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GUIDE TO RESTRUCTURING A CROSS-BORDER WORKFORCE

VIETNAM

AUTHORS:

KIEN TRUNG TRINH, SARAH GALESKI, DUNG THI PHUONG LE & NGUYEN THI HUONG NGUYEN

Tilleke & Gibbins

Vietnam

Kien Trung Trinh, Dung Thi Phuong Le, Nguyen Thi Huong Nguyen & Nguyen Thi Huong Nguyen
Tilleke & Gibbins

Reduction in workforce

1. Is there a concept of redundancy - based on a shortage of work or other economic reasons - as a justified reason to dismiss employees in your jurisdiction? If so, how is it defined?

Employers in Vietnam are permitted to terminate labour contracts on the grounds of redundancy in the following cases:[1]

- Technological or organisational changes (at the level of the employer), which include:
  - changes in organisational structure or personnel rearrangement;
  - changes in processes, technology, or equipment associated with the employer's business lines; and
  - changes in products or product structure.

In such circumstances, if the employer has a new vacancy, it must prioritise retraining and rehiring the affected employees for continuing employment.[2]

- Economic difficulties, which include economic crisis and economic depression, and changes in law and state policies due to restructuring of the economy or implementing international commitments.
- Division, demerger, consolidation, or merger of enterprises; sale, lease, or conversion of enterprise; transfer of ownership or right of use with regard to the assets of the enterprise (at the level of the employer) (collectively referred to as restructuring transactions).

[1] Article 43 of the Labour Code No. 45/2019/QH14 passed by the National Assembly on 20 November 2019 (the Labour Code).
[2] Article 42.3 of the Labour Code.

2. In brief, what is the required process for making someone redundant?

In general, the compulsory procedures for redundancy are as follows:

- Employer's internal approval of the technological or organisational changes or restructuring transactions (if applicable)

Subject to the company's charter (also known as "the articles of association" in other jurisdictions) and the applicable laws on enterprises, the relevant management body of the employer will issue a resolution or decision regarding technological or organisational changes, or restructuring transactions to commence the relevant process, including formulation of a labour usage plan (if applicable).

If the employer is working in Vietnam with the status of a representative office of a foreign company or organisation, the decision or resolution on the reorganisation or restructuring should be issued by the parent company or parent organisation of the Vietnam-based representative office.

- **Formulation of labour usage plan[3]**

If the technological or organisational changes, economic difficulties, or restructuring transactions impact more than one employee's job, the employer must formulate and implement a "labour usage plan" after consultation with any grassroots employees' representative organisations (eg, grassroots trade union) and conducting a "dialogue in the workplace" session. A labour usage plan should include, among other contents, the following information:

- a list of employees to be retained, retrained for further employment, and working on a part-time basis;
- a list of employees to retire;
- a list of employees whose employment contracts have to be terminated;
- rights and obligations of the employer, employee, and relevant parties regarding implementation of the labour usage plan; and
- financial resources and methods to implement the plan.[4]
- **Dialogue in the workplace in relation to the redundancy due to technological or organisational changes, or economic difficulties, and the labour usage plan[5]**

In general, the requirements for dialogue in the workplace session (e.g, participants, time and place) are determined by the employer's democracy in the workplace policy.[6] However, if the employer has not yet formulated its democracy in the workplace policy, the dialogue in the workplace session can be implemented in accordance with the relevant regulations. Particularly, in order to conduct the dialogue in the workplace session, the employer must send a document specifying the issues subject to discussion (e.g, the reason for the layoff and the draft labour usage plan) to the employees' dialogue representatives. The employees' dialogue representatives will then collect the opinions of the employees they represent on those issues and compile them into a document for the employer. Based on the employees' opinions, the employer will then hold a "dialogue in the workplace" session to discuss the redundancies and the formulation of a labour usage plan, and written minutes of the meeting are recorded.[7]The dialogue in the workplace session should only take place if at least 70% of the employees' dialogue representatives participate.[8]

Within three working days following the dialogue in the workplace session, the employer is required to announce the main contents of the dialogue session at the workplace. Within 15 days of being approved, the employer is required to announce the labour usage plan to its employees. The employees' representative organisation or the employees' dialogue representative group will disseminate the contents of these to their members.

- Notice of termination of employment[9]

The employer must provide both the provincial People's Committee and the affected employees with an advance notice on termination of employment at least 30 days prior to the date of the termination.

- Settlement of rights, benefits and obligations of the impacted employees[10]

Within 30 days of the termination date of the labour contract, the employer is required to settle all of the payments and benefits of the employees, including:

- unpaid salary;
- job-loss allowance equal to one month's wages for each year of employment, with a minimum of two months' wages, only applicable to the employees who have worked for the employer for at least 12 full months. The period for calculation of job-loss allowance is the total period during which the employee actually worked for the employer minus the period during which the employee participated in the state-scheme compulsory unemployment insurance. However, a minimum of two months' salary should be paid in any case, since the regulations are ambiguous on this minimum requirement. The salary for calculating the job-loss allowance payment is the average salary under the employment contract for the six months immediately preceding termination of the employment contract.[11] Periods of one to six months are rounded to half a year, while periods over six months are rounded to a full year;

- compensation salary for unused annual leave;[12] and
- other employee benefits pursuant to the labour usage plan, a valid collective labour agreement (CLA)[13] and the labour contract (if any).

The employer also needs to:

- finalise compulsory insurance contributions with the social insurance body;
- finalise personal income tax with the taxation authority;
- de-register the employee from the monthly payroll;
- stop paying personal income tax and insurance premiums; and
- verify the social insurance book for the employee (if any) and return it to them.

The employer also needs to issue a decision on the termination of the labour contract and provide the employee with one original executed decision for the employee to claim unemployment insurance allowance.

[3] Articles 42.3 and 42.4 of the Labour Code.
[4] Article 44.1 of the Labour Code.
[5] Article 63.2(c) of the Labour Code, Article 41 of Decree No. 145/2020/ND-CP of the Government dated 14 December 2020 on elaboration of some articles of the Labour Code on working conditions and labour relations (Decree 145).
[6] Article 41.1(d) of Decree 145.
[7] Article 41 of Decree 145
[8] Article 41.1(dd) of Decree 145.
[9] Article 42.6 of the Labour Code.
[10] Article 48 of the Labour Code
[11] Article 47 of the Labour Code.
[12] Article 113.3 of the Labour Code.
[13] Under Vietnamese labour laws, a CLA is a written agreement between the employer and collective employees. The contents of a CLA must not be contrary to the law and should have provisions that are more favourable than the statutory regulations. The CLA's term is up to three years. It is worth noting that it is not compulsory for an employer to issue a CLA. However, if the employees so request, then the employer must work with the employees to negotiate and enter into a CLA. Once the CLA is executed, the provisions of the CLA will be applicable to all of the employees and prevail over other similar internal regulations of the employer.

03. Does this process change where there is a "collective redundancy"? If so, what is the employee number threshold that triggers a collective redundancy?

The prevailing laws of Vietnam on labour do not specifically define "collective redundancies", but when two or more employees are made redundant or have their jobs impacted, the usual redundancy procedure, as discussed in question 2, must be followed.

04. Do employers need to consult with unions or employee representatives at any stage of the redundancy process? If there is a requirement to consult, does agreement need to be reached with the union/employee representatives at the end of the consultation?

The employer is required to consult with the employees' representative organisation (i.e., the grassroots trade union organisation), if it exists, to formulate and implement a labour usage plan. Additionally, as discussed in question 2, the employer is required by law to carry out the dialogue in the workplace session to consult with its employees, through their dialogue representatives, on the redundancy due to technological or organisational changes, or economic difficulties and the labour usage plan if the technological or organisational changes or economic difficulties impact more than one employee's job.

Written minutes of the meeting must be taken from the dialogue in the workplace session. Vietnamese law does not require the parties to reach an agreement; however, if an employee brought a wrongful termination claim, the court may view the employer's actions negatively if an agreement was not reached.

05. If agreement is not reached, can the restructure be delayed or prevented? If so, by whom?

As discussed in question 4, the laws of Vietnam do not explicitly require an agreement to be reached between the employer and the employees to conclude the redundancy and the labour usage plan. Therefore, even if an agreement is not reached, the employer may proceed with the restructure and there would not be any delay. However, in this case, proceeding with the redundancy would be riskier.

06. What does any required consultation process involve (i.e. when should it commence, how long should it last, what needs to be covered)? If an employer fails to comply with its consultation obligations, what remedies are available?

Please refer to question 2 (step 3) for a detailed description of the consultation procedure. In summary:

- The dialogue in the workplace in relation to redundancy and the labour usage plan will take place after the employer's internal approval on the reasons and upon issuance of a resolution and/or decision for redundancy and the formulation of the labour usage plan, as detailed in question 2 (steps 1 and 2).
- The laws are silent on the statutory timeline for carrying out the dialogue in the workplace and therefore can be detailed in the employer's democracy in the workplace policy, provided that some statutory invitation and announcement timelines are met. Normally a dialogue in the workplace may take 1-2 months, depending on the complexity of the matters consulted.

If this consultation obligation is not followed, the employer may be subject to an administrative fine of up to 20 million dong.[14] In addition, the validity of the redundancy may be challenged.

[14] Articles 6.1, 12.3 and 15.4 of Decree 12/2022/ND-CP of the Government dated 17 January 2022 on penalties for administrative violations against regulations on labour, social insurance, and Vietnamese guest workers.

07. Do employers need to present an economic business rationale as part of the consultation with unions/employee representatives? If so, can this be challenged and how would such a challenge normally be made?

The prevailing laws of Vietnam do not stipulate any compulsory content to be presented or explained in the dialogue in the workplace session for consultation with employees' representatives. Therefore, the employer may decide on the information to be disclosed in relation to the reason for the redundancy to prove that the redundancy is lawful.

08. Is there a requirement or is it best practice to consult employees individually (whether or not the employer is also legally required to collectively consult employees)?

It is a statutory requirement to consult with the collective employees, through their dialogue representatives in the dialogue in the workplace session on: (i) the redundancy due to technological or organisational changes, or economic difficulties; and (ii) the labour usage plan.[15]

Although not required by law, it is highly recommended that the employer attempts to negotiate with the employees to reach an agreement to mutually terminate their labour contracts before the occurrence of the circumstances discussed in question 1 above. If the parties can reach an agreement for the mutual termination of the labour contract, the employees would then not need to be subject to redundancy procedure.

[15] Article 64.1 of the Labour Code

09. Are there rules on the selection of individual employees for redundancy?

No. The prevailing laws of Vietnam are silent on the rules for selection of redundant employees.

10. Are there any specific categories of employees who an employer is prohibited from making redundant?

No. Vietnamese law provides some protection provisions for pregnant employees, employees taking statutory leave (such as maternity leave or sick leave), employees raising children under 12 months old, and employees who are members of the board of management of the employees' representative organisations (eg, grassroots trade unions) against being unilaterally terminated.[15] However, these protective provisions do not apply in the case of redundancy.

[15] Articles 37, 137.3, 140 and 177.3 of the Labour Code.

11. Are there categories of employees with enhanced protection (e.g., union officials, employees on sick leave or maternity/parental leave, etc)?

If an employer would like to assign a new work position for an employee who is a member of the board of management of the employees' grassroots representative organisation, the employer must reach an advance written agreement with the board of management of the employees' representative organisation. If such a written agreement cannot be reached, the employer and the relevant members of the employees' representative organisation board of management must report on the issue to the provincial Department of Labour, Invalids and Social Affairs. In this case, the employer can only implement the new work position after this 30-day period. Nevertheless, the relevant board of management of the employees' representative organisation would still have the right to pursue labour dispute resolution if they do not agree on the reassignment.[16]

[16] Article 177.3 of the Labour Code; Article 28.2 of the Law on Trade Union No. 50/2024/QH15 passed by the National Assembly on 27 November 2024.

12. What payments are employees entitled to when made redundant? Do these payments need to be made within a specified period? Are there any other requirements, such as giving contractual notice, payments into a central fund, etc.

As discussed in question 2, within 30 days as of the termination date of the labour contract, the employer is required to settle all of the payments and benefits of the employees, including:

- unpaid salary;
- job-loss allowance;
- compensation salary for unused annual leave; and
- other employee benefits pursuant to the labour usage plan, a valid collective labour agreement (CLA)[17] and the labour contract (if any).

In addition, the employer must complete the procedure for certification of the contribution period of social insurance, unemployment insurance, and verification of the social insurance book, and return the original documents to employees. The employer needs to issue a decision of termination of labour contract and provide it to the employees so they can claim their unemployment insurance allowance. In addition, if required by the employees, the employer, at its own cost, must provide copies of the documents relevant to the employees' working procedures.

[17] Under Vietnamese labour laws, a CLA is a written agreement between the employer and collective employees. The contents of a CLA must not be contrary to the law and should have provisions that are more favourable than the statutory regulations. The CLA's term is up to three years. It is worth noting that it is not compulsory for an employer to issue a CLA. However, if the employees so request, then the employer must work with the employees to negotiate and enter into a CLA. Once the CLA is executed, the provisions of the CLA will be applicable to all of the employees and prevail over other similar internal regulations of the employer.

13. If employees are entitled to redundancy/severance payments, are there eligibility criteria and how is the payment calculated?

As discussed in question 2, job-loss allowance is equal to one month's wages for each year of employment, with a minimum of two months' wages, and is only applicable to employees who have worked for the employer for at least 12 full months. The period for calculation of the severance allowance is the total period during which the employee actually worked for the employer minus the period during which the employee participated in the state-scheme compulsory unemployment insurance. Periods of one to six months are rounded to half a year, while periods over six months are rounded to a full year. The salary for calculating the severance payment is the average salary under the employment contract for the six months immediately preceding termination of the employment contract.[18]

[18] Article 47 of the Labour Code.

14. Do employers need to notify local/regional/national government and/or regulators before making redundancies? If so, by when and what information needs to be provided?

Yes. As discussed in question 2, the employer must provide both the provincial People's Committee and the affected employees with an advance notice on termination of employment at least 30 days prior to the date of the termination. The prevailing laws of Vietnam are silent on the content of the notice, but employers may want to consider including the labour usage plan and the meeting minutes of the dialogue in the workplace session.

15. Is there any obligation on employers to consider alternatives to redundancy, including suitable alternative employment?

If there is a new workplace, the employer must prioritise the retraining of employees to fill other vacant positions at the organisation.[19]

[19] Article 42.3 of the Labour Code.

16. Do employers need to notify local/regional/national government and/or regulators after making redundancies, e.g. immigration department, labour department, pension authority, inland revenue, social security department? If so, by when and what information needs to be provided?

After the redundancy, employers are obliged to take the following steps that involve informing authorities:

- Employers must complete the procedure of closing the insurance books of the redundant employees at the social insurance authority by providing the necessary documents (eg, list of employees, decision of termination of labour contract). The insurance closing must be completed within 30 days of the termination date of the labour contract.[20]
- Employers also need to report the decrease of employees in their periodical reports to the relevant authorities (eg, labour reports, investment reports that require this information).

- Employers that have foreign employees must return the relevant foreign employee's work permit to the labour management authorities and explain the foreign employee's redundancy in writing within 15 days of the expiry date of the work permit or the termination date of the foreign employee's labour contract.[21]
- Employers must also notify the immigration authority that they will cease sponsoring the foreign employee.[22] If the employee was granted a temporary residence card (TRC), the employer must return the TRC to the immigration authority when the work permit or TRC expires.

[20] Article 48.1(b) of the Labour Code.
[21] Article 31.1 of Decree 219/2025/ND-CP.
[22] Article 45.2(e) of the Law on entry, exit, transit, and residence of foreigners in Vietnam No. 47/2014/QH13 passed by the National Assembly on 16 June 2014,as amended in 2019 and 2023.

17. If an employee is not satisfied with the decision to make them redundant, do they have any potential claims against the employer? If so, what are they and in what forum should they be brought, e.g. tribunal, arbitration, court? Could a union or employee representative bring a claim on behalf of an employee/employees and if so, what claim/s and where should they be brought?

If the employees are dissatisfied with the employer's decision to make them redundant, the employees or a grassroots representative organisation (e.g. grassroots trade union) can raise a claim against the employer regarding the redundancy to the labour mediators, labour arbitration councils or the People's Court.[23]

- Labour mediators are appointed by the provincial People's Committee to mediate labour disputes and disputes over vocational training contracts, and assist in the development of labour relations.

Depending on the claim details, before being settled by the labour arbitration councils or the People's Court, the labour dispute may be required to be mediated by labour mediators first (eg, a claim by an employee grassroots representative organisation on the interpretation and implementation of the labour laws) or not (e.g. a claim by the employee on redundancy compensation package).

- Labour arbitration councils are established by the relevant provincial People's Committee with a term of five years. A labour arbitration council has at least 15 arbitrators chosen by the president of the relevant People's Committee.

To settle a labour dispute at a labour arbitration council, the parties must mutually agree to submit their dispute to the labour arbitration council. The parties cannot request a labour arbitration council and a People's Court to settle a labour dispute at the same time.

- If the parties cannot settle the labour dispute via labour mediators or labour arbitration councils, the parties can bring the case to the People's Court for settlement.

[23] Chapter XIV of the Labour Code.

18. Is it common to use settlement agreements when making employees redundant?

Settlement agreements should be applied to mitigate and avoid the employees making complaints or filing a lawsuit against the employer.

19. In your experience, how long does it normally take to complete an individual or collective redundancy process?

It takes two to three months, including the preparation steps, to complete the redundancy procedures discussed in question 2.

20. Are there any limitations on operating a business for a period following a redundancy, like a prohibition on hiring or priority for re-hire being given to previous employees?

As discussed in question 15, employers must prioritise the retraining of employees to fill new vacant positions.[24] If an employer makes employees redundant and then hires new employees for the same positions after a short period of time, this would provide an employee who had been made redundant with a strong chance of success in a wrongful termination claim, since it would make the redundancy appear disingenuous.

Employers are also prohibited from using outsourced labour to replace workers who have recently been made redundant.

[24] Article 42.3 of the Labour Code.

21. Is employee consultation or consent required for major transactions (such as business transfer, mergers, acquisitions, disposals or joint ventures)?

By law, companies are not obligated to seek consent or consultation with employees regarding company restructuring transactions.[25] Consultation with employees becomes necessary in redundancy resulting from the restructuring transactions of the company as discussed in questions 1 and 2.

[25] Article 64 of the Labour Code.

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

Please refer to questions 5 and 6.

23. Is there any statutory protection of employees on a business transfer? Are employees automatically transferred with the business? Are employees protected against dismissal (before or after the transfer of employment)?

For the protection of employees on a business transfer, please refer to questions 1, 2, 10 and 11.

The laws of Vietnam do not allow for employees to be automatically transferred together with the transfer of a business. If an employee will work for a new employer resulting from the business transfer, the transfer method used in Vietnam is “termination/rehire”. This means that the employee and the former employer enter into a mutual termination agreement, and the employee and the new employer enter into a new labour contract. If the employees refuse to transfer, the original employer may have a legal basis to terminate the employees under the grounds of redundancy. After the transfer, the new employer may only terminate the employees based on the usual legal bases recognised under Vietnamese law, and in general, it is very difficult to terminate employees. Transferring employees do not receive any unique benefits.

24. What is the procedure for a transfer of employment (upon a business transfer or within group companies)?

While the law provides a procedure for transfer of employment due to a business transfer (eg, restructuring transactions) similar to question 2, there are insufficient implementing regulations, so this procedure is generally not relied upon. Instead, the parties normally follow the “termination/rehire” process explained in question 23. This procedure would apply even if employees are transferred within the corporate group.

25. Are there any statutory rules on harmonising the transferring employees' terms of employment with the existing employees' terms of employment?

If the employment transfer results from a restructuring transaction, based on the labour usage plan, the new employer and the representative organisation of the employees may consult to agree on continuous implementation, amendment, supplement of the collective labour agreements of the old employer, or execution of a new collective labour agreement.[26] However, in practice, what normally happens is that in order to secure the employees' agreement to transfer through the "termination/rehire" method, the new employer must offer the same or a similar package to what the employees previously had.

[26] Article 80 of the Labour Code.

26. Can an employer reduce the hours, pay and/or benefits of an employee?

The employer can reduce the working hours, payment and/or benefits of an employee by amending the labour contract (with the employee's consent), amending the internal labour regulations (after conducting a "dialogue in the workplace" session and re-registering them with the state authority), or amending the collective labour agreement (after conducting a "collective bargaining" with the consent of more than 50% of the employees).

Amendment of the labour contract

To reduce the working hours, payment or benefits stipulated in the labour contract, the employer must provide a three-day advance notice to the impacted employees on the proposed changes and then reach a written agreement with the employee (i.e. an amendment to the labour contract or a new labour contract).[27]

Amendment of the internal labour regulations or collective labour agreement

If the changes apply to all employees and also pertain to stipulations in internal labour regulations or a collective labour agreement, the employer must also amend the internal labour regulations (after conducting a "dialogue in the workplace" session and re-registering them with the state authority) or collective labour agreement (after conducting a "collective bargaining" with the consent of more than 50% of the employees).[28]

[27] Article 33 of the Labour Code.
[28] Articles 76, 82 and 118 of the Labour Code.

27. Can an employer rely on an express contractual provision to vary an employment term?

No. The Labour Code requires that any changes to a labour contract (including the employment term) must be agreed in writing with the employees (as discussed in question 26). The parties are not allowed to change the term (i.e., duration) of a labour contract through a contractual amendment. Instead, they need to enter into a new labour contract when the prior labour contract expires or is terminated following the permissible circumstances stipulated in the Labour Code (i.e., mutual termination).[29]

[29] Articles 22.2 and 33 of the Labour Code.

28. Can an employment term be varied by implied conduct?

Yes. If a fixed-term labour contract with a local employee expires while they are still working for the employer, the parties must enter into a new labour contract within 30 days of the termination date. If they fail to do so, the labour contract will be automatically converted into an indefinite term labour contract.[30]

[30] Article 20.2(b) of Labour Code.

29. If agreement is required to vary an employment term, what are the company's options if employees refuse to agree to the proposed change?

Generally, Vietnamese law does not allow the parties to change the term (i.e., duration) of a labour contract. Therefore, strictly speaking, the employer should honour the term (i.e., duration) of labour contract. If the employer would not like to continue the employment of the concerned, the employer may consider terminating the labour contract following the permissible circumstances stipulated in the Labour Code (eg, mutual termination).

30. What are the potential legal consequences if an employer varies an employment term unilaterally?

If the employer varies an employment term unilaterally, the employee can bring a claim against the employer as discussed question 17. The employee may also bring a claim for wrongful termination if the unilateral amendment of the employment term results in the employment being terminated earlier than is set out in the original contract. In such a case, the employer has the following obligations:[31]

- To reinstate the employee in accordance with the signed labour contract and pay the employee a compensation package including: salary for the period the employee has not been allowed to work because of the illegal termination; an amount equivalent to at least two months' salary; and an amount equivalent to the employee's salary for any days the employer violated the advance notice obligation for unilateral termination of a labour contract. In addition, the employer must contribute the social insurance, health insurance and unemployment insurance for the period the employee has not been allowed to work because of the illegal termination.
- If the employee is not willing to be reinstated, the employer must pay the employee the compensation package stipulated in item (i) above plus any necessary severance allowance.
- The severance allowance is equal to half of one month's wages for each year of employment and only applies to employees who have worked for the employer for 12 months or longer. The period for calculation of the severance allowance is the total period during which the employee actually worked for the employer minus the period during which the employee participated in the state-scheme compulsory unemployment insurance. The salary for calculating the severance payment is the average salary under the employment contract for the six months immediately preceding termination of the employment contract.[32]
- If the employer is not willing to reinstate the employee and the employee agrees not to be reinstated, the employer must pay the amount stipulated in item (ii) plus an additional compensation amount as agreed by the parties and equivalent to at least two months' salary.

[31] Articles 39 and 41 of the Labour Code.
[32] Article 46 of the Labour Code.

Areas to Watch

The government and labour authority have not proposed or issued any upcoming legislation in relation to the redundancy process or labour matters relevant to restructuring/reorganisation. However, it is worth noting that in the first half of 2025, Vietnam has conducted the restructuring of authorities and administrative boundaries, resulting in a change of labour management authority. In particular, the previous labour management authorities, i.e., the Ministry of Labour, Invalids and Social Affairs and provincial Departments of Labour, Invalids and Social Affairs, have been merged into the Ministry of Home Affairs and relevant provincial Departments of Home Affairs. Such change does not directly impact the redundancy process and labour matters relevant to restructuring/reorganisation, but may cause some change in the authorities' practice in the interpretation and application of the law.