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VIETNAM – DRAFT OF NEW LABOR CODE

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On 28 April 2019, the Vietnamese Government has released its latest proposal for the Draft Labor Code (the "Draft Code") replacing the current Labor Code 2012.

Following various proposed drafts opened for public comments since 2017, this Draft Code introduces significant reforms owed to Vietnam's participation in two important FTAs (including the European Vietnamese Free Trade Agreement, [EVFTA](#); and the Comprehensive and Progressive Agreement for Trans-Pacific Partnership, [CPTPP](#)). Notably, Vietnam has ratified the CPTPP on November 2018, while the EVFTA is strongly pushed by the Vietnamese Government for signing in 2019.

The Draft Code proposes changes in four main axes:

→ Draft of New Labor Code

Enlarge recognition of labor contract

The current laws define that a labor contract constitutes an agreement between employees and employer on a paid job, working conditions as well as rights and obligations of each party.

The Draft Code officially recognizes that "even in case the employees and the employer define otherwise, if there is an agreement on (i) scope of work, (ii) wages and (iii) the management/direction of each party in relation to the other, then such agreement is considered as a labor contract". This vague definition may even

cover cases in which an individual renders services to an entity in Vietnam.

In practice, many employers will rather consider signing a service contract (instead of a labor contract) to arrange for a short-term employment. This would release the employers and employees from certain obligations related to a proper labor relationship, such as compulsory social insurance, work permit requirements for foreign employees of less than 3 months, etc. This mechanism could no longer be workable, though, once the Draft Code will have been approved

Increase employee's right to establish and participate in their own representative organization

The Vietnamese Government notes that, with regard to the freedom of association, collective bargaining and the right to organize, the current code is not compatible with the requirements of EVFTA and CPTPP. As such, the Draft Code should enhance these rights and freedom.

While both, CPTPP and EVFTA, mention "free unions", the Draft Code chooses the term of "representative organizations of employees". The Draft Code proposes for the employees to be allowed to establish their own representative organization of their choice. To operate legally, the representative organization shall legally establish

and operate after joining the Vietnam General Confederation of Labor or registering with the competent authorities. The representative organization of employees may represent the employees in collective negotiations with the employers, or organize strike.

In order words, the Draft Code allows for workers to form their own recognized independent labor unions. According to the current regulations, only the grass-roots trade union is recognized as the representative organization of employees.

More freedom to terminate the labor contract

The Draft Code proposes more freedom for both, employee and employer, to terminate the labor contract.

From an employee's perspective, one of the proposals provides for employees to unilaterally terminate their labor contract by a simple pre-notice of 45 days for indefinite term contract, 30 days for definite terms and three days for a seasonal contract. In special cases, when the employee is convinced that he/she (i) is not assigned to the correct workplace or duties, (ii) not being paid the agreed wages in due time; (iii) is maltreated, sexually harassed or forced to labor, or (iv) in case a pregnant employee is advised by a certified health institution to terminate the employment, the employee is permitted to

unilaterally terminate the job immediately without prior notice. It should be emphasized that "sexual harassment at workplace" is defined as any harassment act which may be caused by any person to the employee, while the workplace is any place where the employee actually works or is assigned to work by the employer.

From the employer's perspective, the employer may terminate the labor contract if the employee usually fails to complete the assigned tasks, with such failure being recorded in two labor minutes within 60 days consecutively. The employer is still required to respect the notice period of 45 days for indefinite terms, 30 days for definite terms and three days for a seasonal contract.

Other changes to public holidays, retirement age and overtime working hours

The Draft Code proposes an additional holiday on 27 July each year for Remembrance Day in Vietnam. This would result in a total of 11 public holidays. Nonetheless, the Draft Code proposes as well that if any days in Tet holidays fall on weekends, there is no compensation date. This may shorten the Tet holidays to 5 days off all inclusive.

From 2021, the retirement ages will be increased to 60 years, 3 months for male employees and 55 years, 4 months for female employees. The increment actually aims at a planned retirement age of 62 years for male and 60 years for female employers. Currently, the retirement ages are 60 for men and 55 for women.

The overtime working hours may be increased up to 400 hours per years in some special cases, compared to currently 300 hours.

The Draft Labor Code is currently open for public comments and contribution until the end of June, 2019. The Vietnamese Government is expected to submit it to the National Assembly for approval on its next session meeting. If approved, the Draft Code could be promulgated in November 2019. Interested entities may raise their comments and concerns via their respective commercial chambers.

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