

## Investing in Vietnam: Key points on Vietnamese employment law

Published: 3/09/2018 at 09:38 AM

Online news:

Investment by Thai companies in Vietnam is surging over recent years, especially after several major M&A deals in the last few years in the beverage, retail and other sectors. However, Thai companies, as well as all foreign investors in Vietnam, should be aware of some common pitfalls in regard to Vietnamese employment law.

### Termination of Employees

One important point that new investors must be aware of is the very pro-employee labour regulations of Vietnam. If a staff member must be let go, very strict legal processes must be followed (such as in some cases consultation with the local labour authorities or trade union organisation). Failure to abide by the processes can result in the employee being reinstated, and the company being required to pay very high damages, even in the hundreds of thousands of US dollars. Thus, it is always very important to consult with legal counsel in such situations before taking action.

### Internal Labour Regulations

It is also important to note that all companies in Vietnam with 10 or more employees must register their internal labour regulations/work rules with the local labour authorities. Failure to do so can lead to grave consequences. For example, one company discovered that there was an embezzlement scheme secretly taking place within its organisation in Vietnam. The company conducted an internal investigation, spending huge amounts of money on data forensics and forensic accounting to prove the embezzlement. However, because the company failed to register its internal labour regulations, the employees could not be terminated, and the company ultimately had to negotiate with the employees to resign, and ironically had to pay an incentive bonus to encourage the embezzling employees to leave the company.

The formation of the internal labour rules requires the involvement of the trade union organisation which is set up within the company, or the trade union federation of the district/industrial zone where the company is located.

### Labour Due Diligence

In terms of labour issues in the context of M&A transactions in Vietnam, many companies fail to do proper due diligence on the target company, and this can have very damaging implications. There have been several cases of investors incurring huge liabilities unknowingly. For example, one company purchased a target company but did not realise that the target company had over many years categorised a large part of salary paid to a huge workforce as simply "allowances," but had not paid personal income taxes and social insurance on the amount. After the target company was purchased, the tax authorities discovered the issue and then imposed fines and back tax amounts in the millions of US dollars on the buyer.

The investor should ensure that the target company does not owe the statutory social insurance, medical insurance and unemployment insurance premiums as well as the trade union fee. Some violations regarding failure by a company to pay social insurance can even lead to criminal liability. By doing careful due diligence before investing in Vietnam, investors can ensure the success of their projects and avoid harmful mistakes.

### Labour Contracts

Additionally, companies need to pay close attention to the type of labour contract they sign with regard to the term. Is it a fixed-term or an indefinite-term contract? The rights under these contracts differ greatly. In particular, the rights of indefinite-term employees are very high. Thus, employers should take great care when entering into labour contracts. Notably, a probation period of up to 60 days is acceptable. During the probation period, the parties (employee and employer) may terminate the labour contract/probation contract if the probation work is not satisfactory.

A labour contract must include certain compulsory contents such as the job specification, working time and rest time, salary, place of work, term of the contract, social insurance contributions, etc. Apart from these compulsory contents, the employer can, based on the position of the relevant employee, provide additional items, such as those relating to responsibilities to protect the trade secrets of the employer.

The Labour Code of Vietnam provides for the automatic conversion of a definite term contract or a seasonal contract into an indefinite term contract or a 24-month definite term contract, respectively, if the employee continues to work for employer but the parties fail to sign a new contract within 30 days from the date of the contract's expiry. Thus, it is very important for companies to keep track of the expiry date of all labour contracts. If a company forgets to conduct the proper termination procedures on time, a low-performing employee on a fixed-term contract can suddenly become a more permanent problem.

It is possible for Thai companies to send management to Vietnam under contracts governed by Thai law, and avoid the contract being governed by Vietnamese law. This is called an intracompany transfer. However, many companies that try to structure the employment relationship in this way ultimately fail due to not following best practices. For example, while maintaining the labour contract with the offshore company, the employee, in some cases, also enters into an employment/labour agreement with the local company for work permit or other purposes. A mix-up in any of these areas can lead to the employment relationship being governed by Vietnamese law.

### Working Hours

Generally, working hours must not exceed eight hours a day or 48 hours a week. However, if the employer chooses to have employees working hours figured on a weekly basis, the working hours must not exceed 10 hours a day and/or 48 hours a week. Night working hours run from 10 p.m. to 6 a.m. of the subsequent day. The employee is entitled to a break (including for meal time) of at least 30 minutes each day, and an employee who works at night is entitled to a break of at least 45 minutes each day, which shall be included in the number of working hours.

Employees working on shifts are entitled to a break of at least 12 hours before moving to another shift. In every week, an employee is entitled to a break of at least 24 consecutive hours, or at least four days off per month where it is impossible for an employee to have weekly leave due to the work cycle.

The above tips should be helpful to new investors from Thailand in Vietnam, as well as companies already operating in Vietnam.

---

**Authors:** Thomas J. Treutler, Partner and Managing Director and Kien Trung Trinh, Partner, Tilleke & Gibbins (Vietnam). For further information contact at [thomas.t@tilleke.com](mailto:thomas.t@tilleke.com) or [kien.tt@tilleke.com](mailto:kien.tt@tilleke.com) in Vietnam, and Andrew Stoutley at [andrew.s@tilleke.com](mailto:andrew.s@tilleke.com) in Bangkok.

**Series Editor:** Christopher F. Bruton is Executive Director, Dataconsult Ltd, [chris@dataconsult.co.th](mailto:chris@dataconsult.co.th). Dataconsult's Thailand Regional Forum provides seminars and extensive documentation to update business on future trends in Thailand and in the Mekong Region.

**Related search:** [company](#), [labour](#), [contract](#), [working hours](#)