

REPORT FROM HR SUB WORKING GROUP

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On the 1st May 2013, the new Labor Code of Vietnam has been implemented, this is after three years of consultations with various stakeholders including ILO, VCCI, VBF, EuroCham and AmCham to name a few. Throughout these consultations there has been open dialogue and information sharing by all parties to ensure that Vietnam continues to build a flexible and functioning labor market.

This is not only to remain competitive regionally against new emerging markets, to satisfy the demands of both domestic and foreign companies in their need for a skilled workforce, but to ensure formal employment and up skilling of the current workforce. It has been proven that companies and economics that can adapt to fluctuations in demand are better placed to manage and react to market opportunities and thus would benefit Vietnam's economy, which is why the New Labor Code and its issuing decrees and circular are a concern for all VBF members.

Although the new Labor Code has addressed some issues, decrees and circulars have led to move confusion and additional administration burdens for companies, which we would like to focus on:

1. Firstly Introduction of Sub leasing

With the changing view of work and also requirements from companies in terms how they employ we welcome the introduction of Sub leasing into the labor code. This is in line with other ASEAN countries that have adopted this form of work into their legal framework. We recognize the hard work and due diligence that the MOLISA completed working with ILO. We totally agree that this should remain a conditional service with a high capital charter required and deposits, to ensure that rouge agencies cannot operate in this industry, but the MOLISA should regulate the license but not the services offered by Private employment agencies.

Sub leasing is only allowed in certain job sectors and mainly focused on full time work rather than temporary ad hoc assignments which is where the demand for comes from user enterprises. There are restriction on the lengthen of duration an employee can be used by the user enterprises, with outsourcing services being banned, subleasing does not cater for the majority of user enterprises needs for a flexible workforce.

Although the MOLISA has given a time frame for companies to apply for this license if is not realistic due to the time it takes to get a license in Vietnam, especially for conditional services.

We suggest the following:

- Introduction of a full temporary services (hourly pay and contribution for government insurances) as at present it is very difficult to do due a fixed registered salary on the labor contract for contribution of government statutory insurances. We would like to see this address in future Social and Medical insurances laws where there is a minimum threshold based on a minimum wage.

- Dialogue with CIETT globally and in Vietnam on best practices for the industry, including ratification of Convention No 181 in Vietnam.
- Additional time frame of six months to allow for license registration process.

2. Restrictions of overtime hours and increasing overtime pay

This has remained one of the biggest issues for both domestic and foreign enterprises. With the continued capped on the limit on overtime hours, this is causing major issues for employers and employees alike.

Overview legal permissible maximum working overtime

country	legal permissible maximum (hours per week)			
	normal	overtime		
		week	month	year
US	40	none	none	none
China	40	36	156	1,872
Thailand	48	36	156	1,872
Malaysia	48	24	104	1,248
Singapore	40-45	17	72	864
Germany	48	12	48	624
France	39	9	36	468
Vietnam	48	20	25	300

Although inflation has significantly reduced over the last two years, it is still remaining at 8% annually. The capped on overtime means that employees has no means of earning additional income and has led to many strikes in manufacturing and production industries. Foreign companies are very rarely paying the mimuimim wages and average salaries in foreign companies are up to 4,000,000 million vnd per month. With the mimiumm cost of living seen as 3,200,000 VND there is very little additional income. Vietnam does not have the skilled workforce to capped overtime especially as six months maternity has also been introduced in 2013 which is an additional burden on employees.

The current practice of increasing the mimimum wages and government insurances will only mean that Vietnam does not have any longer the cheap labor force that it has used for many years to remain competitive in Asia. Due to the lack of qualified workers and the education system there is not an abundance of workers available in the market. This is especially apparent as Vietnam is trying to promote its value added technologies and R&D industry, where there is not a workforce able to meet the demand of enterprises.

We suggest the following:

- Overtime limits should be introduced capped at 800 hours for all industries and in special cases 1200 hours.
- Public Holiday / Holiday time overtime payment is excess at 500% and not in line with other Asia countries, we recommend that it is reduced back as companies will not be able to afford to operate business during these periods.

3. Work Permits

We welcome the concession that has been adopted by the MOLISA on employment of Foreign Nationals under Decree 46 and potential Employment Law Draft. The fact is that Foreign Nationals are employed in Vietnam due to the lack of qualified workforce rather than taking away employment from Vietnamese nationals.

There are outstanding issues that need to be addressees:

Seven years from the WTO Commitments and the introduction of exemption of work permit applicable under the 11 service sectors, Vietnam Business Forum was unable to find one member who had successfully been exempted of work permit under this clause, due to there being no clarification of what needs to be provided to show the company is exempted from Work permits

Vietnam Business Forum compiled an survey from its members:

Respondents consisted of Fortune 500 companies in banking, manufacturing, production and FMCGs

Summary of survey

- 50% of companies responding employ up to 5 Foreign Nationals in their company
- Technical expertise and shortage of qualified Vietnamese candidates are the two main reasons for employing foreign nationals in Vietnam
- 62% of Foreign Nationals employed are on the Board of Directors or Heads of Department
- Majority are employed in General Management and technical departments
- 60% are employed in Vietnam for between 3 – 5 years
- 100% of work permits once full submitted to DOLSA take longer than 3 weeks to obtain
- 87% of respondents required work permit for a minimum of 1 – 5 years
- 13% would ideally like an conditional work permit for 6 months once documentation being obtained

We recommend the following be adopted:

- Clear guidelines on “and “ / “or” use under describing if a degree and / or certificate of experience is required;
- Better training of department within MOLISA as currently unclear guidelines are causing issues at local levels;
- Removal of the need for People Committee approval for hire, this is a new addition and was never consulted on – this adds another layer of administration and transparency for companies;
- Investment certificate of the company receiving the transferee (demonstrating that the company receiving the transferee is involved in one of the above mentioned sectors);
- Proof of relationship between the foreign enterprise (having previously employed the transferee) and the company receiving the transferee (e.g. Investment Certificate, share certificate, certificate of contribution...);
- Proof of employment of the Transferee with the foreign enterprises (having previously employed the transferee) for at least a year (e.g. labour contract).

Work Permits durations should be issued for a period of five years as a VBF survey provided to MOLISA has shown that this is duration of time required to complete skills knowledge

Currently the work permit exemption from No.11 requires supporting documents which are similar to the documents required for a Work Permit application. Such exemption should also be communicated to the Immigration Department in charge of issuing Temporary Residence Card for foreign employees and dependent living in Vietnam.

Once again we would like to thank the MOLISA for its adoption of the many recommendation from VBF, also the open dialogue and consultation they have practice over the last three years this a refreshing exchange of views which we believe is very important.