

# Employment and Employee Benefits in Vietnam: Overview

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A Q&A guide to employment and employee benefits law in Vietnam.

This Q&A gives a high-level overview of the key practical issues including: the scope of employment regulation; employment status; background checks; regulation of the employment relationship (including unilateral changes by an employer to the terms and conditions of employment); minimum wage and bonuses; working time, holidays and flexible working; illness and injury of employees; rights created by continuous employment; provisions for fixed-term, part-time and agency workers; discrimination and harassment; termination of employment (including protection against dismissal and protected employees); resolution of disputes between an employee and employer; redundancy/layoff; employee representation and consultation; consequences of a business transfer; employer and parent company liability; employer insolvency; employers' health and safety obligations; taxation of employment income; intellectual property; restraint of trade; and relocation of employees.

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## Scope of Employment Regulation

1. Do the main laws that regulate the employment relationship apply to:

- Foreign nationals working in your jurisdiction?
- Nationals of your jurisdiction working abroad?

## Laws Applicable to Foreign Nationals

The main law regulating employment relationships in Vietnam is the Labour Code 2019 (Labour Code), which came into force on 1 January 2021. Specifically for foreign nationals, there are also various governmental implementing regulations (under Decree 152/2020/ND-CP dated 30 December 2020, as later amended by Decree 35/2022/ND-CP dated 28 May 2022, and Decree 70/2023/ND-CP dated 18 September 2023) which mainly provide guidance on matters concerning work permits for foreign national workers in Vietnam.

The Labour Code explicitly states that it applies to foreign nationals working in Vietnam, and the general rule is that foreign nationals working in Vietnam must comply with the Vietnamese labour laws, unless an international treaty to which Vietnam is

a party determines otherwise. If an employment contract is signed with a Vietnam-based entity, the law of Vietnam must apply to that employment contract regardless of any choice of law selected by the parties.

The Vietnam labour legislation, however, does not fully apply to foreign nationals who are working in Vietnam through an internal company transfer under a foreign employment contract. That is, the legislation does not fully apply to cases where a foreign parent company temporarily assigns its employee to work at its Vietnam-based subsidiary or representative office (and the labour contract is signed with the parent company).

## Laws Applicable to Nationals Working Abroad

The Law on Vietnamese Guest Workers 2020 states that contracts for Vietnamese workers abroad must conform to the Labour Code, so the Labour Code is the main law applicable to their employment relationship. There are also implementing regulations under Decree 112/2021/ND-CP dated 10 December 2021. In general, Vietnamese nationals working abroad must comply with both the laws of Vietnam and the laws of the foreign country within which they are working, unless an international treaty to which Vietnam is a party determines otherwise. Under the Civil Code 2015, which came into force on 1 January 2017, where the selected law for an employment contract is not Vietnamese law but it adversely affects the minimum interests of the employee as would be prescribed under Vietnamese law, the laws of Vietnam will prevail. As a result, in the case of guest workers, where the law of a foreign country is applied to the employment contracts but it is less favourable to the employees, the Vietnamese Labour Code will apply.

## Employment Status

2. Does the law distinguish between different categories of worker? If so, what are the requirements to fall into each category, the material differences in entitlement to statutory employment rights and are there any maximum time periods for which each category of worker can be engaged?

## Categories of Worker

**Employee/worker.** Vietnam's labour laws do not make any legal distinction between different categories of workers, but apply to employees, trainees, apprentices and, under the current (amended) version of the Labour Code, "other workers without labour relations". It is not clear what types of workers are included within the category "other workers without labour relations", or indeed whether the entire Labour Code (or only certain aspects of it) should be applied to this category of worker. The Labour Code also defines "employees" more expansively than was previously the case, and states that an "employee" is a person who works for an employer under an agreement, and is paid, managed, and supervised by the employer. Therefore, businesses must take particular care when drafting contracts with independent contractors or other types of workers whom they do not intend to employ as regular employees, as these categories of worker may otherwise be considered to in fact constitute "employees" if the business closely manages or supervises their work.

The Labour Code also contains specific provisions for certain classes of employees (such as junior employees, elderly employees, disabled employees, and women employees) who are granted certain protections and additional statutory employment rights (such as additional rest breaks or shorter regular working hours).

**Independent contractor.** An individual can also provide services to an enterprise or organisation in Vietnam as an independent contractor. However, the provision of services as an independent contractor is governed by the Civil Code 2015 (rather than the Labour Code) and is generally not considered to constitute an employment relationship to which the labour laws apply. Consequently, an independent contractor is not entitled to any statutory employment rights under Vietnam law, such as statutory leave (annual leave, sick leave, maternity leave, and unpaid leave), statutory insurance, severance, or job loss allowance upon termination of employment, and so on. The Labour Code also applies to "other workers without labour relations", but it is still uncertain whether independent contractors should be included within this category, and which aspects (if any) of the Labour Code will apply.

There is no legal provision that specifies the situations where an employer must (or must not) use either an employment contract or a service contract. However, if a contract contains the features more customarily found in an employment relationship (for example, it provides that the contractor is subject to the employer's working hours, or to disciplinary actions provided under the work rules for a breach of the work rules), the contract will be treated by the authorities as an employment contract even if it is referred to as a service contract. As a general rule, the use of a service contract for permanent and long-term work is not encouraged and should only be used for projects where the individual is not directly supervised or managed by the enterprise receiving the services. Where an employer misclassifies an employee as an independent contractor, the labour authorities may view this misclassification as a deliberate circumvention by the employer of both the labour laws and employment-related requirements (such as the provision of paid leave and the payment of statutory insurance). Such an employer may be subject to a monetary fine, and the employee's statutory entitlements must be provided/paid for the duration of the employee's employment.

## Entitlement to Statutory Employment Rights

Only employees (not independent contractors) are entitled to statutory employment benefits (see above, *Categories of Worker*).

## Time Periods

The Labour Code sets out two types of employment contracts:

- Fixed-term employment contracts with a maximum term of 36 months.
- Indefinite term employment contracts.

Generally, the parties can only enter into two successive fixed-term employment contracts, and after the expiry of the second fixed-term employment contract, the parties must enter into an indefinite term employment contract to continue employment. If the first fixed-term employment contract expires but the employee continues working, the parties can sign a second fixed-term employment contract. However, if they fail to sign this second fixed-term contract within 30 days from the date on which the first fixed-term employment contract expired, the employment contract will automatically convert into an indefinite term employment contract by operation of law. Similarly, if the employee continues working after the expiry of two successive fixed-term employment contracts, the employment contract will automatically convert into an indefinite term employment contract by operation of law. However, this rule does not apply to certain categories of employees, such as:

- Employees past retirement age.
- Foreign employees (whose employment terms are limited by the duration of their work permits).
- Directors of state-owned enterprises.
- Officers of employee representative organisations.

Any agreement under an annex which has the purpose of amending the term of an employment contract is not permitted. With respect to independent contractors, there are no minimum or maximum time periods that apply to their service contracts.

## Background Checks

3. Are there any restrictions or prohibitions on carrying out background checks in relation to applicants?

### Restrictions/Prohibitions on Conducting Background Checks

Questions about an applicant's past, health, and criminal record are permissible in Vietnam. By law, an employee must provide certain personal information to the employer before commencing employment, including their:

- Full name.
- Date of birth.
- Gender.
- Place of residence.
- Educational background.
- Vocational skills.
- Health condition.
- Any other information directly related to the execution of the employment contract as requested by the employer.

However, conducting background checks on applicants involves the processing of personal data, which is regulated by Decree No. 13/2023/ND-CP dated 17 April 2023 on personal data protection (Personal Data Protection Decree) (PDPD). Therefore, the applicant must provide their explicit consent to a background check before it is conducted. The consent form must strictly follow the requirements set out in the PDPD. Specifically, the consent provided to the employer must be given voluntarily, based on the applicant's full understanding of:

- The purpose of the personal data processing.
- The type of personal data to be processed.
- The entities authorised to process the personal data.
- The applicant's rights and obligations with respect to their personal data.
- Whether the data processed will also include sensitive personal data.
- Whether the data processed will be transferred outside of Vietnam.

- The contact details of the employer in case the applicant has any questions or concerns about the personal data processing.

In addition, the employer must comply with all the data protection measures set out in the PDPD concerning the processing of basic personal data and sensitive personal data.

### **Background Checks by Third Parties**

An employer must have the prior, explicit consent of the applicant/employee to transfer the applicant's/employee's personal data (whether basic personal data or sensitive personal data) to any third party for the purpose of conducting a background check. The consent must meet the conditions and requirements set out above (see above, *Restrictions/Prohibitions on Conducting Background Checks*). In practice, the consent form providing permission to the employer to process an applicant's/employee's personal data will usually include a provision that such processing can also be conducted by a third party on the employer's behalf.

### **Regulation of the Employment Relationship**

4. How is the employment relationship governed and regulated?

### **Written Employment Contract**

Employment contracts must be made in writing, with the exception of employment contracts for temporary work of a duration of less than one month (in which case, an oral employment contract can be used). An employment contract must contain provisions on all the following:

- The employer's name and address, as well as the full name and position of the person signing the contract on the employer's behalf.
- The full name, date of birth, gender, place of residence, and identity card number or passport number of the employee.
- A description of the work to be performed, job location and term of the contract.
- The wages (including the rate, method and time of payment, allowances and other additional payments, and regime for wage increases and promotion).
- The working hours, rest breaks, and holiday provisions.
- Details of any personal protective equipment that is provided to the employee.
- Details of the social, health, and unemployment insurances that are provided to the employee.
- Details of any training and upskilling that are provided to the employee.

An employment contract must be entered into directly with the company that employs the employees, and not the group company. Although Vietnamese employment law does not explicitly regulate the language of an employment contract, for practical purposes a local employment contract should be drafted in the Vietnamese language or in dual languages (for example, Vietnamese and English), since Vietnamese is the compulsory language used in administrative procedures and before the court.

## Implied Terms

The only terms that are automatically implied into employment contracts in Vietnam (whether or not specific provisions are also included within the written employment contract) are those concerning:

- The conditions under which a fixed-term employment contract will be automatically converted into an indefinite term employment contract.
- The circumstances under which an employment contract can be terminated (as the termination of employment contracts is strictly regulated by Vietnamese law).

## Collective Agreements

Employers must implement and comply with a collective labour agreement (CLA) where it applies. A CLA is binding on the employer when it has been signed by the employer and the representative of the labour collective following a collective bargaining session, during which the labour collective has voted in favour of the CLA with a simple majority. The effective date of the CLA is the date on which it is signed by the employer and the representative of the labour collective, or another date as agreed upon by the parties and as recorded in the CLA.

Vietnam's labour laws also include provisions concerning both sectoral and multi-enterprise collective bargaining, though their practical application has yet to be established. These types of collective bargaining will be carried out through a collective bargaining council, which will be established by the People's Committee in the relevant province. At the time of writing, a decree guiding this process has yet to be released by the Vietnamese Government.

5. What are the main points to consider if an employer wants to unilaterally change the terms and conditions of employment?

An employer cannot unilaterally change the terms and conditions set out in the employment contract. An employer who wishes to amend or supplement the terms of an already signed employment contract must notify the employee at least three working days before the term in question is amended or added, and obtain the employee's consent to the amendments or additions in question. Any amendments or additions to an employment contract must be made in an addendum to the employment contract, or by the parties entering into a new employment contract. If the parties fail to reach an agreement on the new terms of the contract, the original signed employment contract must continue to be performed. Note that any agreement under an addendum which has the purpose of amending the duration of an employment contract is not permitted.

## Minimum Wage and Bonuses

6. Is there a national (or regional) minimum wage? Is it common to reward employees through contractual or discretionary bonuses?

## Minimum Wage

On 12 June 2022, the Government of Vietnam adopted Decree No. 38/2022/ND-CP regulating the minimum wage (similar decrees are issued on a regular, typically annual, basis). This decree provides for a range of minimum wages/salaries applicable to all employers, including enterprises, co-operatives, farms, households, individuals, and other organisations hiring employees under employment contracts from time to time. Currently, there are four "regional" minimum monthly salary levels with which employers must comply, ranging from VND3,250,000 (about USD140) to VND4,680,000 (about USD200) per month, depending on the locality. These "regions" are not purely geographic but are based on relative socio-economic development and the costs of living, in addition to location. Employers must pay a salary to their employees which is no lower than the minimum salary level applicable in their region. The regional minimum monthly salary levels are expected to be increased by 6% from 1 July 2024 (though the official legislation for this has not yet been issued at the time of writing).

There is no mandatory salary payment method. Payment methods are subject to the agreement between the parties, though salary payments must be made directly (to the employee), on time and in full.

## Bonuses

Normally, where a bonus payment applies its terms will be agreed in a bonus clause contained in the relevant employment contract. There are no specific restrictions or guidelines on bonuses. However, an employer can only deduct bonus payments (as a deductible expense) from its corporate income tax liability where the terms of the relevant bonus have been included in a collective labour agreement, an employment contract, or the employer's own financial or bonus policy. An employer can issue its own internal bonus regulations, which will then be notified to employees subject to consultation with the grassroots level trade union or employee representative organisation (if any) and also subject to a "dialogue in the workplace" session, which involves a discussion between all the employees' representatives and the employer's representatives. Generally, it is common in Vietnam to offer a 13th month salary bonus to all employees across all sectors.

## Working Time, Holidays and Flexible Working

7. Are there restrictions on working hours, and if so, can an employee opt out? Is there a minimum paid holiday entitlement? Is there a statutory right for employees to request to work flexibly?

## Working Hours

**Restrictions on working hours.** There is a restriction on the maximum regular working hours of employees in Vietnam, and no parties to the employment relationship (employees, unions, or employers) can waive this restriction by either individual or collective agreement. The regular working hours cannot exceed eight hours per day, or 48 hours per week. For employees working in extremely heavy, hazardous, or toxic working conditions, the employer must limit the time of exposure to harmful elements in accordance with the law and relevant national technical regulations.

However, there is some flexibility permitted to the rules outlined above, and working hours can be set on an hourly/daily/weekly basis depending on the employer's needs. For example, where an employer sets hours on a weekly basis, regular working hours of up to ten hours per day are permitted, provided that the total hours worked over the week do not exceed 48 hours.

Employers are generally permitted to grant overtime, though this is capped at the following for each employee:

- 50% of the regular working hours per day (if the employer applies weekly regular working hours, the sum of both the regular working hours and any overtime hours must not exceed 12 hours per day).
- 40 hours of overtime per month.
- 200 hours of overtime per year. Under special circumstances prescribed by the government, employers can extend the annual overtime cap to 300 hours provided that such overtime has been notified to the Department of Labour, Invalids and Social Affairs within a maximum of 15 days from the date the relevant overtime exceeding the ordinary cap was worked.

Where an employee works their normal working hours at night (that is, between 10.00 pm and 6.00 am) and this work is not overtime work, that employee is entitled an additional "night-time" payment equivalent to 30% of their normal hourly salary for the hours worked between those times.

**Overtime pay.** Employees working overtime are entitled to overtime pay as follows:

- At least one-and-a-half times the normal hourly rate of pay for extra hours worked on regular working days.
- At least two times the normal hourly rate for extra hours worked during the weekend.

In addition to the provisions discussed above, if an employee works overtime at night (that is, between the hours of 10.00 pm and 6.00 am), that employee is also entitled to a further additional payment at the rate of 20% of their salary for a normal working day, a weekly day off, or a holiday, depending on the day on which the overtime is worked (and this payment is in addition to the overtime rates prescribed above).

## Rest Breaks

**Rest breaks during the working day.** Employees who work for six consecutive hours a day are entitled to a rest break of at least 30 minutes, which is included in the working hours.

**Rest periods between working days.** The employer must arrange for employees to take a rest period of at least 12 hours before commencing their next shift. Employees are also entitled to take a rest period of at least 24 hours per week, or at least four days off per month. However, if the circumstances of the job require it, these four days off can be accumulated within a month and do not necessarily need to be taken as one day off per week.



**Special provisions for night/shift work.** If an employee works at night (that is, between 10.00 pm and 6.00 am) for six consecutive hours, the rest break during the working time must be at least 45 minutes (instead of the minimum 30-minute period required for day shift workers) and is included in the working hours.

## Holiday Entitlement

**Minimum paid holiday entitlement.** By law, holiday entitlements are as follows:

- Employees working under normal working conditions are entitled to a minimum of 12 days of paid annual leave, exclusive of public holidays.
- Employees who are minors, or who are working under heavy, hazardous, or toxic working conditions, are entitled to a minimum of 14 days of paid annual leave, exclusive of public holidays.
- Employees working under extremely heavy, hazardous, or toxic working conditions are entitled to a minimum of 16 days of paid annual leave, exclusive of public holidays.

Every employee must also be given one additional day of paid annual leave for every five years of consecutive service for an employer, and there is no cap on these additional leave days.

**Public holidays.** At present, there are a total of 11 paid public holidays in Vietnam for which employees receive their normal pay entitlement. If any of the public holidays falls on a weekend, employees are entitled to take the next weekday off. In addition to these public holidays, expatriate employees are also entitled to one paid day off for their traditional new year, and another paid day off for the national day of their country.

## Flexible Working

There is no specific legal provision that gives employees the right to request to work flexibly, and any flexible working arrangement will depend on what has been agreed between the employee and the employer. However, the law encourages employers to create conditions for women employees to have regular employment, and to extensively implement systems that include flexible working hours, part-time work, or home-based work for women employees, as well as reduced daily working hours or part-time regimes which allow elderly employees to work.

## Illness and Injury of Employees

8. What rights do employees have to time off in the case of illness or injury? Are they entitled to sick pay during this time off? Who pays the sick pay and, if the employer, can it recover any of the cost from the government?

## Entitlement to Paid Time Off

**Sick leave covered by the Social Insurance Fund.** Both Vietnamese employees and foreign national employees who are subject to compulsory health insurance contributions are entitled to paid sick leave, which is covered by the Social Insurance

Fund. The maximum number of paid sick leave days within a year, calculated according to working days and excluding paid leave covered by the employer (such as public holidays, annual leave and paid personal leave), is as follows:

- For employees working under normal working conditions:
  - 30 days if they have paid social insurance premiums for less than 15 years;
  - 40 days if they have paid social insurance premiums for between 15 years to up to 30 years; and
  - 60 days if they have paid social insurance premiums for 30 years or more.
- For employees working in heavy, hazardous, or toxic conditions, or occupations or jobs on the list promulgated by the Ministry of Labour and the Ministry of Health, or working regularly in specified regions:
  - 40 days if they have paid social insurance premiums for less than 15 years;
  - 50 days if they have paid social insurance premiums for between 15 years to up to 30 years; and
  - 70 days if they have paid social insurance premiums for 30 years or more.

During the sick leave period, employees are entitled to 75% of their salary or remuneration on which social insurance premiums were based in the month preceding their leave.

Vietnamese employees infected with a disease on the list of diseases requiring long-term treatment, as promulgated by the Ministry of Health, are entitled to the following paid sick leave entitlements:

- A maximum of 180 days in a year, including public holidays and weekends. Similar to the circumstances outlined above, the employee is entitled to 75% of their salary or remuneration on which social insurance premiums were based in the month preceding their leave.
- Employees still needing treatment after 180 days continue to be entitled to the paid sick leave regime at a lower level (between 45% to 65% of their salary or remuneration on which social insurance premiums were based on the month preceding their leave).

The salary for the purposes of calculating the employee's sick leave allowance is capped at 20 times the basic statutory pay rate for officials, public employees, and the armed forces (which differs from the regional minimum wage outlined in [Question 6](#)), and is typically multiplied by a coefficient used to calculate salaries and allowances. Under Decree 24/2023/ND-CP dated 14 May 2023, the current basic statutory pay rate is VND1,800,000 (about USD77) per month.

**Paid personal leave.** Employees are entitled to personal leave (which is fully paid by the employer) in the following circumstances:

- Three days off for their own wedding.
- One day off for the wedding of any of their children.
- Three days off for the funeral of any of their parents, parents-in-law or children.

In such cases, the employee must provide prior notice of the personal leave to be taken to the employer.

## Entitlement to Unpaid Time Off

An employee is entitled to a one-day leave without pay on the death of a grandparent or sibling, or to attend a wedding of the employee's parent or sibling. Any additional unpaid time off is subject to agreement between the employer and the employee.

## Recovery of Sick Pay from the State

Not applicable (see above, [Entitlement to Paid Time Off](#)).

## Provisions Concerning COVID-19

Whilst the COVID-19 pandemic is now under control in Vietnam, its impact has significantly affected the economy of Vietnam and the daily lives of its people. To support its citizens and the economy to recover from the pandemic, under Resolution No. 80/2023/QH15 dated 9 January 2023 and Resolution No. 110/2023/QH15 dated 29 November 2023, the Vietnamese Government continues to maintain supporting policies concerning COVID-19 (such as Resolution No. 43/2022/QH15 dated 11 January 2022, under which value added tax is maintained at the rate of 8% through to the end of June 2024, among other measures).

## Rights Created by Continuous Employment

9. Does a period of continuous employment create any statutory rights for employees? If an employee is transferred to a new entity, does that employee retain their period of continuous employment? If so, on what type of transfer?

## Statutory Rights Created

An employee is given one additional annual leave day for every period of five consecutive years that they work for an employer. In addition, employees with over one year's service with their employer are entitled to a severance payment if their employment contract is terminated for certain reasons (see [Question 12, Severance Payments](#)).

## Consequences of a Transfer of Employee

The succeeding employer is responsible for continuing to employ the transferring employees in the case of a merger, consolidation, division or separation of an enterprise or co-operative. In this case, the employees will retain their period of continuous employment as if there had been no transfer. If the preceding employer and the employees choose to terminate their employment contracts and settle all outstanding rights and obligations under the existing contracts, and the employees enter into new contracts with the succeeding employer, a new employment relationship will start with the new employer. If all the employees are not employed by the succeeding employer, a labour usage plan must be formulated (see [Question 15](#)).

## Fixed-Term, Part-Time and Agency Workers

10. To what extent are temporary and agency workers entitled to the same rights and benefits as permanent employees? To what extent are part-time workers entitled to the same rights and benefits as full-time workers?

## Temporary Workers

In Vietnam, there is no specific type of employment contract for temporary workers, as the most recent version of the Labour Code eliminated the previous contract category of "seasonal/specific job" employees (which had previously applied to employees with contract terms of under 12 months). Temporary workers are now simply workers under fixed-term employment contracts, which have no minimum term, and a maximum term of 36 months. Therefore, all employees (even those on very short-term contracts) are entitled to the same wages, the same rights and obligations, and the same opportunities, treatment and working conditions as indefinite term employees (see *Question 2, Time Periods*).

Because employees working under fixed-term contracts are entitled to the same rights and benefits as those working under indefinite term contracts, any unilateral termination of employment must be with cause, and subject to the procedures provided for by the law.

## Agency Workers

Under the Labour Code, labour outsourcing is defined as the situation where an employee is employed by an enterprise that is licensed to conduct labour outsourcing, where that employee then works for another subleasing employer. The outsourced employee is subject to the management of the subleasing employer, while maintaining an employment relationship with the outsourcing enterprise. Labour outsourcing can only be conducted in respect of 20 categories of jobs that are contained on a specific list promulgated by the Government of Vietnam to satisfy the subleasing employer's temporary demand for labour, for a maximum term of up to 12 months. Outsourced employees have the right to be paid the same wage as the wage of an employee of the subleasing employer with the same professional qualifications and doing the same job, or a job of the same value, and must be provided with similar labour conditions as the employees of the sub-leasing employer.

## Part-Time Workers

Part-time employees are entitled to receive the same wages and have the same rights and obligations as full-time employees, and are entitled to the same opportunities, treatment and working conditions as full-time employees. For the consequences for misclassifying workers as "independent contractors" rather than "employees", see *Question 2*. In Vietnam, all employees must have their employment contracts with the company for whom they are providing services, and not with any other member of the group.

## Discrimination and Harassment

11. What protection do employees have from discrimination or harassment, and on what grounds?

## Protection from Discrimination

Discrimination and sexual harassment are strictly prohibited under the Labour Code, and employees cannot be discriminated against on the basis of any of the following:

- Gender.
- Ethnicity.
- Race.
- Skin colour.
- Nationality.
- Social class.
- Beliefs and religion.
- HIV infection.
- Age.
- Pregnancy.
- Marital status.
- Personal opinions.
- Family responsibility.
- Disability.
- Establishment of, or participation in, a trade union or an internal employee organisation.

The law does not provide any specific guidelines on what protections employees can have from discrimination. In general, when there are grounds to suggest that an employer's decisions or behaviour have breached the labour law and infringed an employee's legal rights and interests, the employee can make a claim or a "labour denunciation" to the employer or the labour inspectors to protect their rights and interests.

The following steps can be taken by an employee to make/settle a labour complaint:

- Step one: the employee must lodge a complaint directly with the employer within 180 days from the date of the action being complained of, and the employer must settle the complaint within 30 to 45 days, depending on the complexity of the case.
- Step two: if the employee does not agree with the employer's settlement decision, or the complaint has not been settled at all within the stipulated time, the employee can lodge a complaint with the Chief Inspector of the Department of Labour, Invalids and Social Affairs where the employer's head office is located. This must be done within 30 days from

either the date the settlement decision should have been reached by the employer, or the date the employee receives the employer's settlement decision. The Chief Inspector must settle a complaint within 45 to 60 days, depending on the complexity of the case.

- Step three: if the employee does not agree with the decision of the employer (as a result of step one) or the decision of the Chief Inspector (as a result of step two), the employee can take the case to the court. However, the employee has the right to bring the case to the court at any stage of the complaint resolution process.

To make a labour denunciation, the employee must submit a petition and evidence related to the labour denunciation directly to the Chief Inspector of the Department of Labour, Invalids and Social Affairs where the employer's head office is located.

Under the Law on Denunciation 2018, the denouncer (the employee) can request the application of several protection measures, including:

- Protection of the denouncer's (employee's) information.
- Protection of the position and job of the denouncer.
- Protection of the denouncer's life, health, property, honour, and dignity.

Where there is evidence that the employee's request for protection is legitimate, those who are settling the labour denunciation can apply the protective measures under their competence or propose that the competent authorities handle the case according to the law.

## Protection from Harassment

In respect of sexual harassment, employers must include detailed regulations within their internal employment regulations setting out how sexual harassment complaints will be handled, including measures for compensating victims and remedial measures. Employers must also ensure their employees are aware of these regulations, so regular trainings are necessary. The Labour Code adds sexual harassment as a ground for dismissal, and employees who are victims of sexual harassment can terminate their employment contracts with no notice. Additionally, Vietnamese laws also provide for a monetary fine of between VND30 million (about USD1,280) up to VND60 million (about USD2,560) for the violation of the laws concerning sexual harassment in an employer's workplace. Such fines can be further increased up to VND150 million (about USD6,380) where the affected employee is a domestic worker (Articles 6.1, 11.3 and 30.4, Decree No. 12/2022/ND-CP of the Government of Vietnam dated 17 January 2022 on penalties for administrative violations in the field of labour and social insurance).

## Termination of Employment

12. What rights do employees have when their employment or employment contract is terminated?

## Notice Periods

For unilateral termination of employment by an employer (when permitted by law), the employer must provide advance notice to the employee within the minimum statutory time limit. Employees who resign are also required to give advance notice to their employers within the minimum statutory time limit. However, in some specific cases, employees who resign will not be required to provide advance notice (for example, if the work is not the same as was agreed in the signed employment contract, if the salary is not paid in full or on time, if the employee is subject to sexual harassment at work, and so on). In cases requiring advance notice, the relevant minimum statutory time limits are:

- 45 days' notice in advance for indefinite term employment contracts.
- 30 days' notice in advance for fixed-term employment contracts.
- Three working days' notice in advance for employment contracts with durations of less than 12 months.

## Severance Payments

Vietnamese labour law requires employers to provide severance payments to employees whose employment contracts are terminated where those employees have been regularly working for the employer for 12 months or more. The severance payment is equal to one-half of one month's wages for each year of employment. Salary for the purposes of calculating the severance payment is the average salary under the employment contract for the six months immediately preceding termination of the employment contract.

However, no severance payment is required by law in any of the following circumstances:

- At the time of termination of the employment contract, the employee has worked for the company for less than 12 months.
- The employee illegally unilaterally terminates the employment contract.
- The employee is dismissed for breaching the company's internal labour rules.
- The employee is retrenched (in this case, a job loss allowance will apply instead, which is equal to one month's salary for every year of service).
- The employee retires and is eligible for a pension.
- The employee is absent from work without justifiable reason for five consecutive working days or more.
- The employee is a foreign national and is deported from Vietnam.
- The employee is a foreign national and their work permit expires (resulting in the automatic termination of that employee's employment contract).

## Procedural Requirements for Dismissal

Dismissal is a way of dealing with a breach of "labour discipline". The Vietnamese labour laws define "labour discipline" as the rules governing compliance with time, technology and the management of business and production, as set out in the employer's internal employment rules. Therefore, dismissal procedures must comply with the internal employment rules and the labour laws of Vietnam, and follow a sequence to deal with a breach of labour discipline. The procedure for dismissal must include the following steps:

- Making a record of the breach if the breach is discovered at the time it is committed, and notifying the grassroots trade union (or the district level trade union if there is no grassroots trade union) of the breach.
- Sending written notices to the required attendees to attend a meeting to deal with the breach of labour discipline.
- Holding a meeting to deal with the breach of labour discipline.
- Issuing minutes of the meeting.
- Issuing a decision following the meeting dealing with the breach of labour discipline.

There is no regulation on the consequences if the procedural requirements are not followed. However, considering the pro-employee approach of the Vietnamese courts and labour authorities, it is likely that a dismissal will be found to be illegal if the correct dismissal procedures are not followed.

13. What protection do employees have against dismissal? Are there any specific categories of protected employees?

## Protection Against Dismissal

**Grounds for dismissal.** Dismissal is a disciplinary action where an employment contract is terminated for a breach of "labour discipline" and is only permitted in a few limited cases, as set out in the labour laws of Vietnam and recorded in the employer's internal employment rules. Dismissal is highly regulated by the labour laws of Vietnam and can only be imposed on the following grounds:

- The employee commits an act of gross misconduct, as follows:
  - an act of theft, embezzlement, gambling or deliberate violence causing injury;
  - the use of drugs at the workplace;
  - disclosure of the employer's technological or business secrets, or infringement of the employer's intellectual property rights;
  - is guilty of conduct causing serious loss and damage or which threatens to cause particularly serious loss and damage to the property or interests of the employer;
  - an act of sexual harassment at the workplace.
- The employee is already subject to disciplinary action for a particular breach of the internal employment rules (for example, the employee has been given a deferral of wages, or a demotion, and so on) and then commits a second breach whilst still under disciplinary measures.



- An employee unilaterally, and without the employer's prior consent/knowledge, takes time off from work, without proper reasons, for either:
  - an aggregate of five days off within a 30-day period; or
  - an aggregate of 20 days off within a 365-day period.

Cases deemed to be "proper reasons" include a natural disaster, fire, illness of the employee or a relative (as certified by a competent medical consulting or treating establishment), and other cases prescribed in the internal employment rules.

**Procedural requirements for dismissal.** The employer must follow the strict procedures for dismissal (see *Question 12, Procedural Requirements for Dismissal*). Otherwise, the dismissal can be challenged by the court. In addition, under the Penal Code, the unlawful dismissal of an employee or the use of threats to cause the resignation of an employee may even lead to criminal liability.

**Prerequisites to qualify for protection against dismissal.** There are no prerequisites to qualify and all employees are protected by the usual statutory protections afforded to employees.

## Protected Employees

Women employees cannot be dismissed for reasons that concern marriage, pregnancy, maternity leave or nursing a child under 12 months of age. Male employees also enjoy protection from dismissal while they are on paternity leave or raising a child under 12 months of age. An employer is also prohibited from dismissing an employee who is:

- Taking leave due to illness or convalescence.
- Taking other leave with the employer's consent.
- Being held under temporary custody or detention (without formal charges having been made).
- Awaiting the results of an investigation conducted by a state agency (such as a criminal investigation).

If an employer wishes to dismiss an employee who is a part-time trade union officer, the employer must obtain a written agreement on the dismissal from either:

- The executive committee of the grassroots trade union.
- The executive committee of the directly superior trade union.

If the employer and the relevant trade union are unable to reach an agreement on the dismissal, the two parties must report this failure to agree to the local Department of Labour, Invalids and Social Affairs. Only the employer has the right to make the decision concerning the dismissal, and will be legally liable for that decision, which can be taken after 30 days have expired from the date of the notification of the failure to reach an agreement to the local Department of Labour, Invalids and Social Affairs. If the employee and the executive committee of the relevant trade union disagree with the employer's decision on the dismissal, they have a right to request the resolution of the labour dispute in court in accordance with the procedures stipulated by law. In addition, if the employment contract of a member of the executive committee of the relevant trade union will expire before the end of that individual's term of office, the employer must extend the contract until the end of the term.

## Resolution of Disputes Between an Employee and Employer

14. Is there a governmental or independent organisation to which employees can refer complaints in the event that there is a dispute between the employee and the employer?

The resolution of labour disputes arising from employment agreements is strictly regulated. The resolution of a labour dispute must first and foremost be based on direct negotiations between the employer and the employee(s), aimed at reaching a harmonious solution in the interests of both parties, stabilising production and business, and ensuring social order and safety. If these direct negotiations fail to resolve the dispute, the regulations on resolution differ, depending on whether the labour dispute is individual or collective.

### Procedure for an Individual Labour Dispute

An individual labour dispute must generally first be subject to the conciliation procedures provided by the labour conciliators before it can then be referred to either the Labour Arbitration Council (introduced by the Labour Code 2019) or the court (such referrals can be made where a resolution cannot be reached by the labour conciliator). A request for conciliation must be sent to the labour conciliators, and within five working days from the date the request is received, a labour conciliator must complete the conciliation process with the parties to the labour dispute. The labour conciliator will then put forward a settlement proposal for consideration by the two parties.

If the two parties agree to the settlement proposal, the labour conciliator will prepare the minutes of settlement. Both parties must then comply with the agreements recorded in the minutes of settlement. If the two parties do not agree to the settlement proposal, or if one of the parties is not present to draw up the minutes of settlement without proper reason after being validly summonsed for the second time, the labour conciliator must prepare the minutes of unsuccessful conciliation. In the event of an unsuccessful conciliation, or if one of the parties then fails to implement the minutes of settlement, or if the labour conciliator has not resolved the matter on expiry of the time limit for resolution, each disputing party has the right to bring the dispute before the court in Vietnam, or alternatively the parties can agree to bring the dispute before the Labour Arbitration Council.

The Labour Arbitration Council is an alternative to court. The parties must mutually agree on arbitration and must submit a request to the Labour Arbitration Council to resolve the dispute through arbitration following an unsuccessful conciliation. An arbitration tribunal will be established within seven working days of receipt of the request for arbitration, and the arbitration tribunal must then issue a decision on the dispute within 30 working days of its establishment. This new option for individual labour dispute resolution is much faster than court, which typically takes between six months to two years to resolve a labour dispute.

Whilst the general rule is that labour disputes must be referred to a labour conciliator before they can be referred to either the Labour Arbitration Council or the court, the following types of labour disputes are exempt from this rule and can proceed directly to arbitration or to court:

- A dispute relating to a disciplinary dismissal for a breach of the labour law, or a dispute arising from an employer's unilateral termination of an employment contract.

- A dispute relating to the payment of compensation for loss and damage or the payment of allowances upon termination of an employment contract.
- A dispute between a domestic worker and that worker's employer.
- A dispute relating to social insurance or health insurance.
- A dispute relating to the payment of compensation for loss and damage under a contract between an employee and an enterprise (or non-business unit) which has sent the employee to work abroad.
- A dispute between an outsourced employee and the client enterprise.

## Procedure for a Collective Labour Dispute

The procedure for settling collective labour disputes has some similarities with that for settling individual labour disputes.

**Collective labour dispute concerning rights.** Collective labour disputes that concern employees' rights must first undergo the same conciliation process as that for individual labour disputes (see above, *Procedure for an Individual Labour Dispute*).

In the event of an unsuccessful conciliation, or if the labour conciliator has not resolved the matter by the expiry of the time limit for resolution, each party has the right to request the court to settle the dispute, or the parties can mutually agree to submit the dispute to the Labour Arbitration Council. The timeline for the resolution of the dispute by the arbitration tribunal is the same as for the resolution of an individual dispute. If the arbitration tribunal finds that the employer has violated the law, the tribunal itself will not make a settlement decision but will instead issue a record of the arbitration and transfer the documents to the competent authority for settlement as prescribed by law.

**Collective labour dispute concerning benefits.** In the event of a collective labour dispute concerning employees' benefits, the employees and the employer can choose to either refer the dispute for conciliation with a labour conciliator, or to refer the dispute for arbitration with the Labour Arbitration Council.

In the event of an unsuccessful conciliation, or if either of the parties fails to implement the minutes of settlement, or if the time limit for conciliation has expired and the conciliator has not conducted a conciliation, the parties can then mutually agree to petition the Labour Arbitration Council to resolve the dispute, and if no resolution through arbitration can be made, the employees' representative organisation can organise a strike. The Labour Arbitration Council must establish an arbitration tribunal within seven working days of the date of receipt of the request for arbitration, and the arbitration tribunal must reach a decision on the dispute within 30 working days of its establishment.

The authorised representatives of the two disputing parties must be present at the arbitration to resolve a collective labour dispute concerning employee benefits. If necessary, the Labour Arbitration Council can also invite representatives of other concerned bodies and organisations to attend the arbitration. At the dispute resolution meeting, the arbitration tribunal will specify the issues raised by the parties and each party will have the opportunity to present its position. After studying the case file and collecting evidence, the arbitration tribunal will issue a decision on the dispute and send that decision to the parties. If the tribunal fails to issue a decision or the employer fails to implement it, the employees can go on strike.

Before commencing a strike, the employees' representative organisation must conduct a poll with the employees and obtain the agreement of over 50% of them to go on strike. If the majority of employees are in favour of the strike, the employees' representative organisation must then issue a strike decision setting out the:

- Results of the poll.
- Starting time and venue for the strike.
- Scope of the strike.
- Demands of the employees.
- Full names and addresses of the representatives of the employees' representative organisation leading the strike.

This strike decision must be sent to the employer, the People's Committee of the District and the provincial labour authority at least five working days in advance of commencement of the strike. Strikes will be considered illegal where:

- The procedures outlined above have not been followed.
- The strike is organised by a party other than the employees' representative organisation.
- The parties have not yet gone through the mediation procedure, or where the parties elected to resolve the dispute through the Labour Arbitration Council, the arbitration tribunal issued a decision on the dispute, and the employer has observed that decision.
- The strike takes place in a workplace where strikes are prohibited (for example, workplaces where a strike may threaten national security, public health or public order, as set out in a list provided by the Vietnam Government).
- A competent authority has issued an order to postpone or cancel the strike.

## Redundancy/Layoff

15. How are redundancies/layoffs defined, and what rules apply on redundancies/layoffs? Are there special rules relating to collective redundancies?

### Definition of Redundancy/Layoff

There is no specific definition of redundancies/layoffs contained in the labour laws, but in practice an employer can make an employee redundant where either:

- There are technological or organisational changes that result in the cessation of the employee's job function.
- The employer experiences economic difficulties that result in the cessation of the employee's job function.

### Procedural Requirements

An employer can make employees redundant where there are any of the following:

- Technological changes that have occurred at the level of the employer (such as changes to all (or part) of the equipment, machinery or technological processes that are used by the employer).
- Changes to the employer's organisational structure (for example, where there is a merger, a consolidation, or a cessation of the operation of one (or several) department(s) or unit(s), or where the employer is facing difficult economic conditions).
- Economic reasons, which are defined as an economic crisis or changes in legal or state policies which require the employer to reorganise their structure.

If these changes lead to the dismissal or layoff of two or more employees, the employer, in conjunction with the grassroots trade union, must formulate a "labour usage plan", after consultation with the grassroots trade union and conducting a "dialogue in the workplace" session.

In order to conduct the dialogue in the workplace session, the employer must send a document specifying the issues subject to discussion to the employees' trade union representatives, who will then collect the employees' opinions on those matter for discussion and compile them into a document. This document outlining the employees' opinions is then sent to each employees' representative organisation, which in turn will then send them to the employer. Based on the employees' opinions, the employer will then hold a dialogue in the workplace session to discuss the redundancies and will formulate a labour usage plan, and written minutes of the meeting are recorded. Within three working days following the dialogue in the workplace session, the employer is required to announce the main contents of the dialogue session and the labour usage plan, and the employees' representative organisations will disseminate the contents of these to their members.

After this consultation procedure, the employer must provide both the provincial labour authority and the affected employees with notice of termination of employment. The provincial labour authority and the affected employees must receive the notice at least 30 days in advance of the date of the terminations of employment.

### **Redundancy/Layoff Pay**

The employer must provide a job loss allowance to an employee who has been made redundant where that employee has worked for the employer for at least 12 full months. The job loss allowance is equal to one month's salary for each year of service with the employer (though a minimum of two months' salary must be paid in any event). Salary for the purposes of calculating a job loss allowance is the average salary under the employment contract for the six months immediately preceding the termination of employment.

### **Collective Redundancies**

The law does not specifically define "collective redundancies", but where two or more employees are being made redundant the usual redundancy procedure must be followed (see above, [Procedural Requirements](#)).

## **Employee Representation and Consultation**



16. Are employees entitled to management representation (such as on the board of directors) or to be consulted about issues that affect them? What does consultation require? Is employee consultation or consent required for major transactions (such as acquisitions, disposals or joint ventures)?

## Management Representation

Employees are represented by the executive committee of the grassroots trade union (the trade union within the company) or the executive committee of the trade union at the directly superior level (if a grassroots trade union has not yet been established within the company). There is no legislation specifically mandating that employees are entitled to management representation (such as on the board of directors), although the law recognises employees' rights to participate in management in accordance with the employer's internal rules.

## Consultation

Employees have the right to request, and participate in, discussions with the employer to implement democratic regulations and to be consulted at workplaces in order to protect the employees' lawful rights and interests. The employer must consult with the trade union in the following cases:

- When formulating and implementing plans concerning occupational safety and hygiene.
- When formulating the criteria for the assessment of employees' performance.
- When making more than two employees redundant.
- When formulating a labour usage plan.
- When formulating pay scales, payroll and work limits.
- When deciding on a reward scheme.
- When formulating the internal labour rules.
- When temporarily suspending an employee from work.

Following the enactment of the most recent version of the Labour Code, employers now have a greater obligation to undertake dialogue in the workplace. Though this obligation existed under the previous Labour Code, in practice it was rarely implemented. While the frequency of general dialogue in the workplace sessions had decreased over time from once every quarter to only once every year, employers must now carry out dialogue in the workplace sessions in addition to corporate-level trade union consultations for all the above-listed matters (except for the formulation and implementation of plans concerning occupational safety and hygiene). These dialogue in the workplace sessions must be held in accordance with the employer's Democracy in the Workplace internal regulations, which set out the rules, participants, frequency, and responsibilities of the parties regarding dialogue in the workplace.

## Major Transactions

There is no legislation requiring employees' consultation or consent for major transactions such as acquisitions, disposals or joint ventures. Employees are only entitled to be notified of the final decision of these major transactions.

Where there has been a transfer of ownership, or of the right to manage or use an enterprise, or where an enterprise merges, consolidates, divides or separates, the succeeding employer and the representative of the labour collective will rely on the labour usage plan to:

- Consider the continuance of its performance, or its amendment, or an addition to the old collective labour agreement.
- Conduct collective bargaining in order to sign a new collective labour agreement.

17. What remedies are available if an employer fails to comply with its consultation duties? Can employees take action to prevent any proposals going ahead?

## Remedies

An employer who fails to comply with its consultation duties can be subject to administrative sanctions. A fine of between VND10 million up to VND20 million can be imposed on an employer for:

- Failing to formulate, promulgate or revise/supplement the workplace democracy regulations in accordance with the legal regulations.
- Failing to hold periodic dialogues at the workplace, failing to hold a dialogue as requested, and failing to co-operate in holding employees' meetings in accordance with the legal regulations.
- Failing to publicly disclose the main contents of the dialogue or the workplace democracy regulations in accordance with the legal regulations.
- Failing to arrange the location, time and other material conditions necessary for holding a dialogue at the workplace.
- Failing to appoint a person (or persons), or appointing an unqualified person (or persons), to act as the employer's representative(s) for the dialogue at the workplace.
- Failing to submit reports on the holding of a dialogue at the workplace, and/or the implementation of workplace democracy regulations, to the competent labour authorities upon their request.

## Employee Action

There are no provisions in the labour laws that specify the measures an employee can take to prevent any proposals going ahead. However, generally, under Vietnamese law, an employee or a trade union can either:

- Complain about an employer's decisions to the competent labour authority.
- Petition the competent court to declare that an employer's decision is void for failure to comply with the procedures required by the law.

## Consequences of a Business Transfer

18. Is there any statutory and/or common law protection of employees on a business transfer?

### Automatic Transfer of Employees

On merger, consolidation, division or separation of an enterprise, the succeeding employer is responsible for continuing to employ the employees who were employed by the transferring employer. However, if the succeeding employer is unable to employ all of these employees, the succeeding employer must prepare and implement a labour usage plan, listing (among other things) the number of employees who will continue their employment with the succeeding employer, and the number of employees whose employment contracts will be terminated. A trade union or employee representative must participate in the formulation of this labour usage plan. Where employment contracts are terminated, a job loss allowance must be paid to each dismissed employee.

### Protection Against Dismissal

Employees are not automatically protected from dismissal on a business transfer, as the succeeding employer can implement a labour usage plan and terminate employment contracts where this is necessary. However, a job loss allowance must be paid to any employee who has their employment contract terminated (see above, *Automatic Transfer of Employees*).

### Harmonisation of Employment Terms

There are no specific legal provisions on the harmonisation of employment terms. As a matter of practice, the employees and the succeeding employer can either choose to enter into new employment contracts with new terms and conditions, or amend the existing employment contracts with the relevant changes as agreed between the parties.

## Employer and Parent Company Liability

19. Are there any circumstances in which:

- An employer can be liable for the acts of its employees?
- A parent company can be liable for the acts of a subsidiary company's employees?



## Employer Liability

An employer will be liable for the acts of its employees where those acts are conducted by the employee in the performance of their work duties as delegated by the employer. Specifically, under the 2015 Civil Code, a legal entity must compensate a third party who has suffered damage that was caused by another person (an employee) who was performing the duties assigned to them by that legal entity. However, where a legal entity has provided such compensation to a third party but the employee was at fault in performing their duties, that legal entity has a right to demand reimbursement of that compensation paid from the employee who was at fault.

## Parent Company Liability

A parent company is not liable for the acts of a subsidiary company's employees in Vietnam, as a subsidiary company is considered to be an independent legal entity separate from the parent company, and so the parent company does not employ the subsidiary's employees.

## Employer Insolvency

20. What rights do employees have on the insolvency of their employer? Is there a state fund which guarantees repayment of certain employment debts?

## Employee Rights on Insolvency

Under the Bankruptcy Law 2014, employees and the grassroots trade union have the right to lodge a petition for the bankruptcy of an employer if the employer fails to pay salary and other debts to the employees within three months after they are due. Where an enterprise is dissolved or declared bankrupt, the payment of wages, severance allowances, social insurance and health insurance and other employment-related payment interests will take priority over other debts.

## State Guarantee Fund

There is no state guarantee fund that guarantees the repayment of any employment-related debts available in Vietnam.

## Health and Safety Obligations

21. What are an employer's obligations regarding the health and safety of its employees?

An employer must comply with the laws on occupational safety and hygiene. The employer must take into account the general standards, national technical regulations and local technical regulations on occupational safety and hygiene in order to formulate their own internal rules and working procedures to ensure occupational safety and hygiene as appropriate for each type of machinery, each piece of equipment and every workplace. The Labour Code also regulates, in detail, the employer's obligations concerning work-related accidents and occupational diseases, and the prevention of both.

In general, the obligations of employers concerning occupational safety and hygiene at work include:

- Ensuring a safe and hygienic work environment.
- Providing any necessary safety training and instruction.
- Conducting regular inspections of workplace conditions.

Employers must also provide health insurance and regular health checks for their employees.

## Taxation of Employment Income

22. What is the basis of taxation of employment income for:

- Foreign nationals working in your jurisdiction?
- Nationals of your jurisdiction working abroad?

### Foreign Nationals/Nationals

Income tax must be paid on employment income earned in Vietnam, and the applicable rate of income tax is determined by whether the taxpayer has resident or non-resident status for tax purposes (regardless of the taxpayer's nationality).

A resident person is a person who satisfies at least one of the two following conditions:

- Spends at least 183 days in Vietnam within one calendar year or within a consecutive 12-month period from the date of first entry into Vietnam.
- Has a "regular residential location" in Vietnam, meaning that the person has either:
  - a residential location for which permanent residence has been registered under the law on residence; or
  - a leased residence under the law on residential housing with a lease term of at least 183 days in a tax year.

A non-resident is a person who does not satisfy any of the conditions outlined above.

**Resident status.** A resident person will be subject to income tax in Vietnam on the total amount of their worldwide income received within the relevant tax year. Income from salaries or wages is taxed at source (the employer withholds the tax due and pays this directly to the tax authorities). For the applicable tax rates, see *Question 23, Rate of Taxation on Employment Income*.

**Non-resident status.** A non-resident person is only subject to income tax in Vietnam on their Vietnam-sourced income. This income is taxed at a flat income tax rate of 20%.

## Nationals Working Abroad

This is the same as for foreign nationals and is based on status of the individual (that is, resident or non-resident) (see above, *Foreign Nationals/Nationals*).

23. What is the rate of taxation on employment income? Are any social security contributions or similar taxes levied on employers and/or employees?

## Rate of Taxation on Employment Income

Income tax for a person who is resident is charged at progressive rates depending on the amount of the employment income, as follows:

- Income of up to VND5 million: 5%.
- Income above VND5 million and up to VND10 million: 10%.
- Income above VND10 million and up to VND18 million: 15%.
- Income above VND18 million and up to VND32 million: 20%.
- Income above VND32 million and up to VND52 million: 25%.
- Income above VND52 million and up to VND80 million: 30%.
- Any income above VND80 million: 35%.

A non-resident person is taxed at a flat rate of 20% on the employment income they receive from their employment in Vietnam.

## Social Security Contributions

By law, employers and employees must contribute to the compulsory social, health, and unemployment insurance funds. The employers' and employees' contributions are calculated as a percentage of the employee's base salary, as follows:

- Social insurance:

- employer pays 17.5%;
  - employee pays 8%.
- 
- Health insurance:
    - employer pays 3%;
    - employee pays 1.5%.
- 
- Unemployment insurance: employer and employee both pay 1% each.

The salary for the purposes of calculating the compulsory social and health insurance is capped at 20 times the basic statutory pay rate, while the salary for the purposes of calculating the unemployment insurance is capped at 20 times the applicable regional minimum salary.

## Intellectual Property (IP)

24. If employees create IP rights in the course of their employment, who owns the rights?

The employer owns the IP rights provided that this is specifically provided for in the relevant employment contract.

## Restraint of Trade

25. Is it possible to restrict an employee's activities during employment and after termination? If so, in what circumstances can this be done? Must an employer continue to pay the former employee while they are subject to post-employment restrictive covenants?

## Restriction of Activities

**Restriction of activities during employment.** It is questionable whether or not a non-competition clause contained in an employee's employment contract will be enforceable where it applies during the course of employment. The Labour Code explicitly grants employees the right to enter into employment contracts with more than one employer, provided that the employee is able to fully perform all the terms and conditions of each employment contract. Therefore, where such clauses are included, employers should include a statement in the employment contract that, in order to fully perform their duties under

the employment contract, it is necessary for the employee to not undertake any additional employment prior to obtaining the employer's consent.

**Restriction of activities after termination of employment.** While it is generally possible to restrict an employee's activities during employment in most cases, any restriction after termination of employment will not usually be enforceable as this will infringe the employee's right to work, as provided for by the labour laws and the Constitution of Vietnam. However, there have recently been several cases where non-compete obligations were enforced for high-level executives who had access to their former employer's very sensitive confidential information. In these cases, the non-compete agreements were executed separately from the employment contracts and were characterised as civil agreements.

## Post-Employment Restrictive Covenants

Confidentiality obligations can survive the termination of the employment contract if so agreed between the parties. A non-compete clause is unlikely to be enforceable, unless this applies to a high-level executive and has been executed as a separate civil agreement (see above, *Restriction of Activities*). A non-solicitation clause will be difficult to enforce due to the burden of proof and the unfamiliarity of the Vietnamese courts with these types of clauses.

## Relocation of Employees

26. Can employers include mobility clauses in employment contracts, or take any other measures, to ensure that employees are obliged to relocate?

There is no specific legal provision that regulates the use or scope of mobility clauses. As a matter of practice, employers will usually include mobility clauses in employment contracts. Whether or not a relocation allowance or similar payment, or any assistance, must be made to the relocating employee will depend on what has been agreed between the parties in the relevant employment contract.

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