion. Vietnam also has a new Civil Code 2015. Article 37 of this code legalised sex reassignment surgery and introduces the right to legal gender recognition for transgender people who have undergone such surgery.

The Government is implementing regulations to support private businesses and SMEs through national-level policies. Under these regulations, the Government encourages start-ups and innovation, increasing the efficiency of SMEs, and supports programs for start-up women in the period 2017-2027 with a target of reaching 35% of female-owned enterprises out of a total of 1 million enterprises by 2020. Recently, the Government has issued legislation to further these policies. On the 24th of June 2019, the Government issued Decree 55/2019/ND-CP on providing legal assistance to small and medium-sized enterprises ("Decree No. 55"). Under Decree 55, SMEs will receive Government support for legal service fees ranging from 100 percent (capped at VND 3 million) to 10 percent (capped at VND 10 million) depending upon their size, with the smallest enterprises receiving the most support. Women-owned SMEs, those with a large number of female employees, and those whose workforce is comprised of at least 30 percent disabled people, would be given priority for Government support for legal assistance service fees. This legislation demonstrates Vietnam's support for female entrepreneurs and those employing the disabled.

While not required to be implemented into Vietnamese law under the EVFTA, social insurance policy reform is also in the works. Resolution 28-NQ/TW dated 21 May 2018 issued by the Central Executive Committee of the Communist Party prescribes general instructions on social insurance policy reform, to gear policy towards a mixed compulsory and voluntary system while ensuring that special categories of citizens, such as farmers, low income workers, or the elderly without retirement pay, can have access to social insurance.

Vietnam is also taking steps to ensure that its workers receive fair wages so that they can share in the benefits of Vietnam's growth. Party Resolution 27-NQ/TW dated 21 May 2018 issued by the Central Committee of Vietnam Communist Party takes into account the ILO's suggestions to reform the country's wage policies. The Resolution clearly emphasises Vietnam's determination to reform its wages so that they provide a fair living wage to workers. In particular, the Resolution commits to:

"Building a system of national wage policies in a scientific and transparent manner, suitable to the practical situation of the country, meeting the development requirements of the socialist-oriented market economy and taking initiative in the association, international integration, building harmonious, stable and progressive labor relations".

Presently, public-sector employees receive a far lower wage than private-sector employees. The Resolution seeks to address this inequity and identifies the complicated wage coefficient system and resulting unfair wages as an important factor discouraging the recruitment and retention of talent. It proposes to include increments of statutory pay rates and a new public sector wage system, linked to positions and grades, while setting the lowest wage level to a rate equal to the average of regional minimum wages by 2021. It also suggests that public sector pay should be reasonably correlated to wages in the labour market, which means that there will be a gradual move towards pay parity between the public and private sectors with the following schedule:

In 2021, the lowest wage of officials and public employees will be equal to the lowest average of regional minimum wages in the private sector;

In 2025, the lowest wage of officials and public employees will be higher than the average of regional minimum wages in the private sector; and

In 2030, the lowest wage of officials and public employees will be equal to or higher than the lowest wage of the highest-paying region in the private sector.

Meanwhile, in the private sector, the Resolution highlights the role of regional minimum wages as "the basis for wage negotiation and labour market regulation" and the requirement of incremental increases in the context of modernisation of the economy and deeper international integration. It also emphasises the role of the National Wage Council to periodically adjust the regional minimum wages based on Vietnam's level of productivity.

Moreover, the Resolution recognises that “the State does not directly intervene in the wage policies of businesses” and “negotiation and agreements between employers, workers and their representatives” should become the basis for wage fixing at the enterprise level. In this regard, it is important to “enhance the role and capacity of trade union organisation, which is the representative organisation of workers, in labour relations in line with the socialist-oriented market economy and international integration.” Thus, Vietnam’s recent ratification of the ILO convention on collective bargaining and strengthening of the role of trade unions will play a vital role in regulating Vietnam’s wages in the future. In short, the Resolution demonstrates Vietnam’s commitment to ensure that workers are paid fair wages allowing them to share in the benefits of Vietnam’s economic growth.

In conclusion, the ratification of the EVFTA will be a significant step forward to improve labour and social rights in Vietnam. The ratification and implementation of the EVFTA will be a strong impetus for change in Vietnam. In its absence, there will be negative consequences for millions of Vietnamese children, working women, and labourers. Without this pressure to reform, we anticipate that these individuals would not benefit from the protections required under the EVFTA, as both legislative reform and the implementation of these changes in practice may not occur. EuroCham and HR&T SC appreciate the current changes and efforts that the Government has made and will continue to update and support further policy changes and facilitate better developments of both economic and social aspects in Vietnam.