



Speech by EuroCham at the Consultation Workshop on the Draft Law on Social Insurance (amended) organized by the Ministry of Labour, Invalids and Social Affairs and the Office of the International Labor Organization (ILO) in Vietnam

(3 August 2023)

- Respectfully to: the Representative of the Ministry of Labour, Invalids and Social Affairs;
- Respectfully to: the Representative of the Office of the International Labor Organization (ILO) in Vietnam;
- Respectfully to all participants in today's Workshop;

I am Khuat Van Trung – Co-Chairman – Human Resources and Training Sector Committee of EuroCham Vietnam

I would like to thank the Ministry of Labour, Invalids and Social Affairs and the ILO Vietnam Office for being present today to give our members the opportunity to exchange and comment directly on the contents of the draft Law on Social Insurance (amended).

In March 2023, the Government issued a draft of the Revised Law on Social Insurance for public comments until 30 April 2023. Recently, we further received a latest update of the draft of the Revised Law on Social Insurance version 28 July 2023 (hereinafter referred to as “**Draft Law**”). During our reviewing on the contents of the Draft Law, we acknowledge that the potential insurance policies of the Draft Law present a number of notable changes to the applicable regulations that may bring about a significant impact to the businesses in managing and allocating enterprises’ funds to ensure the employees’ rights. Therefore, on the occasion of today's Consultation Workshop, we would like to contribute some comments as well as propose recommendations for the Draft Law as follows:

1. Regarding the sanctions for violation of social insurance regulations

According to Article 44.2 and 44.3 of the Draft Law, the employers that evade compulsory social insurance contributions for upwards of 6 months, in addition to being compelled to return the evaded contribution amount in full, facing corresponding administrative sanctions and having to pay interest on the evaded contribution amount, may further (i) be temporarily ceased the use of invoices, and/or (ii) even be postponed the ability to exit the country.

The provisions on these two stricter sanctions are unreasonable for the following reasons:

- The suspension of the use of invoices and travel ban have never been regulated as administrative labor sanctions before. Furthermore, if being applied in practice, they may negatively affect the employer's business activities – which may further have adverse impacts on the national economy.
- Additionally, these forms of sanctions are not practical and may even cause troublesome scenarios. For example, supposing that an enterprise was regarded as having the act of underpayment of social insurance premiums due to an error in the system of the social insurance authority, leading to the fact that such enterprise's legal representatives - who normally are high-ranking employees and have to travel to handle businesses of the enterprise – are subject to travel ban, then the operation and business of such enterprise shall be seriously damaged.

Therefore, our recommendation is removing the two (2) forms of sanctions applicable to the act of social insurance contribution evasion, which are (i) suspending the use of invoices and (ii) travel ban – as stated at Article 44.2 and 44.3 of the Draft Law.

2. Regarding the compulsory social insurance subjects:

Article 3.1 of the Draft Law expands the scope of subjects participating in compulsory social insurance by adding (among others) employees being Vietnamese citizens who: (i) work under a contract that includes content on salary payment and management, as well as administration and supervision of a party, regardless of the name or description of such contract; (ii) work under a part-time labor contract with a monthly salary equal to or higher than the lowest rate of the salary used as the basis for the compulsory social insurance contribution; (iii) work as business managers that do not receive a salary. We assess that the subjects of compulsory social insurance should be considered carefully for a fair and practical implementation, while the aforementioned expansion of the scope may cause challenges in the management of these categories of subjects.

- Specifically, in terms of item (i) on “employees working under a contract with a different name but including the content on salary, management and supervision”, in practice, since the employers have different levels of knowledge as well as different perceptions, they may have dissimilar interpretation of which shall be the correct case of a person working under a contract with the nature of a labor contract. This accordingly may cause difficulties in management for relevant authorities and may even lead to the situation where an employer is considered evading social insurance premiums as such employer's interpretation is not in line with the authority's view due to the fact that there is no official guidance.

- ⇒ As a solution, we suggest that there should be a specific identification mechanism or an official guidance from the authority for determining who will be subject to the case; or remove this subject from the list.
- In terms of item (ii) on “employees working on a part-time basis with a monthly salary equal to or higher than the lowest rate of the salary used as the basis for the compulsory social insurance contribution”, they are normally those who hold multiple positions in different entities and do not maintain a long-term employment with each entity but only works for a short period of time (for example, a visiting teacher for one to two hours at university, a doctor can partly work in multiple hospitals, etc.), therefore it is unreasonable and impractical to require employers to still deduct money to pay social insurance contributions for such employees.
 - Furthermore, in terms of item (iii) which is “business managers who do not receive salary”, the participation of this subject in compulsory social insurance is not practical since they don’t even have the salary which normally acts as the basis for the contribution of social insurance premiums.
 - ⇒ Recommendation for the subjects in item (ii) and (iii): switch them from compulsory insurance to a voluntary (or optional) mechanism subject to parties’ agreements.

3. Regarding the salary used as the basis for payment of compulsory social insurance premiums

Applicable to the private sector, in Article 37.1 (b), the Draft Law regulates that the salary used as the basis for payment of compulsory social insurance premiums shall include “*salary, allowances and other supplements that are paid regularly and stably during each salary payment period.*” We opine that there is a need to define what constitute “regular” (e.g., 6 months or 1 year?) and “stable” payment for future implementation. Otherwise, the salary used as the basis for paying social insurance premiums can be significantly expanded as it will further include other supplements during the employee’s working period which may cover supplements relating to performance results.

4. Regarding the social insurance contribution schemes for foreigners:

Pursuant to Article 31.2 of the Draft Law, generally, foreign employees (except for certain cases) are also among the subjects participating in compulsory social insurance. Currently, the social insurance contribution scheme for foreigners is identical to that for



Vietnamese employees, which includes five (5) regimes: sickness, maternity, labour accident – occupational disease, pension, and survivorship.

However, it is unreasonable and impractical for foreign employees to participate in the two long-term regimes - pension and survivorship, for the following reasons:

- **Firstly**, foreign employees often work in Vietnam for a short period of time according to the term of work permit, especially in light of strict management of the use of foreign employees in Vietnam.
- **Secondly**, foreign employees normally also have to pay social security in their home country – beside their payment in Vietnam - which creates double payment of social insurance premiums. Although the Vietnam Government has been negotiating bilateral agreements on recognition of social insurance contributions with certain countries, it cannot not cover all countries where foreign employees come from. Thus, it will definitely increase costs for both employees and employers.
- **Thirdly**, regarding the lump-sum pay-out of pension benefit for foreign employees, in the case that they have left Vietnam due to the expiration of their work permit or termination of employment, it is unclear who shall be responsible for claiming this amount for them. In addition, the required documents of the expatriates in the relevant dossier for the purpose of claiming this benefit, if issued by overseas authorities, shall further be required to be translated into Vietnamese and then notarized in accordance with applicable regulations, which are very time-consuming.

In light of the above, we recommend the application of the pension and survivorship regimes to foreign employees on an **optional** basis only. Accordingly, foreign employees are merely statutorily required to participate in three **(3) regimes** that are necessary during their service period in Vietnam, including sickness, maternity, and labor accident - occupational disease regimes.