

Nevertheless, the Sector Committee would like to draw attention to the fact that, under the EVFTA commitments on refurbished/remanufactured goods, on national treatment and market access for goods, Article 5 states that the Parties shall accord to remanufactured goods the same treatment as that provided to new-like goods. A Party may require specific labelling of remanufactured goods in order to prevent the deception of consumers. The application of this Article is subject to a transitional period of no longer than three years from the entry into force of the EVFTA. As mentioned above, in Vietnam import of used equipment is prohibited, there is no definition of “used equipment” or of refurbished equipment, or of remanufactured goods in current local regulations. Therefore, the refurbished goods are usually considered used goods which are then prohibited from being imported.

It is recommended that Vietnam provides specific regulations and definitions on refurbished goods/remanufactured goods - medical devices for future trade. The international Medical Device community is providing guidance to the Vietnamese Government on this topic, based on knowledge and practices from other countries.

7.2.6 Human Resources and Training Sector Committee

The Implementation of ILO's Core Labour Standards

Under the EVFTA, Chapter 15, Trade and Sustainable Development, each of the Parties to the treaty 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, namely: 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 Code⁸³ and the Statutes of Vietnamese Trade Unions⁸⁴ 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, but some of its principles are already reflected in Vietnamese law. Furthermore, Vietnam has committed to ratify ILO Convention No. 87 by 2020.⁸⁵

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.⁸⁶ Under the Vietnamese Constitution and legal framework, employees may establish, join and operate trade unions. However, the order and procedures for establishing, joining and operating trade unions must comply with the Statutes of the Vietnamese Trade Union.⁸⁷ Furthermore, Vietnam is also unique because it generally does not have an industry-wide or trade-specific concept of a trade union, as in other countries. Currently, there is only one trade union system under the Vietnam General Confederation of Labour Unions (VGCL).⁸⁸

83 Article 189, Law 10/2012/QH13 passed by the National Assembly on 18 June 2012, effective from 1 May 2013 (Labour Code).

84 Article 7, Labour Code.

85 Article 3.b, Section II, Decision 2528/QĐ-TTg dated 31st December 2015 approving the plan of implementation and proposal to access the Conventions of the United Nations and the International Labour Organisation in the Labour Organisation in the Labour and Social fields of the period 2016-2020; Article 2.10 of Resolution 06-NQ/TW of the IV Plenum of the Party Central Committee dated 5th November 2016.

86 Article 2, International Labour Organization (ILO), Freedom of Association and Protection of the Right to Organise Convention, C87, 9 July 1948, C87, available at: http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_INSTRUMENT_ID:312232:NO [accessed 25 July 2018] (“ILO Convention No. 87”).

87 Articles 10, 25, 63 of Vietnamese Constitution 18/2013/L-CTN, Labour Code 10/2012/QH13 dated 18 June 2012; Articles 4,10,14,15 and 24 of the Law on Trade Unions 12/2012/QH13 valid from 1st January 2013; Article 63; Decree 60/2013/ND-CP of the Government dated 19 June 2013 guiding details on the Article 63.3 guiding on democracy mechanism at workplace; Official letter 1755/HD-TLĐ of the Vietnam Confederation of Labour Unions dated 20 November 2013 guiding on the participation of trade unions in establishing and implementing democracy mechanism at workplace.

88 Vietnam General Confederation of Labour Unions was established on 28th July 1929 by the Politburo of the Central Committee of the Communist Party of Vietnam. Further information on the website: <http://www.congdoan.vn/aboutus>, last accessed 11th September 2018

According to ILO Convention No. 87, employees' organisations have the right to draw up their own rules, be subject to such rules, and to join organisations of their own choosing without prior authorisation.⁸⁹ They also have the right to organise their administration and activities/programmes.⁹⁰ 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.⁹¹ The VGCL and the FES signed a cooperation agreement to implement the project entitled "Trade Unions in Vietnam and the empowerment of workers".⁹² 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, the Government intends to amend the Vietnamese legal framework in order to reflect the full nature of "freedom of association" and to comply with its EVFTA commitments. On the 5th of November 2016, the Party Central Committee of Vietnam issued Resolution No. 06- NQ/TW,⁹³ which addresses the review and amendment of the legal system to facilitate Vietnam's integration with the global economy. In this resolution, it is very clear that a new institution, Workers' Representative Organizations (WROs), which are trade unions independent from the VGCL, will be a part of Vietnam's legal framework.

Vietnam commenced the Labour Code revision process several years ago, but it was stalled after the United States withdrew from the Trans-Pacific Partnership Free Trade Agreement. However, the Labour Code revision process was restarted in late 2017, and at that time, the Ministry of Labour, Invalids and Social Affairs (MOLISA) issued a report on the practicality and enforcement of the 2012 Labour Code.⁹⁴ In this report, the MOLISA proposed that the principle of freedom of association be fully incorporated into Vietnamese law by allowing employees to formulate trade unions independent from the VGCL, which currently regulates all trade unions in Vietnam.

Indeed, the latest draft⁹⁵ of the revised Labour Code includes provisions on WROs. Under the draft Labour Code, WROs would be permitted to be formed within one enterprise and would require a minimum of 20 members to become established.⁹⁶ WROs would draft their own constitutions, setting out their mandates and purposes, and would register with State agencies.⁹⁷ The draft 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.⁹⁸

While these amendments show the Government's clear commitment to implementing the right to freedom of association into Vietnamese 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

89 Article 3.1, ILO Convention No. 87.

90 Article 3.1, ILO Convention No. 87.

91 Anita Chan, "Trade Union Reform in One-Party States: China and Vietnam Compared", *Made in China*, Issue 3, 2017, available at: <http://www.chinoiresie.info/trade-union-reform-china-vietnam-comparison/> [accessed 25 July 2018].

92 European Union Press Release, "The EU supports the empowerment of Vietnamese industrial workers", dated 28 January 2013, available at: http://eeas.europa.eu/archives/delegations/vietnam/documents/press_corner/2013/20130128_en.pdf [accessed 25 July 2018].

93 Resolution 06-NQ/TW of the IV Plenum of the Party Central Committee dated 15th November 2016 ("Resolution 06").

94 Summary Report of the Labour Code, available at: <http://duthaovanban.molisa.gov.vn/detail.aspx?tab=2&vid=580>, [accessed 17th September 2018]

95 Amendment of the Labour Code, Draft No.0, dated 13 July 2018 ("Draft Labour Code"); Draft No.1 available at MOLISA website: <http://www.molisa.gov.vn/vi/Pages/DanhSachGopYDuThaoVanBan.aspx?iDuThao=889> [accessed 11 September 2018].

96 Articles 151 & 152.2, Draft Labour Code.

97 Article 150.2 & 153, Draft Labour Code.

98 For example, please see Articles 44.2, 79.2 and 97.3, Draft Labour Code.

this restriction would not apply to a VGCL trade union.⁹⁹ WROs are also prohibited from engaging in political activities under the draft Labour Code. Nonetheless, considering the size and well-established nature of the VGCL trade union system, Vietnam's approach to gradually amending its law to introduce independent trade unions is reasonable and necessary to prevent upheaval in Vietnamese society. The amendments included in the draft new Labour Code demonstrate that Vietnam is taking the first key steps to fully and effectively implement the right of freedom of association into its legal framework. The draft Labour Code is anticipated to be submitted to the National Assembly in May 2019, and it is expected to be passed by October 2019.¹⁰⁰

Collective Bargaining

ILO Convention No. 98, addressing the right to organise and collectively bargain, has also not yet been ratified by Vietnam. Nonetheless, there is presently a detailed legal framework in Vietnam which reflects the key concepts outlined in ILO Convention No. 98 well. The draft law to ratify ILO Convention No. 98 will be submitted to the National Assembly in May 2019 and is expected to be passed in October 2019 along with the new Labour Code.¹⁰¹

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.¹⁰² 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 his or her term of office.¹⁰³ 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 such a decision. Furthermore, the employer must first notify the labour authority at least 30 days in advance of applying any action.¹⁰⁴

The draft new Labour Code includes detailed provisions prohibiting the discrimination and harassment of trade union members,¹⁰⁵ and MOLISA has also stated that implementing legislation to be drafted will increase administrative fines for these violations.

ILO Convention No. 98 also prohibits the interference with either workers' or employers' organisation. 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.¹⁰⁶ Vietnamese law forbids employers from carrying out various acts of interference with employees establishing, joining or participating in a trade union.¹⁰⁷ 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

99 Article 152.3, Draft Labour Code. Please also note that a WRO would require 20 members to become established in comparison to the requirement for only five members to establish a VGCL trade union (Article 152.1, Draft Labour Code).

100 Resolution 549/NQ-UBTVQH14 of the Standing Committee of the National Assembly dated 30 July 2018, available at: <https://thuvienphapluat.vn/van-ban/Bo-may-hanh-chinh/Nghi-quyet-549-NQ-UBTVQH14-2018-thuc-hien-Nghi-quyet-ve-Chuong-trinh-xay-dung-luat-phap-lenh-389810.aspx> [accessed 14 September 2018].

101 *Ibid.*

102 Article 1, International Labour Organization (ILO), Right to Organise and Collective Bargaining Convention, C98, 1 July 1949, C98, available at: http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_INSTRUMENT_ID:312243:NO [accessed 25 July 2018] ("ILO Convention No. 98").

103 Article 192.6, Labour Code.

104 Article 192.7, Labour Code.

105 Article 158, Draft Labour Code.

106 Article 2, ILO Convention No. 98.

107 Article 190, Labour Code.

has been criticised as constituting an act of employer interference in the trade union. Vietnam has taken steps to remedy the challenges of its trade union system, and has issued Guidance 238/HD-TLD dated 4 March 2014 on the Implementation of the Charter of Vietnam Trade Union which prohibits individuals holding the following positions to join 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."¹⁰⁸ The provisions of the draft new Labour Code addressing WROs, or trade unions independent from the VGCL, also prohibit employees exercising management functions from participating in WROs,¹⁰⁹ which 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.¹¹⁰ Presently, trade unions are funded in Vietnam by a trade union fee paid on a monthly basis by employers which is equal to 2 percent of the employer's payroll, capped at the same rates for social and health insurance contributions, which as of 1 July 2018 is VND 27.8 million. All enterprises are required to contribute the trade union fee, even if they lack their own corporate-level trade union. Such a 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 mentioned above, in order to maintain the day-to-day operations of corporate trade unions, employees participating in trade unions would contribute "membership dues", equivalent to 1 percent of their salaries used to determine social insurance contribution to the trade union and 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 2018 is VND 1,139,000 (EUR 42).¹¹¹ 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. The draft new Labour Code also prohibits employers from manipulating trade unions through financial support or economic measures.¹¹²

Article 4 of ILO Convention No. 98 requires measures appropriate to national conditions to be put into place to encourage and promote the development and utilisation of mechanisms to facilitate voluntary negotiation between employers' organisations and workers' organisations. Under Vietnamese law, employers are required to organise periodical employees' dialogue at work, once every quarter, discussing employment-related issues.¹¹³ Employees also have the right to request collective bargaining at any time they wish. These regulations have not been largely implemented in practice and there is still room for improvement.¹¹⁴ MOLISA has issued a draft decree which simplifies and streamlines procedures to implement employee dialogue in the workplace, which will likely encourage employers to actually carry out the procedures outlined in these regulations. In practice, we are also aware of the labour authority focusing on the issue of employer compliance with dialogue in the workplace regulations in labour audits. As a result, we have seen more employers draft policies to implement dialogue in the workplace, so this mechanism for voluntary negotiation appears to be strengthening.

The Vietnamese authority's emphasis on dialogue in the workplace is also demonstrated by the new proposed revised Labour Code. The latest draft of the revised Labour Code includes detailed provisions on dialogue in the workplace, including the creation of a Labour Management Board for enterprises with over 50 employees, which would comprise of representatives of the employer and the WROs within the enterprise.¹¹⁵ Labour Management

108 Article 1.2(b), Section 1.1 of Guidance No. 238/HD-TLD dated 4 March 2014 of Vietnam General Confederation of Labour on implementation of the Charter of Vietnam Trade Union, with effect from 4 March 2014, available at <http://www.congdoan.vn/tra-cuu-van-ban/chi-tiet-1529.tld> [accessed on 11 September 2018].

109 Article 153.3, Draft Labour Code.

110 Article 2.2, ILO Convention No. 98.

111 Decision No. 1908/QĐ-TLĐ, issued by the Vietnam General Confederation of Labor ("VGCL") on 19 December 2016, available at <http://www.congdoan.vn/tra-cuu-van-ban/chi-tiet-2043.tld> [accessed 11 September 2018].

112 Article 158.1 (d), Draft Labour Code.

113 Article 65.1, Labour Code.

114 According to a recent survey of 139 employers done by MOLISA (Bao Cao Tong Ket BLLD), 82% of employers comply with the requirement to organise quarterly employee dialogue. Of note, 30% reported to have monthly employee dialogue, available at: <http://duthaovanban.molisa.gov.vn/detail.aspx?tab=2&vid=580> [accessed 17 September 2018].

115 Article 164, Draft Labour Code.

Boards would participate in dialogue in the workplace, as well as consult on major labour management steps, such as the formulation of internal labour regulations (the working rules of the employer).¹¹⁶

The draft revised Labour Code also includes provisions to facilitate the resolution of collective disputes, which constitutes a mechanism to facilitate voluntary negotiation between employers' organisations and workers' organisations.¹¹⁷ Presently, collective labour disputes are first subject to a conciliation procedure before the parties are permitted to either petition the chairman of the district people's committee to resolve a dispute regarding rights or, in the case of a collective labour dispute about benefits, to petition a labour arbitration council.¹¹⁸ Under the draft revised Labour Code, under one optional provision, this preliminary conciliation procedure will no longer be required. While under the current Labour Code, arbitration as a dispute resolution procedure is available only where the dispute is interests-based,¹¹⁹ another optional provision within the new draft provides that arbitration may also be used for rights-based disputes as well.¹²⁰ Furthermore, the new draft eliminates the involvement of the chairman of the district people's committee in the rights-based collective dispute resolution.¹²¹ 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 draft new 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.¹²² The draft new Labour Code also introduces procedures to allow collective bargaining which will involve multiple enterprises.¹²³

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

Vietnam has ratified the ILO Convention No. 29 on forced labour, but has not yet ratified ILO Convention No. 105, however, Vietnam has committed to do so in 2020.¹²⁴

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.¹²⁵ ILO Convention No. 105 includes a stricter definition of forced labour, and defines it as the following 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 mobilizing 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"¹²⁶ 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;¹²⁷ (ii) retaining originals or personal papers, degrees and certificates of employees;¹²⁸ and (iii) requiring an employee to provide security measures by way of cash or assets to guarantee

116 Please see Articles 44.2, 79.2, 97.3 and 164.1, Draft Labour Code.

117 Articles 195 & 196, Draft Labour Code.

118 Article 204, Labour Code.

119 Article 204.2(b), Labour Code.

120 Article 202, Draft Labour Code.

121 Article 203, Draft Labour Code.

122 Article 171.2, Draft Labour Code.

123 Articles 172 & 173, Draft Labour Code.

124 Article 3. Section II, Decision 2528/QĐ-TTg dated 31st December 2015 approving the plan of implementation and proposal to access the Conventions of the United Nations and the International Labour Organisation in the Labour Organisation in the Labour and Social fields of the period 2016-2020; Article 2.10 of Resolution 06-NQ/TW of the IV Plenum of the Party Central Committee dated 5th November 2016.

125 Article 2, International Labour Organization (ILO), Forced Labour Convention, C29, 28 June 1930, C29, available at: <http://www.refworld.org/docid/3ddb621f2a.html> [accessed 25 July 2018] ("ILO Convention No. 29").

126 Article 8.3 Labour Code.

127 Article 8.3 & 8.6, Labour Code.

128 Article 20.1, Labour Code.

performance of the labour contract.¹²⁹ 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.¹³⁰

However, further detailed guiding legislation to assist with the implementation of these provisions is required in order to comply with Article 23.1 of ILO Convention No. 29, which compels its signatories to issue complete and precise regulations governing the use of forced or compulsory labour.

While regulations regarding labour coercion are not clearly set out in Vietnam's labour law, more detailed regulations are available under other pieces of legislation. Vietnam's Law on Anti-Human Trafficking,¹³¹ 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.¹³²

According to the latest draft of the revised Labour Code, the requirement for a Labour Inspector to give advance notice before an inspection has been eliminated.¹³³ This revision will bring the Labour Code regulations into compliance with ILO Convention No. 81 on Labour Inspection.¹³⁴ 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 25 June 2018, Vietnam re-affirmed its commitment to end forced and child labour by establishing National Alliance 8.7 with cooperation from the MOLISA and the ILO.¹³⁵

c. *The abolition of child labour (ILO Conventions No. 138 & 100)*

Regarding the abolition of child labour, Vietnam has ratified the ILO conventions on child labour - the Convention No. 138 on minimum age to work and the Convention No. 182 on the elimination of worst forms of child labour.¹³⁶

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.¹³⁷ 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.

¹²⁹ Article 20.2, Labour Code.

¹³⁰ Article 5, Decree No. 95/2013/ND-CP dated 22 August 2013 of the Government on administrative penalties in labour, social insurance and overseas manpower supply by contract effective 10 October 2013, as amended by Decree No. 88/2015/ND-CP dated 7 October 2015 effective on 25 November 2015 ("Decree No. 95").

¹³¹ Law No. 66/2011/QH12 passed by the National Assembly on 29 March 2011, with effect from 1 January 2012 ("Anti-Human Trafficking Law").

¹³² Article 297, Penal Code No. 100/2015/QH13, dated 27 November 2015, of the National Assembly ("Penal Code").

¹³³ Article 227, Draft Labour Code.

¹³⁴ This provision had been included in the previous version of the Labour Code, Labour Code 1994. However, in the process of drafting the current Labour Code, Labour Code 2012, this provision was removed to comply with the Law on Inspectorate 2010, which provides that the labour inspectorate must inform parties in advance of conducting inspections. The Draft Labour Code will restore the provision which had been included as Article 187 of the Labour Code 1994.

¹³⁵ "National Alliance to fight child labour in Vietnam", International Labour Organization, available at https://www.ilo.org/hanoi/Informationresources/Publicinformation/newsitems/WCMS_633121/lang--en/index.htm [accessed 25 July 2018].

¹³⁶ "Ending child labour in supply chains is increasingly important in economic integration", International Labour Organization, 14.06.2016, available at: http://www.ilo.org/hanoi/Informationresources/Publicinformation/Pressreleases/WCMS_490746/lang--vi/index.htm, [accessed 10 July 2018].

¹³⁷ Eric V. Edmonds, "Defining Child Labour: A Review of the Definitions of Child Labour in Policy Research," November, 2008, Geneva, ILO, International Programme on the Elimination of Child Labour.

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 Decisions¹³⁸ to reduce child labour. On 7 June 2016, the Prime Minister, Mr. Nguyen Xuan Phuc, also approved the program to prevent and reduce child labour in the period 2016-2020.¹³⁹ 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 25 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.¹⁴⁰ 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. Children under 13 years of age are only permitted to engage in work provided in a list stipulated by the MOLISA,¹⁴¹ which presently allows children under 13 years of age to engage in work in only two job categories: (i) actors and actresses and (ii) gifted athletes.¹⁴²

Children aged 13- 15 years of age are similarly only permitted to engage in a limited number of light jobs issued by MOLISA, and employers must arrange working hours which do not adversely affect the school study hours of the worker.¹⁴³ This list of jobs reflects traditional work which children would normally do in rural areas in cooperation with their families, and comprises of the following:¹⁴⁴

- (i) Traditional jobs: drawing dots on ceramic, sawing clams, painting lacquer, making poonah paper, conical hats, making incense, drawing dots on hats, mat weaving, drum making, brocade weaving, making rice noodles, bean sprouts, making rice noodle (vermicelli);
- (ii) Arts and crafts: embroidery, art wood, make horn comb, weaving net, making Dong Ho paintings, moulding toy figurines;
- (iii) Wicker, making home appliances, fine art crafts from natural materials such as rattan, bamboo, nehouzeaua, coconut, banana and water hyacinth;
- (iv) Rearing silkworms; and
- (v) 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 MOLISA in coordination with the Ministry of Health¹⁴⁵, which has been elaborated upon in a new draft Circular described in further detail below. 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.¹⁴⁶ 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.¹⁴⁷

138 Decision No. 1555/QĐ-TTg dated 17th October 2012 of the Prime Minister Nguyen Tan Dung on approval of National action plan for children 2012-2020, Decision No. 2361/QĐ-TTg dated 22 December 2015 of Deputy Prime Minister Vu Duc Dam on approval of program of children's protection 2016-2020.

139 It focuses on "preventing and minimising child labour while timely detecting and assisting child labourers and vulnerable children in accessing opportunities for development". Accordingly, young labourers and vulnerable children will be provided with life and community-integration skills. In addition, children should be provided with education and vocational training to prepare them for seeking employment in the future. Meanwhile, the program also supports children's families with their means of livelihood and income, which is believed to help decrease the child labour in the country.

140 Article 161, Labour Code.

141 Article 164.3, Labour Code.

142 List appended to Circular No. 11/2013/TT-BLĐTBXH of the Minister of Labor, Invalids and Social Affairs dated June 11, 2013 ("Circular No. 11") promulgating the list of light works allowed using persons under 15 years old to work.

143 Article 164.2(b), Labour Code.

144 List appended to Circular No. 11.

145 Article 163.1, Labour Code.

146 Article 163.4, Labour Code.

147 Article 26, Law No. 102/2016/ND-CP passed by the National Assembly on 5 April 2016 with effect from 1 June 2017 ("Children's Law").

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.¹⁴⁸

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.¹⁴⁹

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.¹⁵⁰

Recent legal developments also demonstrate Vietnam's commitment to abolishing child labour. In May of 2018, MOLISA issued a new Draft Circular on the prohibition of using minor labourers for certain jobs and in certain workplaces. This document was open for public comments from 15 May to 15 July 2018. It is going to replace Circular 10/2013/TT-BLDTBXH dated 10 June 2013 on the same matter. The draft Circular sets out four general categories of jobs in which minors are prohibited to work and also lists and forbids minor employment in 88 specific jobs that are dangerous, hazardous, highly stressful or otherwise harmful to minors.¹⁵¹ Specifically, children are banned from jobs with the following elements:

- a. being in contact with hygiene elements and substances not up to national technical standards;
- b. being in contact with factors that may cause contagious diseases;
- c. working for over four hours per day in an uncomfortable and narrow space, which sometimes requires labourers to go on their knees, to lie or to stoop; or
- d. working on high scaffolds or ropes hung over two meters higher than the working floor; working on hills and mountains with an incline of over 30 degrees.

The 88 job categories for which children are banned are those which involve: (a) a high level of risk, noise, pollution or stress; (b) regular contact with toxic substances or harmful microorganisms; or (c) heavy weights or outdoor conditions.

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 at 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, which include provisions stating that men and women must have equal rights in respect to remuneration, promotions, statutory insurance and working conditions.¹⁵²

148 Article 19, Decree No. 95.

149 Article 296, Penal Code.

150 Article 25.1, Decree 56/2017/ND-CP dated 9 May 2017 of the Government detailing a number of articles under the Children's Law with effect from 1 July 2017.

151 Draft circular to replace Circular No. 10/2013/TT-BLDTBXH dated 10 June 2013, available at: <http://duthaovanban.molisa.gov.vn/detail.aspx?tab=2&vid=597> [accessed 17 September 2018].

152 Article 153.1, Labour Code; Article 5.1, Decree No. 85/2015/ND-CP detailing a number of articles the Labor Code in terms of policies for female employees of the Government dated 1 October 2015 with effect from 15 November 2015 ("Decree No. 85"); and Article 13.1, Law No. 73/2006/QH11 passed by the National Assembly on 29 November 2006 with effect from 1 July 2007 ("Law on Gender Equality").

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.¹⁵³ “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.¹⁵⁴

Vietnamese law has been quite comprehensive on non-discrimination in respect to employment and occupation. The Labour Code includes many provisions favourable to different types of employees such as females, junior employees or elderly ones. 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 the 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 under Vietnamese regulations: “political opinion”; “national extraction”; and “any other distinction having the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation”. However, the draft new Labour Code brings Vietnam’s prohibitions against discrimination closer in line with those advocated by the ILO. The draft new 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.¹⁵⁵

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; and the Labour Code and its implementing legislation include numerous provisions to create positive working conditions for women and to accommodate the demands of motherhood.¹⁵⁶ The Labour Code also encourages employers to prioritise the hiring and advancement of female employees.¹⁵⁷ 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.¹⁵⁸

Culturally, motherhood is extremely valued. For this reason, MOLISA, together with the Ministry of Health, issued a list of jobs which are prohibited for women.¹⁵⁹ These jobs are those which are considered to be harmful to a woman’s health and fertility. It is stated that preventing women from engaging in these jobs is discriminatory, so the Circular setting out this list of jobs should be repealed.

e. *EuroCham’s activities and other relevant developments*

On 16 August 2018, the HR&T SC Co-Chairs and other representatives of EuroCham met with representatives from the UN Women’s Development Program to discuss EuroCham’s cooperation in an upcoming initiative to empower women in the workplace. The HR & Training Sector Committee is currently working on a project to have female role models from various member companies participate in a panel event and mentorship program.

In August 2018, EuroCham also met with ILO and other international labour organisations to discuss further cooperation and advocacy support in order to facilitate the smooth implementation of EVFTA and Vietnam’s labour commitments. EuroCham is also working on a project with the ILO, entitled “Responsible Supply Chains in

153 Article 1, International Labour Organization (ILO), Discrimination (Employment and Occupation) Convention, C111, 25 June 1958, C111, available at: http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0:NO:12100:P12100_INSTRUMENT_ID:312256:NO [accessed 25 July 2018] (“ILO Convention No. 111”)

154 International Labour Organization (ILO), Helpdesk for Business on International Labour Standards, Q&As on business, discrimination and equality, available at: http://www.ilo.org/empent/areas/business-helpdesk/faqs/WCMS_DOC_ENT_HLP_BDE_FAQ_EN/lang--en/index.htm [accessed 31 July 2018].

155 Article 8.1, Draft Labour Code.

156 For example, the Labour Code provides a six-month maternity leave (Article 157) and more favorable and flexible working conditions for women raising young children, such as reducing the work day of a woman nursing a child under 12 months old by one hour while maintaining the same rate of pay (Article 155).

157 Article 153, Labour Code; Article 5.2, Decree No. 85.

158 Decision No. 2351/QĐ-TTg of December 24, 2010, approving the 2011-2020 national strategy for gender equality.

159 Circular No.26/2013/TT-BLĐTBXH dated 18 October 2013 of the Ministry of Labour, War Invalids and Social Affairs promulgating a list of jobs for which women may not participate with effect from 13 December 2015.

Asia”, which focuses on improving labour conditions within the seafood and forestry sectors. EuroCham will assist by surveying the sourcing practices of its members, and by providing training in best labour practices, among other things.

On the 28th and 29th of August 2018, MOLISA and the ILO organised a two-day consultative workshop in Ho Chi Minh City focusing on industrial relations, and in particular, the provisions of the Draft Labour Code relating to WROs, collective bargaining and labour dispute resolution mechanisms. The Co-Chairman of EuroCham’s HR&T SC attended this workshop and discussed the practical implications of these changes with representatives of the ILO and MOLISA, including proposing for further revisions to the draft Labour Code.

On the 30th of August 2018, EuroCham’s HR&T SC together with MOLISA jointly organised a conference entitled “EVFTA and the ILO Convention: Road ahead for Vietnam”. This conference addressed the progress of Vietnam’s ratification of the three remaining ILO conventions and the legislative process for implementing the fundamental rights at work in the draft Labour Code. Participants were informed about the relevant timelines for the passing of key laws, as well as the challenges and proposed solutions to implementing Vietnam’s labour obligations under the EVFTA.

The HR & Training Sector Committee notes that MOLISA is in the process of implementing many positive developments, such as 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 very active in working with MOLISA to revise the Labour Code and proposing the incorporation of international standards. Over the years, the HR&T SC has constantly provided its comments and recommendations to MOLISA on issues related to labour legislation such as work permits for foreign workers in Vietnam, Labour Code’s revision, regional minimum wage, trade union, visa, social insurance for foreign workers. In addition, our members have also actively joined other associations such as Vietnam Business Forum or Vietnam Chamber of Commerce and Industry 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 increasing awareness of the Ministries of our concerns and proposals, HR&T SC also speaks at various workshops, and conferences of MOLISA which consults with business associations and the business community. The Sector Committee itself also has held many events to disseminate the new regulations (on visa, work permit, insurance policies, etc.) to support updating EuroCham members. EuroCham also supported MOLISA to conduct a survey among European members in Vietnam regarding draft regulation on compulsory social insurance for foreign workers in Vietnam to assess the actual demand and concerns of businesses. The Sector’s members also support the improvements of the workplace for disabled people and actively participate in the UNICEF consultation meeting with Ho Chi Minh City leaders on the Child-Friendly City Initiative.

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 18th November 2016 and valid from 1st January 2018, which protects an individual’s right to freedom of religion. Vietnam also has a new Civil Code 2015, which at Article 37, legalised sex reassignment surgery and introduces the right to legal gender recognition for transgender people who have undergone such surgery.

Recently, the Government has also passed regulations to support private businesses and SMEs through the national level policies such as Resolution No. 10/NQ-TW dated 3rd June 2017 on development of private businesses as the motivation for the market economy and passing the Law on Support for SMEs dated 12th June 2017. Under these regulations, the Government encourages developing start-ups and innovation, increasing the efficiency of SMEs as well as supports the Programs for start-up women in the period 2017-2027 with a target of reaching 35 percent of female-owned enterprises out of a total of 1 million enterprises by 2020. While not required to be implemented into Vietnamese law under the EVFTA, social insurance policy reform is also in the works. Resolution No. 28-NQ/TW dated 21st 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.¹⁶⁰

160 Available at: <http://baochinhphu.vn/Tin-noi-bat/Toan-van-Nghi-quyet-so-28NQTW-ve-cai-cach-chinh-sach-bao-hiem-xa-hoi/337267.vgp> [accessed 25 July 2018].

In conclusion, the ratification of the EVFTA would be a very significant step forward to improve labour and social rights in Vietnam. The ratification and implementation of the EVFTA would be a strong impetus for change in Vietnam. In the absence of FTA ratification and implementation, 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 appreciates the current changes and efforts that the Government has made and will continue to actively update and support further policy changes and facilitate better developments of both economic and social aspects in Vietnam.

7.2.7 Mobility Sector Committee

The EVFTA, under Chapter 20 on Institutional, General and Final provisions, Article 7 provides the following on Taxation:

"1. Nothing in this Agreement shall affect the rights and obligations of either Viet Nam or the Union or one of its Member States under any tax agreement between Vietnam and 5 any Member State or States of the Union. In the event of any inconsistency between this Agreement and any such agreement, that agreement shall prevail to the extent of the inconsistency."

"2. Nothing in this Agreement shall be construed to prevent the Parties from distinguishing, in the application of the relevant provisions of their fiscal legislation, between taxpayers who are not in the same situation, in particular with regard to their place of residence or with regard to the place where their capital is invested."

"3. Nothing in this Agreement shall be construed to prevent the adoption or enforcement of any measure aimed at preventing the avoidance or evasion of taxes pursuant to the tax provisions of agreements to avoid double taxation or other tax arrangements or domestic fiscal legislation"

Table 1. Tax deduction from 2016 to 2018

	2016	2017	2018	
ATIGA	40%	30%	0%	
MFN	70%	70%	70%	51% for 4WD with engine over 3.0 l
EVFTA		78%		reduced over 9-10 years divided in 11 equal steps (10 for 4WD) ⁹

Source: EuroCham Mobility Sector Committee

In light of the high importance of the EVFTA, we focus more strongly on questions of import than traditionally local manufacturing. Under the EVFTA commitments on national treatment and market access for Annex 2-b: Motor Vehicles, Article 2: International Standards, the FTA provides that:

"The Parties recognise that the UNECE Regulations of WP.29 are the relevant international standards for the products covered by this Annex. Automatic acceptance and no further test requirement for EU products having equal/higher technical standards certified by EU".

Moreover, under the Article 12 on National Treatment, Chapter National Treatment and Market Access for Goods, Vietnam as a Party of EVFTA *"shall accord national treatment to the goods of the other Party in accordance with Article III of the GATT 1994."*

Since 1st January 2018, Decree 116/2017/ND-CP (Decree 116) and its Circular 03/2018/TT-BGTVT (Circular 03) enforced new conditions in the automotive sector. According to Article 6.2.a of Decree 116, imported CBU vehicles are required to pass homologation tests (emission and safety) for each and every shipment. A similar vehicle to one imported in a different shipment needs to be tested again. Decree 116 also requires all models to obtain a Vehicle Type Approval (VTA) certification issued by authorities of the exporting country. VTA certifications show that the vehicle meets the standards of the country in which it will be sold and is normally issued by domestic entities of the importing country. In practice, automotive certifying authorities test vehicles according to their country specifications, for instance, Europe. These authorities are not in a position to test vehicles for export markets with each export country specifications. From January to June 2018, the number of CBU imports from the European Union to Vietnam declined 42 percent. There was hardly any homologation of CBU vehicles from Europe. As a