

CHAPTER 3 HUMAN RESOURCES AND TRAINING

OVERVIEW

The EuroCham Human Resources and Training Sector Committee would like to express our sincere appreciation for the positive changes and the efforts taken by the Government and relevant Ministries in terms of improving regulations regarding labour, employment and training over recent years. We fully support the increased dialogue and consultation with the business community.

Vietnam's Socio-Economic Development Strategy (SEDS) 2011-2021 defines promoting human resources/skills development as one of the three breakthrough areas. The lack of necessary skills in primary industries and sectors is still the most significant challenge for the Vietnamese workforce, although training investment is increasing each year. Improving training, education and the legal systems on managing labour will help meet the demand for a skilled workforce, improved productivity and also promote a competitive and healthy investment environment.

We are very interested to see the on-going progress of labour quality, labour rights and labour commitment, especially since Vietnam has actively participated in global integration; signing and implementing many Free Trade Agreements (FTAs), including the EU-Vietnam Free Trade Agreement (EVFTA) with the European Union.

The EVFTA contains a robust and comprehensive chapter on Trade and Sustainable Development which deals, inter alia, with labour matters relevant to trade relations between the EU and Vietnam. The objective is to promote mutual supportiveness between trade, investment and labour policies as well as to ensure that increased business relations do not come at the expense of workers' rights. In this context, Vietnam has committed to the ratification and effective implementation of the fundamental International Labour Organisation (ILO) Conventions, of which only two remain pending (No. 87 and No. 105). The FTA also includes commitments to promote responsible business practices (Corporate Social Responsibility, or CSR) at the level of enterprises, be it local or foreign investment. In 2019, Vietnam ratified ILO Convention No. 98 and plans to ratify the remaining core ILO Conventions very soon. We are very glad to see that Vietnam has implemented the key principles of these conventions in the revised Labour Code, passed by the National Assembly on the 20th of November 2019 and effective from the 1st of January 2021¹ (the Revised Labour Code). To ensure that Vietnam can comply with its commitments under the EVFTA, the Sector Committee makes the following recommendations:

- ▶ Follow the action plan for the ratification of the pending ILO fundamental Conventions, whereby ILO Convention No. 105 is expected to be ratified by 2020 and ILO Convention No. 87 will be ratified by 2023;
- ▶ Ensure that decrees implementing the Revised Labour Code, which are expected to be issued within 2020, are in line with EVFTA commitments;
- ▶ Begin the process of amending the Trade Union Law to reflect the principles of freedom of association, as set out in ILO Convention No. 87;
- ▶ Work with the ILO to monitor and facilitate the implementation of the EVFTA commitments;
- ▶ Upgrade the labour inspectorate system to improve its capacity to effectively implement core labour standards; and
- ▶ Develop awareness on CSR principles in line with the OECD Guidelines for Multinational Enterprises and the United Nations' Guiding Principles for Business and Human Rights.

In order to effectively implement the EVFTA, Vietnam also needs to improve the country's working environment throughout preparations and enforcement of existing regulations (as presented in detail below) and passing new legislation.

¹ Labour Code No. 45/2019/QH14 of the National Assembly dated 20 November 2019.

The Revised Labour Code introduces many positive changes, which will more practically address labour management challenges that employers currently face. Nonetheless, many provisions remain unclear, so we recommend that the Government issues detailed regulations to provide more clarity and efficient application of the law.

I. OVERTIME, INTERNAL LABOUR REGULATIONS AND TERMINATION OF THE LABOUR CONTRACT

Relevant authorities: Ministry of Labour, Invalids and Social Affairs (MOLISA)

1. Overtime

Issue description

In consultations with MOLISA and the Government in the drafting process for the Revised Labour Code, the business community strongly lobbied to increase the annual cap for overtime hours. While early drafts of the Revised Labour Code raised the regular annual cap to 400 hours, Vietnam ultimately took a conservative approach and retained the regular annual cap of 200 hours per year, extendable in special circumstances to 300 hours per year. The new provision does, however, extend the monthly overtime cap from 30 to 40 hours and expand the description of special circumstances under which the annual overtime cap may be raised. The economic boom in Vietnam and rapid growth have necessitated overtime hours for many industries, especially for those just becoming established in Vietnam.

Potential gains/concerns for Vietnam

To fully harness the opportunities for economic growth welcomed by Vietnam's entry into the new free trade agreements, through decrees implementing the Revised Labour Code, we recommend including further circumstances under which the annual cap may be raised from 200 to 300 hours.

Article 107.3 in the Revised Labour Code states the following:

3. The overtime working hour could reach 300 hours per year in the following cases:

- a) Production and processing of products for export of textiles, garments, leather, shoes, electric and electronic components, processing of agricultural, forestry, salt and aquatic products;
- b) Production, supply of electricity, telecommunications, oil refining; water supply and drainage;
- c) In case of such jobs requiring employees with high technical and professional qualifications that the labour market will not fully and promptly meet the demand;
- d) Cases that must be dealt urgently, cannot be delayed due to the seasonal nature, the time of raw materials, products or to solve arising problems due to unforeseen objective factors such as weather, natural disasters, fires, enemy sabotage, lack of electricity, lack of raw materials; technical problems of production lines;
- dd) Other cases specified by the Government."

Recommendations

We recommend supplementing Article 107.3(dd) as follows: "Other cases specified by the Government" to include a flexible, and extensive description of possible circumstances.

2. Internal Labour Regulations

Issue description

Internal Labour Regulations (ILRs) are the working rules of a company, and under the Revised Labour Code every enterprise is required to have them. While these are an essential corporate document, many enterprises struggle

to follow the legal registration processes. If an enterprise lacks its own corporate-level trade union it is difficult, if not impossible in practice, for them to consult the immediate upper-level trade unions about the issuance of ILRs. Sometimes the immediate upper-level trade unions refuse to give opinions on ILRs or it can take a very long time to obtain an appointment and complete the consultation process. This problem may remain under the revised legislation. The Revised Labour Code states: “Before the issuance or amendment, supplement of the internal labour regulations, an employer must consult the employees’ representative organizations at grass-roots level (if any).”²

Potential gains/concerns for Vietnam

It is presently unclear whether businesses which lack employees’ representative organisations are required to consult before issuing, amending or supplementing their ILRs. If enterprises are not required to consult, this would facilitate businesses to put into place ILRs and would be much more efficient. Moreover, it would also reflect the principle of freedom of association, as set out in ILO Convention No. 87, as under this principle, employees should be free not to associate with the immediate upper-level trade union if they so choose.

Recommendations

We strongly recommend clarifying in the forthcoming decrees that organisations which lack employees’ representative organisations are not required to consult with the immediate upper-level trade union.

3. Termination of the labour contract

Issue description

Vietnam’s labour law is generally very protective toward employees, especially on issues related to employment termination. Unlike in many other countries, Vietnamese law does not recognise the concept of ‘termination at will’. Employment termination must follow strict requirements on reasons and procedures. The cases in which an employer can terminate an employee’s employment contract are fairly limited. The Revised Labour Code introduces many positive changes, correcting many problematic provisions regarding termination. However, greater clarity is required and some provisions still need to be revised to accurately reflect today’s business environment.

Potential gains/concerns for Vietnam

From the practical perspective of businesses in dealing with their employees, there are several major concerns on termination:

I. Unequal retirement ages

Under the current Labour Code, differential retirement ages apply for men and women – men retire at age 60, but women retire at age 55.³ The Revised Labour Code increases the retirement age for men and women, whereby the final retirement ages will be 60 years old for women and 62 years old for men.

This unequal retirement age for men and women has been identified as a factor preventing women from being promoted to upper management positions. In fact, in a meeting with EuroCham’s Human Resources and Training Sector Committee, the United Nations Women’s Development Programme stated that they considered the differential retirement age as an obstacle to achieving gender equality in the workplace.⁴ Accordingly, we encourage legislators to further revise the law to set the same retirement age for both men and women.

II. Probation

The Revised Labour Code makes many positive changes in respect to probation. It provides that probation may either be set out in a separate probationary contract or within the labour contract itself.⁵ However, there

² Article 118.3, Revised Labour Code.

³ Article 118.3, Revised Labour Code.

⁴ Meeting between United Nations (UN) Women’s Development Programme and EuroCham’s HR & Training SC, 16 August 2018, regarding consultation on the role and engagement of the private sector in Vietnam in promoting women’s economic empowerment as part of the UN Women’s Development Programme’s regional programme on “Promoting women’s economic empowerment at work in Asia”.

⁵ Article 24.1, Revised Labour Code.

is still some uncertainty with respect to how the labour contract would be terminated if probation is addressed within the contract. The Revised Labour Code states that a circumstance where the labour contract automatically terminates is: “if the probationary agreement is stated in the labour contract but the probationary job does not satisfy the requirements, or each party terminates the probation agreement.”⁶ Under this wording, it is unclear whether the employer must prove the probationary work was unsatisfactory. We suggest clarifying this issue through the forthcoming implementing decrees, and to state that if either party is unsatisfied with the work requirements, the labour contract will automatically terminate.

III. Labour discipline and dismissal

Dismissal is the most severe disciplinary action that can be taken against an employee. Under the current Labour Code, this action is limited to certain kinds of misconduct, in particular:

Where an employee commits an act of theft, embezzlement, gambling, intentionally causes injury, uses illicit drugs in the workplace, discloses technological or business secrets or infringes the intellectual property rights of the employer, or commits acts which are seriously detrimental or pose seriously detrimental threats to the assets or interests of the employer;

- a) Where an employee who is subject to the disciplinary measure of a deferred wage increase recidivates while the disciplinary measure is still in force; or where an employee was demoted as a labour reprimand and recidivates; and
- b) Where an employee has been absent from work for 5 accumulated days in one month or 20 accumulated days in one year without proper reason.
- c) The Revised Labour Code includes the same acts subject to dismissal as listed above at (a), but has added sexual harassment as a ground for dismissal⁷, which is a major step forward. However, under the current and revised legislation, the scope of dismissal is narrow and does not cover many acts of misconduct that companies face. For instance, acts of aggression and hostility, fraud, giving or receiving bribes or kickbacks and violent behaviour (including intimidation, attempts to instil fear in others or subjecting others to emotional distress) should also be subject to dismissal.

The Labour Code does allow an employer to dismiss employees based on the severity of the damages caused, for example, if an employee “commits acts which are seriously detrimental or posing seriously detrimental threat to the assets or interests of the employer”, but there is no clear guidance on the threshold for what should be considered ‘seriously detrimental’ or ‘posing a seriously detrimental threat’. In practice, during the registration of internal labour regulations, each local Department of Labour, Invalids and Social Affairs (DOLISA) has a different interpretation of this provision. Some DOLISAs interpret it to mean that the employers, based on their business situation, should define the threshold of serious damage in their internal labour regulations. Meanwhile, other DOLISAs argue that serious damage must be defined as that with a total value equal to at least 10 months of the regional minimum wages applicable to the employees’ place of work. The DOLISAs’ different interpretation of this regulation has made the application of dismissal more difficult in practice. Moreover, for many acts of serious misconduct, it is not possible to prove material financial damages. For example, in most cases, it would not be possible to prove the damage caused by bribery, despite the fact that it may cause irreparable – though unquantifiable – damage to a company’s reputation.

Furthermore, there are many deficiencies in the general labour disciplinary procedures. The statute of limitations for settling a labour disciplinary action varies from 6 to 12 months from the date of the occurrence of the misconduct. An employer must gather evidence, hold a disciplinary hearing and issue a dismissal decision within this limitation period. Presently and under the Revised Labour Code, the general limitation period applicable to employee misconduct is 6 months, but it is extended to 12 months where the act of misconduct is directly related to finance, assets and disclosure of technological or business secrets.⁸ This statute of limitations is problematic because many employees carry out their acts of misconduct in a surreptitious manner, so the employer only learns of the act of misconduct after the limitation period has already expired. For example, employee fraud is

⁶ Article 34.13, Revised Labour Code.

⁷ Article 125.2, Revised Labour Code.

⁸ Article 123.1, Revised Labour Code.



generally undertaken in a secretive manner to avoid detection, so is often only discovered at a much later date. Another problem with the current limitation period is that it often takes a considerable amount of time to gather evidence of the employee's misconduct, and employers have difficulty completing all the disciplinary procedures within the limitation period.

We are encouraged to see that disciplinary procedures have been simplified under the new Decree 148.⁹ In order to dismiss an employee, an employer must hold a disciplinary hearing with the presence of both the employee and the executive committee of the trade union. Previously, an employer had to issue at least three invitations to the required attendees before it was permitted to proceed in the absence of one of the parties. In practice, this often meant that it would take around one month to conclude the disciplinary hearing, since one of the required parties would not attend. However, under Decree 148, effective as of the 15th of December 2018, an employer is now only required to send one invitation to the disciplinary hearing and within three working days the invitees must confirm their attendance or explain their legitimate reasons for being unable to attend. The employer is permitted to proceed with the disciplinary hearing in the absence of one of the parties if they do not provide a legitimate reason for failing to attend. While this will likely streamline the disciplinary hearing procedure, there are still problems, as Decree 148 does not provide a definition of "legitimate reasons" so it will be unclear when the employer can proceed in the absence of one party. Moreover, there is no stated limit to the number of times a party can refuse to attend based on "legitimate reasons", so the disciplinary hearing process could ultimately take even longer than under the previous regulations.

In addition to adding sexual harassment as a ground for dismissal, the Revised Labour Code also requires employers to address the prevention and handling of sexual harassment within their ILRs.¹⁰ As this provision is very general, we recommend setting out detailed regulations on the policies and training employers must adopt. The Sector Committee suggests adopting a form similar to the "Code of Conduct on Sexual Harassment in the Workplace" issued by the MOLISA, ILO and VCCI in 2015¹¹ as part of a circular implementing the provisions on sexual harassment in the Revised Labour Code.

IV. Redundancies

The current law in respect of redundancies and the Revised Labour Code leave some significant issues unclear in respect of terminating employees under the ground of redundancy. Both versions of the Labour Code state that certain groups of employees are protected from unilateral termination including those who are recovering from a workplace accident, on leave as agreed with the employer or as entitled under the law, pregnant, having a child under 12 months old or on leave pursuant to the regime on parental leave.¹² However, it is unclear whether this protection extends to the circumstance of redundancy. Another issue which remains unclear is whether an employer is permitted to make one employee redundant. This issue is not specifically addressed in either the current or Revised Labour Code. We recommend addressing these issues in the implementing decrees so employers and employees clearly understand their rights.

Recommendations

In order to increase the quality of the workforce, facilitate fair competition in the labour market and attract more foreign investors and employers, legislators should seriously consider revising labour regulations to provide further clarity and efficiency in respect of terminations. In particular, the Sector Committee would like to recommend the following measures:

- Impose the same retirement age for men and women;
- Clarify that the labour contract automatically terminates if either the employer or employee is unsatisfied with the requirements of the work during the probationary period;
- Expand the scope of acts of misconduct subject to immediate dismissal (e.g. fraud, giving or receiving bribes)

9 Decree 148/2018/ND-CP dated 24 October, 2018 of the Government on amendments to the Government's Decree 05/2015/ND-CP dated 12 January, 2015 on elaboration of some contents of the Labour Code

10 Article 118.2(d), Revised Labour Code.

11 "Code of conduct on sexual harassment", *International Labour Organization*. Available at: <https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-hanoi/documents/publication/wcms_421220.pdf>, last accessed on 10 January, 2020

12 Article 37, Revised Labour Code.

or kickbacks or aggressive, hostile and violent behaviour or having violated the internal safety rules which lead to potential risk to human life);

- › Extend the statute of limitations for settling a labour disciplinary action from 12 to 24 months (we refer to the same statute of limitations for settling a labour disciplinary action with respect to cadres and civil servants under the Law on Cadres and Civil Servants).¹³ This statute of limitations should be calculated from the date the misconduct was discovered by the employer, rather than from the date the act occurred;
- › Set out the threshold as a basis to determine “seriously detrimental” or “posing seriously detrimental damages” – for instance, a specific monetary threshold – or, alternatively, remove the requirement for acts within this category to cause damage equivalent to a monetary threshold;
- › Clarify whether employees listed under Article 37 are protected from redundancy terminations and whether redundancy is a legal ground of termination in the case that only one employee is made redundant; and,
- › Provide further detail on the policies and procedures employer must adopt to address and prevent sexual harassment, using the Code of Conduct on Sexual Harassment in the Workplace as a model.

II. MANAGING FOREIGNERS WORKING IN VIETNAM

Relevant authorities: The Government, Ministry of Labour, Invalids and Social Affairs (MOLISA), Vietnam Social Insurance Agency (VSIA).

1. Statutory Social Insurance contribution for foreign workers in Vietnam

Issue description

Under the Law on Social Insurance 2014 and Decree 143¹⁴, from the 1 January 2018, foreigners working in Vietnam will be subject to statutory Social Insurance (SI) contributions. The people subject to the mandatory SI scheme are those who:

- › Work under a work permit or practice certificate or practice license; and
- › Maintain a labour contract with an indefinite term or a definite term of one year or more with an employer in Vietnam.

The exemption of mandatory SI contribution includes those who:

- › Work in Vietnam under intra-company transfer form as regulated in Decree 11¹⁵ (managers, executive directors, experts or technicians of a foreign enterprise which has established a commercial presence in Vietnam and were employed by the foreign enterprise at least 12 months prior to being transferred); or
- › Have reached the retirement age in accordance with the Labour Code.

In short, the contribution scheme for foreigners is similar to Vietnamese, including 5 regimes: sickness, maternity, labour accident, pension, and survivorship allowance. In which, the contribution to 3 short-term regimes (sickness, maternity and labour accidents) is applicable from the 1 December 2018, and the remaining 2 long-term regimes (pension and survivorship allowance) will be applicable from the 1 January 2022.

Upon the termination of the Vietnam labour contract or expiration of the work permit, and when the expatriates no longer live and work in Vietnam, they can claim a one-off allowance for the contribution period. The claimable

¹³ Law 22/2008/QH12 dated 13 November 2008 of the National Assembly on cadres and civil servants

¹⁴ Decree 143/2018/ND-CP dated 15 October 2018 of the Government on elaborating on Law on social insurance and Law on occupational safety and hygiene regarding compulsory social insurance for employees who are foreign nationals working in Vietnam

¹⁵ Decree 11/2016/ND-CP of the Government dated 3 February 2016 of the Government detailing the implementation of a number of articles of the Labour Code regarding foreign workers in Vietnam.

amount and procedure are similar to that applied for Vietnamese.

Upon the release of the official guiding Decree, there are still several insufficient and impractical points in this Decree which will be discussed in the next section of this chapter.

Potential gains/concerns for Vietnam

Firstly, Decree 143 excludes foreign workers who are being internally transferred within enterprises in accordance with Decree 11. Decree 11 defines internal transfer as the transfer from the subsidiaries or headquarters on the business licence in Vietnam as the investors or owners of the entities in Vietnam. However, in practice, most foreign workers are assigned to Vietnam from the group companies rather than from the headquarters. This leads to the fact that this SI exemption is applied to limited individuals and results in double SI contribution in both their home and host countries.

The narrow definition of internal transfer does not only contradict to the international mobilisation practice but also misleadingly describes the employment relationship. Some local labour and tax authorities require Vietnamese entities to sign employment contracts with the foreigners who are dispatched from the affiliates rather than the investor in the business registration certificate for the purposes of application of work permit and corporate income tax deductibility expenses. This distorts the employment relationship between the Vietnamese entities and the foreign labourers where the employment of the foreign labourers is indeed governed by the employment contract between signed with the home entities whereas from the point of view of Vietnam's competent authorities, Vietnamese entities become the "nominal" employer on paper.

Regarding SI regimes, even though the long-term regimes are expected to be effective from the 1 January 2022, the application of 5 regimes would not be fair or practical for foreign employees who keep contributing to SI in their home country. We understand that the Government is considering the fact that Vietnam has not signed any bilateral agreements with other countries on insurance coverage. Without relevant bilateral agreements, this will definitely result in double cost for both employees and employers as well as administrative burdens. Furthermore, the application of pension and survivorship regimes is unnecessary and controversial, since foreign employees normally work in Vietnam for a short period of time, especially in light of strict management of foreign workers when the Vietnamese competent authorities review and approve the labour quota for work permit issuance. The Decree proposes that foreign employees in such cases will have the right to request a lump-sum payment before they leave Vietnam. However, the claim procedure will inevitably lead to a greater administrative burden for all stakeholders, including social insurance authorities, employers and foreign employees. In addition, the relevant dossiers of expatriates issued by overseas authorities are required to be translated into Vietnamese and notarised in accordance with prevailing regulations which are normally time-consuming.

In terms of contribution rate, based on the table comparing the social insurance contributions of foreign workers in Vietnam and other ASEAN countries that EuroCham's HR & Training SC has shared with MOLISA in our position paper dated the 2 October 2017, the contribution rate in Vietnam is far higher than other countries, but the rate of return is lower. The procedure of SI implementation for foreign workers is also a big question in practice. The insufficient procedure of SI implementation, especially the procedure to claim a lump sum when foreigners repatriate or move to other countries, will not have a positive effect on the attractiveness of Vietnam's investment environment.

Recommendations

- In view of these concerns, the HR & Training SC recommend the following measures:
- Revise the "inter-company transfer" definition to include expatriates who are assigned from group companies who have participated in home country to avoid double SI contribution;
- Not to apply the pension and survivorship regimes to foreign workers or apply only on an optional basis;
- Create the flexibility for foreign workers to receive a one-off social insurance allowance upon repatriation from Vietnam by authorising the employer to carry out the procedure on expatriates' behalf;
- Stipulate the lower ratio of SI contribution for employers and foreign workers making reference to countries in

ASEAN or the Asia–Pacific region;

- Evaluate the impact of administrative procedures when applying each regime to facilitate the implementation of the executing agencies, foreign workers and employers; and
- The lump-sum allowance should be counted from the application date rather than from the date of issuance of a decision by the insurance agency.

2. Work permit

Issue description

The term “an intra-company transferee” in accordance with Decree 11 is defined as a manager, executive director, expert or technician of a foreign enterprise which has established a commercial presence in Vietnam and who was employed by the foreign enterprise at least 12 months prior to being transferred. In practice, Multi-National Companies (MNCs) have numerous subsidiaries around the world and often relocate their staff to different countries to maximise the skills of their global workforce. Unfortunately, intra-company transferees may only be recognised in Vietnam if they are assigned from the subsidiaries or headquarters registered on the business licence in Vietnam as the investors or owners of the entities in Vietnam. As a result, Circular 35¹⁶ can only be applied in very limited cases.

In addition, due to the strict requirements on the legalisation of documents issued overseas, the time required to prepare documents for a work permit application can range from 2 to 3 months – or even longer due to the complicated procedures of legalisation in different countries. This is a continuing issue for both employers and foreign workers.

The introduction of Circular 23¹⁷ has led to a faster and more straightforward process compared to the existing paper-based procedure. However, some issues remain with the implementation in different locations. The processing time to receive the application, proceed and release the results of the work permit through the online procedure may take longer than the existing paper-based procedure due to technical problems in the online system. Furthermore, some local authorities are not familiar with the system and lack resources to handle these online applications. Recently, the Government has also introduced Decree 140¹⁸ amending some articles of Decree 11 on managing foreign nationals working in Vietnam. One notable point in this Decree is the cancellation of the employer’s responsibility to return the work permit of foreign employees to the local authority where the work permit was issued.

The Revised Labour Code also introduces some provisions which our members have raised concerns about in respect of foreigners obtaining work permits. Article 155 of the Revised Labour Code states that the maximum valid duration of a work permit is two years and it may only be extended once for a maximum period of two years.

Potential gains/concerns for Vietnam

The narrow definition of intra-company transferee is not in accordance with international practice and often leads to impractical implementation. In practice, some local authorities sometimes require intra-company transferees who are being transferred (within the group) to Vietnam to submit their local employment agreements. As a result, intra-company transferees may be subject to statutory Social Insurance for foreign workers as well as the relevant local employment regulations. The preparation time for documents required for work permit applications causes significant difficulties for foreign employees and employers who wish to deploy their staff to Vietnam at the right time to meet business requirements.

The purpose of issuing work permits online is to help improve and shorten the processing time. However, frequent

16 Circular 35/2016/TT-BCT of the Ministry of Industry and Trade dated 28 December 2016 on identification of foreign workers who are eligible for work permit exemption and internally reassigned by enterprises operating within eleven service sectors specified in Vietnam’s WTO commitments on services.

17 Circular 23/2017/TT-BLDTBXH of the Ministry of Labour, Invalids and Social Affairs dated 15 August 2017 detailing guidance on online issuance of work permit to foreign workers in Vietnam.

18 Decree 140/2018/ND-CP of Government dated 8 October 2018 on amendments to decrees related to business conditions and administrative procedures under the management of the Ministry of Labour, Invalids and Social Affairs.

system errors and a shortage of staff handling the database have caused a delay in issuing work permits for foreign employees. As a result, either the corporation or the employee would prefer to apply by paper rather than online to avoid complicated technical issues. Furthermore, paper documents can be reviewed by the handling staff at the time of submission and requests for supplementary materials can be made right away to save time.

Eliminating the employer's responsibility to return foreign employees' original work permit to the issuing authority after the assignment ends may cause risk for the employer if the foreign employees use that work permit for other, undefined purposes.

The limitation under the Revised Labour Code that only permits a foreign employee to renew his or her work permit once will impede foreign investment in Vietnam and economic growth. Foreign workers are only permitted to be hired in Vietnam because Vietnamese workers cannot fill certain positions. Under the Revised Labour Code, the maximum amount of time a foreigner will be able to work in Vietnam will be four years. It remains unclear under the current wording whether the foreigner must return to his or her home country then begin the application process for a work permit anew or not. In the first case, this requirement will be very expensive, inefficient and time-consuming for businesses.

Recommendations

We suggest that the Government and MOLISA should consider:

- Supplementing the definition of “intra-corporate transferees from head office to its subsidiary” with “intra-corporate transferees within the group companies”, as long as the sponsoring entity in Vietnam can prove that foreign employees are being assigned from subsidiaries within the same group;
- Deploy the fast-track service in which some required documents can be supplemented within the defined time. The higher fee for the fast-track service can be charged and having the system to control the employer will enable them to supplement documents as requested;
- Ensure the online system for work permit application runs smoothly and have experienced staff handling applications in order to avoid any delays in processing and issuing work permits online;
- Implement the detailed instructions on the process of revoking work permits by the employer after foreign employees end their assignment in Vietnam. Through the forthcoming decrees, clarify that foreign employees are not required to leave Vietnam after four years, but may apply for a new work permit while remaining within Vietnam.

III. TECHNICAL AND VOCATIONAL TRAINING AND EDUCATION PRACTICE IN VIETNAM

Relevant authorities: Ministry of Labour, Invalids and Social Affairs (MOLISA), Ministry of Education and Training (MOET).

Issue description

The Vietnamese economy is continuing to make significant steps forward. Vietnam has demonstrated true dedication to equipping its labour force with the training and access to quality education needed to empower workers to work more productively. Education has long been a priority of Vietnam and training and quality education remain paramount for the preparation of young people with workplace skills. The quality of training and education in Vietnam benefits from being at the highest possible standard. Truly significant improvements have been made in this area with the previous passing of Decree 86/2018/ND-CP¹⁹ and this Sector Committee continues to feel great optimism about the pace of these advances.

There continues to be a trend of Vietnamese graduates entering the workforce each year without the necessary skills for the workplace and this Sector Committee recognises the efforts made in the past year by the Vietnamese

¹⁹ Decree 86/2018/ND-CP dated 6 June, 2018 of the Government on foreign cooperation and investment in education.

Government to address this matter. An educated and skilled Vietnamese workforce prepared for Industry 4.0 helps ensure the success of both domestic and foreign investment. Students of Vietnamese educational institutions at all levels – from primary to secondary and from high school to university – must be equipped with the practical knowledge, technical and soft skills, resourcefulness, and mind-set for an ever-changing and evolving workforce. Recognised deficits in competencies are being addressed and minimised through a concentrated effort to ensure that students receive employability and technical skills training prior to graduation and Decree 86 allows foreign training agencies to participate in this endeavour.

With so much dynamism and development taking place in Vietnam, both local and international educational institutions in Vietnam could attract students from across the region and even beyond and could even become a regional hub for quality education. At the same time, numerous studies including some by IZA Institute of Labour Economics and the Yale School of Public Health, link air pollution with negative impacts on education. Poor air quality is also a deterrent to attracting and retaining expert expatriate workers with families. The combination of these factors results in fewer numbers of international students seeing Vietnam as an attractive study destination.

One significant way in which Vietnam can empower its future labour force is by enhancing the skills of educators in all levels of the state education system. This can be accomplished by providing access to international-standard continuous professional development and teacher training in modern educational practices. For example, training in differentiated learning and effective teaching can ensure that greater numbers of Vietnamese students are given the support to reach their full potential and successfully complete their education. This will translate into better equipped workers and dynamic lifelong learners entering the labour force.

At the top end of the workforce, Vietnamese students can prepare for their careers by gaining access to top international universities both overseas and within the country. At the same time, learning opportunities at international institutions operating in Vietnam help students gain admission to top institutions once they reach university level and also provide students with international exposure and cultural sensitivity through the presence of foreign educators. International educational institutions in Vietnam account for a significant number of the foreign labour force in Vietnam and therefore places a larger burden on these institutions with the implementation of social insurance deductions for foreigners.

According to Decree 86, schools and kindergartens can tie up with accredited foreign educational institutions subject to the approval and specific guidelines of the Vietnamese Government. The Government will also issue specific guidelines on the integration of foreign and domestic courses and graduates of such integrated courses must receive certificates, which should be valid for both Vietnam and the foreign country. This will certainly encourage foreign investments in the sector.

To further encourage foreign investment in this sector, local public education institutions might be encouraged to partner with private international education institutions in the training of teachers working in the public school system. Partnerships with international private institutions offering blended educational programs that combine online learning with face-to-face studies for training of Vietnamese teachers in the public school sector could be used to further develop local teachers with the international-standard skills to continue to develop students with the expanding skills necessary for future careers in emerging industries which might not yet exist.

Potential gains/concerns for Vietnam

Vietnam is our host country. We honour and respect Vietnamese culture and readily acknowledge the impressive strides being made to improve the abilities of young people as they prepare to enter the workforce – particularly through the passing of Decree 86. Vietnam has shown its willingness to create partnerships between private educational and training institutions operating in the country as well as from the expertise of foreign institutions to address current skills gaps. Partnerships with private institutions that offer flexible, blended online and face-to-face teacher training programs, Foreign languages and soft skills training can be used to up-skill Vietnamese educators in the state education system at all levels, and also help Vietnamese students and fresh graduates entering the workforce acquire the necessary abilities such as lifelong learning.

Furthermore, while there are currently a variety of initiatives underway to improve vocational and workplace skills training and education in Vietnam, much can also be gained by building the capacity and fostering the quality of educational, vocational and technical training institutions, and continuing to offer opportunities for Vietnamese

students to learn at international schools while at home in Vietnam.

Recommendations

With the aim of supporting international-standard education in Vietnam in order to enhance white-collar job readiness and increasing productivity at the top of the labour pool, the Government should consider relieving the pressure on international education institutions by implementing an exemption on contributions to social insurance by foreign educators since international education institutions employ significant numbers of foreign educators. It is recommended that the Government collaborate with private institutions offering international-standard teacher training and teacher professional development to enhance the abilities of local teachers in order to help develop generations of lifelong learners so that they are prepared to enter the labour force.

With increasing numbers of international educational institutions entering and growing in Vietnam, the on-going rapid changes in technology, the health of Vietnam's population and its reputation as a competitive destination for both foreign students and expatriate families is now a question due to increasing air and environmental pollution in the main cities of Vietnam. It is recommended that Vietnam enhance its attractiveness for the education sector by prioritising the efforts to improve air quality.

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