CODE 45

LABOUR CODE

Dated 20 November 2019

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NATIONAL ASSEMBLY

SOCIALIST REPUBLIC OF VIETNAM

Independence - Freedom – Happiness

Law: 45/2019/QH14

[20 November 2019]

LABOUR CODE

Pursuant to the Constitution of the Socialist Republic of Vietnam;

The National Assembly hereby promulgates the Labour Code.

CHAPTER 1

General Provisions

Article 1 *Governing scope*

The Labour Code regulates labour standards; the rights, obligations and responsibilities of employees, employers, organizations representing employees at the grassroots level, and organizations representing employers in the labour relationship and in other relationships directly related to the labour relationship; and regulates State administration of labour

Article 2 *Applicable entities*

1 Employees, people studying trades or practising trades [trainees and apprentices][1], and workers without a labour relationship.

2 Employers.

3 Foreign employees working in Vietnam.

4 Other agencies, organizations and individuals directly involved in the labour relationship.

Article 3 *Interpretation of terms*

In this Code, the following terms are construed as follows:

1 *Employee* means a person working for an employer pursuant to an agreement, who is paid wages and who is subject to management and supervision by the employer.

The minimum working age is a full fifteen (15) years of age, except in the cases prescribed in Section 1 in Chapter 11 of this Code.

2 *Employer* means an enterprise, agency, organization, co-operative, family household or individual who hires (or) employs a worker to work for such employer pursuant to an agreement; if an employer is an individual, then he or she must have full legal capacity for civil acts.

3 *Organization representing the employees at the grassroots level* means an organization established on a voluntary basis by the employees at any one employing unit, aimed at protecting the lawful and

[1] Allens footnote: Square brackets contain translator's comments only.

proper rights and interests of the employees in the labour relationship via collective bargaining or via other forms stipulated in the law on labour. *Organizations representing the employees at the grassroots level* comprise the grassroots [enterprise] trade union and an employees' organization at the enterprise.

4 *Organization representing the employer* means a lawfully established organization which represents and protects the lawful rights and interests of the employer in the labour relationship.

5 *Labour relationship* means social relations arising during the hiring and employment of workers and during wage payment as between employees, the employer, organizations representing the parties and the competent State agency. *Labour relationships* comprise individual [personal] labour relationships and collective labour relationships.

6 *Worker without a labour relationship* means a person working not on the basis of being hired via a labour contract.

7 *Labour coercion* means using force, threatening to use force or using other tricks to force an employee to work/do a job contrary to his or her will.

8 *Discrimination in labour* means discrimination, exclusion or preference based on race, colour, national origin or social origin, ethnicity, sex, age, maternity status, marital status, religion, belief, political belief, disability, family responsibility or on the basis of HIV infection status or because of the establishment, accession or activities in a trade union or employees' organization at the enterprise adversely affecting equality regarding employment opportunity or trade or profession.

Any act of discrimination, exclusion or priority arising from the special requirements of a job or arising from conduct being the retention and protection of jobs for vulnerable employees is not deemed to be discriminatory.

9 *Sexual harassment in the workplace* means any act of a sexual nature by any person to another person in the workplace without the latter's wish or consent. *Workplace* means any place where an employee actually works pursuant to the agreement with or assignment by the employer.

Article 4 *State's policy on labour*

1 Ensuring the legitimate and proper rights and interests of employees and of workers without a labour relationship, and encouraging agreements which ensure employees have more favourable conditions than those stipulated in the law on labour.

2 Ensuring the lawful rights and interests of employers, that labour is correctly managed in accordance with law, and ensuring democracy, fairness, civilized behaviour and the raising of social responsibility.

3 Facilitating activities of job creation, self-employment, job training and apprenticeship to enable people to find work, facilitating production and business activities to attract many employees, and applying a number of provisions of this Code to workers without a labour relationship.

4 The State has policies on developing and allocating manpower; on raising labour productivity; on training, fostering and raising the qualifications and vocational skills of employees; on supporting the maintenance or change of trades and professions, and employment for workers; and grants incentives to employees with high qualifications and technical expertise satisfying requirements for the industrial revolution, industrialization and modernization of the country.

5 The State has policies on developing the labour market and diversifying the forms of linking labour supply and demand.

6 Advancing engagement by employees and employers in collective discussion and negotiation (bargaining) in order to develop an harmonious, stable and progressive relationship.

7 Ensuring gender equality; and regulating labour regimes and social policies aimed at protecting female employees, disabled employees, senior employees and junior employees.

Article 5 *Rights and obligations of employees*

1 Employees have the following rights:

(a) To work; to freely choose types of work, workplaces, trades and professions; to learn a trade, to improve professional skills, not to be discriminated against, and not to be subject to labour coercion or sexual harassment in the workplace.

(b) To be paid a wage commensurate with his or her qualifications or vocational skills on the basis of an agreement reached with the employer; to be entitled to labour protection and to work in safe and hygienic working conditions; to be entitled to stipulated leave and to paid annual leave and to receive collective welfare benefits;

(c) To establish, join and participate in the organization representing the employees, in occupational organizations and other organizations in accordance with law; to request and participate in discussions, to implement democratic regulations and to participate in collective negotiation (bargaining) with the employer and to receive advice at workplaces in order to protect the employee's lawful and proper rights and interests; and to participate in management in accordance with the internal rules of the employer;

(d) To refuse to work if there is a clear danger directly threatening life or health during the process of doing such work;

(dd) To unilaterally terminate the labour contract;

(e) To strike;

(g) Other rights as stipulated by law.

2 Employees have the following obligations:

(a) To implement labour contracts, collective labour agreements and other lawful agreements;

(b) To comply with labour discipline and internal labour rules and to be subject to management, executive operation and supervision by the employer;

(c) To implement provisions of the law on labour, on employment, on vocational trade training, on social insurance, on health insurance, on unemployment/job loss insurance, and on occupational safety and hygiene.

Article 6 *Rights and obligations of employers*

1 Employers have the following rights:

(a) To recruit, arrange, manage, executively operate [administer] and supervise labour; to reward employees and to deal with breaches of labour discipline;

(b) To establish, join and participate in organizations representing employers, in occupational organizations and in other organizations in accordance with law;

(c) To require the organization representing the employees to negotiate with the aim of signing a collective labour agreement; to participate in resolution of labour disputes and strikes; and to discuss and exchange information with the organization representing the employees on issues within the labour relationship and on improvement of the material and spiritual lives of the employees;

(d) To temporarily close down the workplace;

(dd) Other rights as stipulated by law.

2 Employers have the following obligations:

(a) To implement labour contracts, collective labour agreements and other lawful agreements; and to respect the honour and dignity of employees;

(b) To establish a regime and to hold discussions and exchanges with the employees and with the organization representing the employees; and to implement democratic regulations at the grassroots level in the workplace;

(c) To provide training and retraining and to foster the upgrading of qualifications and technical trade skills aimed at maintaining or changing trades or professions and jobs for employees;

(d) To implement provisions of the law on labour, on employment, on occupational education, on social insurance and health insurance, on unemployment/job loss insurance, and on occupational safety and hygiene; and to formulate and implement solutions on preventing sexual harassment in the workplace;

(dd) To participate in the development of national trade technical standards, and in assessment and recognition of national trade standards for employees.

Article 7 *Formulating the labour relationship*

1 The labour relationship is established via discussion, negotiation and agreement on the principles of voluntary commitment, goodwill, equality, co-operation and mutual respect of legal rights and interests.

2 The employer, the organization representing the employer, the employees and the organization representing employees shall establish a progressive labour relationship which is harmonious and stable with the assistance of the competent State agency.

3 The trade union shall jointly participate with the competent State agency to assist formulation of a progressive, harmonious and stable labour relationship; shall supervise implementation of the law on labour; and shall protect the lawful and proper rights and interests of employees.

4 Vietnam Chamber of Commerce and Industry [VCCI], Vietnam Cooperative Alliance [VCA] and other organizations representing employers which are established in accordance with law have the role of representing and protecting the lawful rights and interests of employers and participate in formulating a progressive, harmonious and stable labour relationship.

Article 8 *Conduct which is strictly prohibited in the labour sector*

1 Discrimination during labour.

2 Mistreatment of employees and labour coercion.

3 Sexual harassment at the workplace.

4 Taking advantage of an apprenticeship or practical training to seek profit or exploit an employee or enticing, seducing or compelling an apprentice or trainee to conduct an illegal act.

5 Employing workers who have not yet had training or who do not yet have national trade or technical certificates in the case of any trade or work which requires employees to have had training or have such certificates.

6 Enticing, seducing, making false promises, conducting false advertising or other tricks in order to deceive employees or in order to recruit employees for the purpose of human trafficking, exploiting or coercing, or taking advantage of employment services or labour export to foreign countries pursuant to contracts in order to conduct an illegal act.

7 Employing juniors contrary to law.

CHAPTER 2

Employment, Recruitment and Management of Labour

Article 9 *Employment and finding jobs*

1 Working or a job means any labour activity which creates income and which the law does not prohibit.

2 The State, employers and society are responsible to participate in job creation, ensuring that all people with the ability to work have the opportunity to work.

Article 10 *Right of workers to work*

1 A worker has the right to himself or herself freely choose a job and employment with any employer and including at any location not prohibited by law.

2 A person seeking work has the right to make a direct approach to prospective employers or to approach them via an employment services organization in order to look for work which matches his or her aspirations, capability, trade or professional skills, and health.

Article 11 *Recruitment of labour*

1 An employer has the right to recruit labour directly or to do so via an employment services organization or labour sub-leasing enterprise as required by such employer.

2 Workers must not be required to pay fees for recruitment.

Article 12 *Responsibilities of employer to manage employees [labour]*

1 To prepare, update, manage and use a labour management register, either in hard copy or electronic and to present same when the competent State agency so requests.

2 To submit a report on employment of a worker within thirty (30) days after the commencement date, and to periodically report any labour changes during the operational process to the specialized agency for labour under the provincial people's committee and also notify same to the social insurance agency.

3 The Government shall provide detailed regulations on this article.

CHAPTER 3

Labour Contracts

Section 1

Entering into Labour Contracts

Article 13 *Labour contracts*

1 *Labour contract* means an agreement between an employee and an employer on paid work, on wages [salary], on working conditions, and on the rights and obligations of each party to the labour relationship.

If the two parties reach an agreement with some other name but with contents setting out the paid work, salary, and management, executive operation [administration] and supervision by one party, then such agreement is deemed to be a labour contract.

2 Before accepting a worker to do any work/job, the employer must enter into a labour contract with such worker.

Article 14 *Forms of labour contract*

1 A labour contract must be entered into in writing and made in two copies, the employee to retain one copy and the employer to retain one copy, except in the case prescribed in clause 2 of this article.

A labour contract entered into by electronic means in the form of data messages in accordance with the law on electronic transactions has the same value as a written labour contract.

2 The two parties may enter into an oral labour contract in the case of a contract with a duration below one month, except for the cases prescribed in articles 18.2, 145.1(a) and 162.1 of this Code.

Article 15 *Principles for entering into labour contracts*

1 Voluntary commitment, equality, goodwill, co-operation and honesty.

2 Freely entering into a labour contract but not contrary to law or to the collective labour agreement or to social ethics.

Article 16 *Responsibility to provide information when entering into a labour contract*

1 An employer must provide truthful information to the employee on the work to be performed, the workplace, working conditions, working hours, rest breaks, occupational safety and hygiene, wages, method of payment of wages, social insurance, health insurance, unemployment insurance, and provisions on confidentiality of business and protection of technology secrets and other matters directly relevant to entering into the labour contract which an employee requests.

2 An employee must also provide the employer with truthful information being the employee's full name, date of birth, gender, residential address, educational standard, trade skills and qualifications, certification of health status and other matters directly relevant to entering into the labour contract which the employer requests.

Article 17 *Prohibited conduct by an employer when entering into and performing a labour contract*

1 Retaining originals of personal papers, degrees and certificates of the employee.

2 Requiring the employee to provide security measures by way of cash or other assets to guarantee performance of the labour contract.

3 Forcing an employee to perform a labour contract to repay a debt to the employer.

Article 18 *Authority to enter into a labour contract*

1 A worker/employee directly enters into a labour contract except for the case prescribed in clause 2 below.

2 In the case of seasonal jobs (and) specific work with a duration of under twelve (12) months, a group of workers aged 18 years or more may authorize one (1) of the workers in the group to enter into the labour contract, and in such case, the labour contract must be in writing and is effective as if it was signed by each worker/employee.

A labour contract entered into by an authorized person must attach a list specifying the full name, date of birth, gender and residential address of each employee and be signed by each employee.

3 The person entering into the labour contract on behalf of the employer shall be one of the following:

(a) Legal representative of the enterprise or person authorized in accordance with law;

(b) Head of the agency or organization with legal entity status as prescribed by law or person authorized in accordance with law;

(c) Representative of the family household, cooperative or other organization without legal entity status or the person authorized in accordance with law;

(d) An individual employer directly employing an employee.

4 The person entering into the labour contract on behalf of the employee must be one of the following:

(a) The employee aged a full eighteen (18) years or more;

(b) The employee aged from a full fifteen (15) years but are not yet aged eighteen (18) years with written consent from the legal representative of such employee;

(c) The employee under fifteen (15) years of age and the legal representative of such employee;

(d) The employee in the group of workers lawfully authorized by such group to enter into the labour contract.

5 The person authorized to enter into a labour contract is not permitted to directly authorize [sub-authorize] another person to enter into the labour contract.

Article 19 *Entering into multiple labour contracts with multiple employers*

1 An employee may enter into multiple labour contracts with multiple employers, provided that all the contents in the executed contracts are fully performed.

2 If an employee enters into multiple labour contracts with multiple employers, participation by the employee in social insurance, health insurance and unemployment [or job loss] insurance shall be implemented in accordance with the law on social insurance, health insurance, unemployment insurance and occupational safety and hygiene.

Article 20 *Types of labour contract*

1 A labour contract must be entered into in either of the following types:

(a) Indefinite term labour contract being a contract in which the two parties do not fix the term nor the time of termination of validity of the contract;

(b) Definite term labour contract being a contract in which the two parties fix the term and the time of termination of the validity of the contract which must not exceed thirty six (36) months from the effective date of the contract.

2 When a labour contract prescribed in clause 1(b) [definite term] expires and the employee continues to work, then:

(a) Within thirty (30) days after the date of expiry of the labour contract, the two parties must enter into a new labour contract, and if they fail to do so within such time-limit [pending entering into a new labour contract], then the rights, obligations and interests of the two parties shall be implemented in accordance with the provisions of the contract which was entered into;

(b) If thirty (30) days after the date of expiry of the labour contract the two parties do not enter into a new labour contract, then the old labour contract entered into as prescribed in clause 1(b) above becomes an indefinite term labour contract;

(c) If the two parties enter into a new labour contract which is a definite term labour contract, they may sign only one (1) additional contract and if the employee thereafter continues to work then an indefinite term labour contract must be entered into, except in the case of a labour contract with a person hired to work as director of an enterprise with State owned capital and except in the cases prescribed in articles 149.1, 151.2 and 177.4 of this Code.

Article 21 *Contents of labour contract*

1 A labour contract must contain the following main particulars:

(a) Name and address of the employer and full name and title of the person entering into the labour contract on the employer's side;

(b) Full name, date of birth, gender, residential address, and serial number of citizen's card, people's identity card or passport of the person entering into the labour contract on the employee's side;

(c) Job description and workplace;

(d) Term of the labour contract;

(dd) Wage rate in accordance with the job or title/position, and method of and time of payment of wages, allowances and other additional payments;

(e) Regime for wage increases and promotion;

(g) Working hours and holidays [rest breaks];

(h) Personal protective equipment of the employee;

(i) Social insurance, health insurance and unemployment insurance;

(k) Training, fostering and raising trade/vocational qualifications and skills.

2 When an employee does work which is directly related to business secrets or technological secrets as defined by law, the employer has the right to have a written agreement with the employee on contents and term of confidentiality of business secrets and protection of technology secrets, of interests/benefits and on payment of compensation if there is a breach.

3 In the case of employees working in the sectors of agriculture, forestry, fisheries and salt production, then depending on the type of work, the two parties may exclude some of the main particulars of the labour contract and reach agreement on adding items on method of resolution if performance of the labour contract is affected by natural disaster, fire or weather.

4 The Government regulates contents of labour contracts of employees hired to act as directors of enterprises with State owned capital.

5 The Minister of Labour, Invalids and Social Affairs [Minister of Labour] shall provide detailed regulations on clauses 1, 2 and 3 of this article.

Article 22 *Addenda to labour contracts*

1 An addendum to a labour contract constitutes a part of such labour contract and has the same validity as the labour contract.

2 An addendum to a labour contract may elaborate in detail or may amend or supplement some of the articles of the labour contract, but may not amend the term of the labour contract.

If the addendum to a labour contract elaborates in detail some of the articles or clauses of the labour contract resulting in an interpretation different from the contents of the labour contract, then implementation shall be in accordance with the contents of the labour contract.

An addendum to a labour contract which has contents amending or supplementing some terms and conditions of such labour contract must clearly specify the articles and clauses which are amended or supplemented and the effective date of such amended and supplemented articles.

Article 23 *Effectiveness of a labour contract*

A labour contract is effective from the date the two parties enter into such contract, unless otherwise agreed by the two parties or unless otherwise stipulated by law.

Article 24 *Probation*

1 An employer and an employee may reach agreement on probation regarding contents stipulated in the labour contract or they may reach agreement on probation by entering into a probationary contract.

2 The basic contents of a probationary contract shall include the probationary term and the items/contents prescribed in sub-clauses (a), (b), (c), (dd), (g) and (h) of article 21.1 of this Code.

3 A probationary period of work is not applicable to an employee who enters into a labour contract with a term of less than one (1) month.

Article 25 *Duration of probationary period*

The duration of a probationary period as agreed by the two parties shall depend on the nature and complexity of the work, but there may only be probation on one occasion for one job, and probation must ensure the following conditions:

1 The probationary period is no longer than one hundred and eighty (180) days in the case of the job being enterprise manager pursuant to the *Law on Enterprises*, and the *Law on Management and Use of State Capital Invested in Production and Business in Enterprises*.

2 The probationary period is no longer than sixty (60) days for working in a position requiring college level or higher specialized or technical expertise.

3 The probationary period is no longer than thirty (30) days for working in an industry or trade requiring intermediate level skills or a technician or professional staff.

4 The probationary period must not exceed six (6) working days for other jobs.

Article 26 *Wage during probation*

The wage of an employee during a probationary period shall be as agreed by the two parties but must be at least 85% of the scale wage rate for the relevant working position/job.

Article 27 *End of probationary period*

1 At the end of the probationary period, the employer must notify the employee of the probation results.

If the employee's work satisfied the requirements, the employer must continue to implement the labour contract entered into if there was an agreement on probationary work in such labour contract, or must enter into a labour contract if a probationary contract was entered into.

If the probationary work did not satisfy the requirements, then the labour contract entered into or the probationary contract is terminated.

2 During the probationary period, each party has the right to rescind the probationary contract or labour contract already entered into, without providing advance notice and without paying compensation.

Section 2

Performance of Labour Contracts

Article 28 *Performing work pursuant to a labour contract*

Work pursuant to a labour contract must be performed by the employee who entered into such contract. The working address [workplace] is implemented in accordance with the labour contract unless the two parties have some other agreement.

Article 29 *Assigning employee to do work other than that specified in the labour contract*

1 If there are unexpected difficulties due to a natural disaster, fire, dangerous epidemic, application of measures to prevent or remedy a labour accident or occupational disease, or due to a power or water breakdown or due to production and business requirements, the employer has the right to temporarily assign an employee to do work other than that specified in his or her labour contract but not for a period in excess of an aggregate sixty (60) working days in any one year; and before an employee is assigned to a job different from that in the labour contract for more than an aggregate sixty (60) working days in the one year, the employee must provide written consent.

An employer shall provide specific provisions in the internal labour rules on cases in which, due to production or business requirements, the employer may temporarily assign an employee to do work other than that specified in the labour contract.

2 When temporarily assigning an employee to do work other than that specified in the labour contract as prescribed in clause 1 above, the employer must provide at least three (3) working days' advance notice to the employee and specify the duration of the work temporarily assigned, and the employer must arrange work appropriate for the health and gender of the employee.

3 An employee who is assigned to do work other than that specified in the labour contract must be paid a wage [appropriate] for the new work. If the wage rate of the new work is less than that of the previous job, the employee is entitled to receive the previous wage for a period of thirty (30) working days. The new wage must equal at least eighty-five (85) per cent of the wage for the previous job, but must not be less than the minimum wage.

4 If the employee does not consent to temporarily doing work other than that specified in the labour contract in excess of an aggregate sixty (60) working days in the year, but must cease work, then the employer must pay wages for ceasing work as prescribed in article 99 of this Code.

Article 30 *Suspension of performance of a labour contract*

1 Suspension of performance of a labour contract is permitted in the following cases:

(a) The employee does military service or discharges his or her obligations to join the self-defence militia;

(b) The employee is detained or temporarily held in prison in accordance with the law on criminal procedure;

(c) The employee must comply with a mandatory decision on [his or her] admission to a detention centre, drug rehabilitation centre or compulsory educational establishment;

(d) The female employee is pregnant as provided in article 138 of this Code;

(dd) The employee is appointed to work as an enterprise manager of a single member limited liability company in which the State holds 100% charter capital;

(e) The employee has a power of attorney/authorization to exercise the rights and discharge the responsibilities of the representative of the State owner of a portion of State capital;

(g) The employee has a power of attorney/authorization to exercise the rights and discharge the responsibilities of the enterprise regarding the capital portion of the enterprise invested in another enterprise;

(h) In other circumstances agreed by the two parties.

2 During the period of suspension of performance of a labour contract, the employee is not entitled to wages and is not entitled to the other rights and interests agreed in the labour contract, unless the two parties reach some other agreement or the law otherwise provides.

Article 31 *Receiving the employee back to work on expiry of suspension of performance of labour contract*

Within fifteen (15) days after expiry of the term of suspension of performance of the labour contract, the employee must attend the workplace and the employer must receive the employee back to work in accordance with the labour contract entered into if the labour contract is still valid, unless the two parties have some other agreement or the law otherwise provides.

Article 32 *Working part-time*

1 *Part-time employee* means an employee with working hours shorter than the average daily, weekly or monthly working hours prescribed in the law on labour, in the collective labour agreement or in the internal labour rules.

2 An employee reaches agreement with an employer for the former to work part-time when entering into the labour contract.

3 Part-time employees are entitled to receive wages, have equality in exercising rights and discharging obligations the same as full-time employees, and are entitled to equal opportunity, must not be discriminated against, and are entitled to conditions on occupational safety and hygiene.

Article 33 *Amending and supplementing the labour contract*

1 Any party during the process of performing the labour contract wishing to amend or supplement the contractual items must provide at least three (3) working days' advance notice to the other party of the specific items to be amended or added.

2 If the two parties reach an agreement, then amendments or additions to contents of the labour contract shall take place by way of entering into an addendum to the labour contract or by way of entering into a new labour contract.

If the two parties fail to reach agreement on the amendment or addition to the contents of the labour contract, then the executed labour contract must continue to be performed.

Section 3

Terminating Labour Contracts

Article 34 *Circumstances in which labour contract is terminated*

[A labour contract is terminated in the following cases:]

1 On expiry of the labour contract, except in the case prescribed in article 177.4 of this Code.

2 The job has been completed in accordance with the labour contract.

3 Both parties agree to terminate the contract.

4 The employee is sentenced to a jail term but not to a suspended sentence and not within the cases of entitlement to release/freedom as prescribed in article 328.5 of the Criminal Procedure Code, or is sentenced to the death penalty, or is prohibited from performing the job prescribed in the labour contract by a legally enforceable verdict or decision of a Court.

5 The employee being a foreigner working in Vietnam is deported pursuant to an enforceable decision or verdict of a Court or pursuant to a decision of a competent State agency.

6 The employee dies; or is declared by a Court to have lost legal capacity for civil acts, to be missing or to be deceased.

7 The employer being an individual dies; or is declared by a Court to have lost legal capacity for civil acts, to be missing or to be deceased. The employer not being an individual terminates its operation or the specialized agency for business registration under the provincial people's committee issues notification that the employer no longer has a legal representative or an authorized person to exercise the rights and discharge the obligations of the legal representative.

8 The employee is disciplined in the form of dismissal.

9 The employee unilaterally terminates the labour contract in accordance with article 35 of this Code.

10 The employer unilaterally terminates the labour contract in accordance with article 36 of this Code.

11 The employer permits the employee to cease work as prescribed in articles 42 and 43 of this Code.

12 The work permit of an employee being a foreigner working in Vietnam expires in accordance with article 156 of this Code.

13 There is an agreement on probationary work stipulated in the labour contract, but the probationary work did not satisfy the requirements or either party rescinded the agreement on probationary work.

Article 35 *Rights of the employee to unilaterally terminate the labour contract*

1 The employee has the right to unilaterally terminate the labour contract but must provide the following advance notice to the employer:

(a) At least forty-five (45) days' advance notice if working pursuant to an indefinite term labour contract;

(b) At least thirty (30) days' advance notice if working pursuant to a definite term labour contract with a duration from twelve (12) months to thirty-six (36) months;

(c) At least three (3) days' advance notice if working pursuant to a definite term labour contract with a duration below twelve (12) months;

(d) In the case of a number of industries and trades and special jobs, the amount of advance notice shall be implemented in accordance with Government regulations.

2 An employee with the right to unilaterally terminate the labour contract is not required to provide advance notice in the following cases:

(a) [The employee] is not assigned to the correct job or workplace or the working conditions agreed are not ensured, except in the case prescribed in article 29 of this Code;

(b) [The employee] is not paid in full or on time the wages due, except in the case prescribed in article 97.4 of this Code;

(c) The employee is abused, beaten, or subject to abusive/defamatory words or acts, or to acts adversely affecting the health, dignity and honour of the employee committed by the employer; or is subject to labour coercion;

(d) The employee is sexually harassed in the workplace;

(dd) A female employee is pregnant and must rest as prescribed in article 138.1 of this Code;

(e) The employee has reached the retirement age in accordance with article 169 of this Code, unless the parties have some other agreement;

(g) The employer provided untruthful information pursuant to article 16.1 of this Code which adversely affected implementation of the labour contract.

Article 36 *Rights of the employer to unilaterally terminate the labour contract*

1 An employer has the right to unilaterally terminate a labour contract in the following circumstances:

(a) The employee regularly failed to perform the work in accordance with the labour contract as determined in accordance with the criteria for assessing the level of completion of work as set out in the rules of the employer. Rules on assessment of the level of completion of work shall be issued by an employer but only after consulting the opinion of the organization representing the employees at the grassroots level in the case of locations [enterprises] which have such an organization;

(b) The employee has been ill [or] injured in an accident and has been receiving medical treatment for twelve (12) consecutive months if working pursuant to an indefinite term labour contract, or has been receiving medical treatment for six (6) consecutive months if working pursuant to a definite term labour contract of twelve (12) up to thirty-six (36) months, or for a period in excess of half of the term of the labour contract if working pursuant to a definite term labour contract for a term of under twelve (12) months, and his or her working capacity has not yet been restored.

When the employee's health recovers, the employer shall give consideration to continuing to enter into a labour contract with the employee;

(c) Where as a result of a natural disaster, dangerous epidemic or fire, or due to resettlement or due to narrowing of production and business as required by a competent State agency, the employer, despite having taken all necessary measures to remedy the problem, still needs to reduce the number of jobs;

(d) The employee failed to attend the workplace on expiry of the period prescribed in article 31 of this Code;

(dd) The employee has reached the retirement age as prescribed in article 169 of this Code, except where there is some other agreement;

(e) The employee arbitrarily leaves the job [gives up his or her job] without a satisfactory explanation for a period of at least five (5) consecutive working days;

(g) The employee provided untruthful information as prescribed in article 16.2 of this Code when entering into the labour contract and this fact adversely affected recruitment of employees.

2 An employer who unilaterally terminates a labour contract for a reason prescribed in sub-clauses (a), (b), (c), (dd) or (g) of clause 1 above must provide the following period of advance notice to the employee:

(a) At least forty-five (45) days in the case of an indefinite term labour contract;

(b) At least thirty (30) days in the case of a definite term contract with a term of twelve (12) up to thirty-six (36) months;

(c) At least three (3) working days in the case of a labour contract with a duration of less than twelve (12) months and in the cases prescribed in clause 1(b) of this article;

(d) In the case of a number of industries and trades and special jobs, the period of advanced notice to be provided shall be as stipulated in Government regulations.

3 On unilateral termination of the labour contract for the reasons prescribed in sub-clauses (d) or (e) of clause 1 above, the employer is not required to provide advanced notice to the employee.

Article 37 *Circumstances in which an employer is not permitted to unilaterally terminate a labour contract*

1 The employee, after an illness or after suffering an injury caused by a work-related accident or an occupational disease is being treated or nursed pursuant to the direction of a competent medical consulting or treating establishment, except in the case prescribed in article 36.1(b) above.

2 The employee is on annual leave, personal leave of absence, or any other case of leave agreed by the employer.

3 The female employee is pregnant; or an employee is currently on maternity leave or is nursing a child under 12 months of age.

Article 38 *Rescission of unilateral termination of labour contract*

Each party has the right to rescind its unilateral termination of a labour contract at any time prior to expiry of the notice period, but must provide written notice to the other party and must have consent from the other party.

Article 39 *Illegal unilateral termination of labour contract*

Illegal unilateral termination of a labour contract means any case of termination of a labour contract which is incorrect in terms of articles 35, 36 and 37 of this Code.

Article 40 *Obligations of employee who illegally unilaterally terminates the labour contract*

1 The employee is not entitled to any allowance for job loss/retrenchment.

2 The employee must pay the employer compensation being one-half of one month's wages as prescribed in the labour contract and a sum of money equivalent to the wages of the employee prescribed in the labour contract for the days for which he or she failed to provide advance notice.

3 The employee must pay the employer training fees as prescribed in article 62 of this Code.

Article 41 *Obligations of employer who unilaterally terminates a labour contract illegally*

1 The employer must receive the employee back to work in accordance with the executed labour contract, must pay wages and premiums for social insurance, health insurance and job loss/unemployment insurance for the days on which the employee did not work, and also a sum of money equal to at least 2 months' wages as prescribed in the labour contract.

After receiving back the employee [re-employing the employee], the employee must refund the employer the severance allowance and retrenchment (job loss) allowance received from the employer.

If there is no longer the working position or job for which the labour contract was entered into and the employee wishes to continue to work, then the two parties shall reach agreement in order to amend or supplement the labour contract.

If there is a breach of the provisions on advance notice prescribed in article 36.2 of this Code, then a sum of money equivalent to the wages prescribed in the labour contract for the days for which advance notice was not provided, must be paid.

2 If the employee does not wish to continue working, then the employer must pay, in addition to the amount prescribed in clause 1 above, a severance allowance pursuant to article 46 of this Code in order to terminate the labour contract.

3 If the employer does not wish to receive the employee back to work and the employee agrees, then, in addition to the amount prescribed in clause 1 above and the severance allowance as prescribed in article 46 of this Code payable by the employer, the two parties shall reach agreement on an additional amount of compensation for the employee which shall equal at least 2 months' salary as prescribed in the labour contract in order to terminate the labour contract.

Article 42 *Obligations of employer in cases of restructuring, change of technology, or [change for] economic reasons*

1 The following circumstances are deemed to be restructuring or a change of technology:

(a) A change of organizational structure or employee/staffing structure.

(b) A change of the production or business processes, technology, machinery or equipment associated with the production and business industry or trade of the employer;

(c) A change of products or product structure.

2 The following circumstances are deemed to be [a change] for economic reasons:

(a) An economic depression or rescission;

(b) Implementation of State policies or law on restructuring of the economy or implementation of an international commitment.

3 If restructuring or a change of technology adversely affects the jobs of many employees, the employer must formulate and implement a labour usage plan in accordance with article 44 of this Code; if new jobs are created, then the employer must prioritize retraining employees in order to continue to employ them.

4 If for economic reasons many employees are in danger of losing their jobs and must be retrenched, then the employer must formulate and implement a labour usage plan in accordance with article 44 of this Code.

5 If the employer is unable to resolve [create] new jobs but must retrench employees, then the employer must pay severance allowances for job loss to employees in accordance with article 47 of this Code.

6 Employees may only be retrenched pursuant to the provisions in this article after there have been discussions with the organization representing employees at the grassroots level in the case of locations [enterprises] which have such an organization and of which the employees are members, and after thirty (30) days' advance notice has been provided to the provincial people's committee and to the employees.

Article 43 *Obligations of employer after division or separation, consolidation or merger; sale, lease out or conversion of enterprise type; or on transfer of the ownership or use right of the assets of the enterprise or co-operative*

1 In a case of division or separation, consolidation or merger; sale, lease out or conversion of enterprise type; or on transfer of the ownership or use right of the assets of the enterprise or co-operative which impacts on the jobs of many employees, the employer must formulate a labour usage plan in accordance with article 44 of this Code.

2 The current employer and the subsequent employer are responsible to implement the labour usage plan which has been passed.

3 Employees who are retrenched are entitled to receive the retrenchment allowance prescribed in article 47 of this Code.

Article 44 *Labour usage plan*

1 A labour usage plan must contain the following basic particulars:

(a) The number and a list of employees who will continue to be employed and who will be retrained for further employment, and of employees who will be transferred to work part-time;

(b) The number and a list of employees who will retire;

(c) The number and a list of employees whose labour contracts must be terminated;

(d) Rights and obligations of the employer, of the employees and of any related parties during implementation of the labour usage plan;

(dd) Measures and financial funding for ensuring implementation of the plan.

2 When formulating the labour usage plan, the employer must exchange opinions with the organization representing employees at the grassroots level in the case of locations [enterprises] which have such an organization. The labour usage plan must be publicly notified to employees within fifteen (15) days after the date on which it is passed.

Article 45 *Notification of termination of labour contract*

1 The employer must provide written notice to the employee of termination of the labour contract in a case of termination of labour contract pursuant to this Code, except in the cases prescribed in clauses 4, 5, 6 and 8 of article 34 of this Code.

2 If an employer not being an individual terminates its operation then the time of termination of the labour contract is calculated from the time on which there is notification of termination of the operation.

If the State administrative agency for business registration under a provincial people's committee issues notification regarding an employer not being an individual, that there is no longer a legal

representative or authorized representative to exercise the rights and discharge the obligations of the legal representative as prescribed in article 34.7 of this Code, then the time of termination of the labour contract is calculated from the date on which such notification is provided.

Article 46 *Severance allowance*

1 When a labour contract is terminated in accordance with clauses 1, 2, 3, 4, 6, 7, 9 and 10 of article 34 of this Code, the employer is responsible to pay a severance allowance to any employee who has regularly worked for the employer for a full twelve (12) months or more, and the severance allowance is one half of one month's wage for each year of employment, except where [the employee] satisfies the conditions for entitlement to a pension in accordance with the provisions of the law on social insurance and except in the case prescribed in article 36.1(e) of this Code.

2 The length of a working period for calculating the severance allowance means the total working time the employee actually worked for the employer minus the period for which the employee received unemployment benefits in accordance with the law on unemployment insurance and minus the working period for which the employer has already been paid a severance allowance or retrenchment/job loss allowance.

3 Wages for the purpose of calculating the severance allowance means the average wage pursuant to the labour contract for the six (6) consecutive months immediately preceding retrenchment of the employee.

4 The Government shall provide detailed regulations on this article.

Article 47 *Retrenchment (job loss) allowance*

1 The employer shall pay a retrenchment allowance for job loss to an employee who has regularly worked for the employer for a full twelve (12) months or more and who loses his or her job pursuant to article 34.11 of this Code. The retrenchment allowance is one month's wages for each working year, but at least two (2) months' salary.

2 The length of a working period for calculating the retrenchment allowance means the total working time the employee actually worked for the employer minus the period for which the employee participated in unemployment insurance in accordance with the law on unemployment insurance and minus the working period for which the employer has already been paid a severance allowance or retrenchment/job loss allowance.

3 Wages for the purpose of calculating the retrenchment allowance for job loss means the average wage pursuant to the labour contract for the six (6) consecutive months immediately preceding job loss of the employee.

4 The Government shall provide detailed regulations on this article.

Article 48 *Responsibilities on termination of a labour contract*

1 Within fourteen (14) working days after the date of termination of a labour contract, each party is responsible to make full payment of monetary amounts relevant to the interests of the other party, and in the following cases this time-limit may be extended but not beyond thirty (30) days:

(a) An employer not being an individual terminates its operation;

(b) The employer restructures, changes its technology or [there are changes] for economic reasons;

(c) There is a separation, division, consolidation or merger [of the enterprise or co-operative]; or a sale, leasing out, conversion of enterprise type; or a transfer of the ownership or use right of the assets of the enterprise or the co-operative;

(d) There is a natural disaster, fire, enemy sabotage or dangerous epidemic.

2 If the (employing) enterprise or co-operative terminates its operation, is dissolved or declared bankrupt, then priority shall be given to payment of wages, contributions/premiums to social insurance, health insurance and unemployment insurance, retrenchment allowances and other interests of the employees pursuant to the collective labour agreement and labour contracts which were entered into.

3 The employer is responsible:

(a) To complete procedures determining [certifying] the period of payment of social insurance and unemployment insurance premiums and to return same to the employee at the same time as returning the originals of other documents which the employer retained from the employee;

(b) To return copies of documents relevant to the process of the employee's job if the employee so requests. The employer is responsible to pay the costs of copying and sending such data.

Section 4

Invalid Labour Contracts

Article 49 *Invalid labour contract*

1 A labour contract is wholly invalid in any one of the following cases:

(a) The entire contents of the labour contract breach the law;

(b) A person entering into [signatory to] the labour contract lacked authority or breached the principles on entering into labour contracts prescribed in article 15.1 of this Code;

(c) The job for which the labour contract was entered into is work prohibited by law.

2 A labour contract is partially invalid when the contents of a part of the contract are illegal without affecting the residual contents of the contract.

Article 50 *Authority to declare a labour contract invalid*

The People's Courts have the right to declare a labour contract invalid.

Article 51 *Dealing with invalid labour contracts*

1 A labour contract which is declared partially invalid shall be dealt with as follows:

(a) The rights, obligations and interests of the two parties shall be resolved in accordance with provisions in the currently applicable collective labour agreement; if there is no collective labour agreement, then such resolution shall be made in accordance with provisions of law;

(b) The two parties shall amend or supplement that part of the labour contract declared to be invalid for compliance with the collective labour agreement or the law on labour.

2 When a labour contract is declared wholly invalid, the rights, obligations and interests of the employee shall be resolved in accordance with provisions of law; if a labour contract is invalid because it was signed contrary to authority, then the two parties shall resign the contract.

3 The Government shall provide detailed regulations on this article.

Section 5

Labour Outsourcing

Article 52 *Labour outsourcing [or sub-leasing]*

1 *Labour outsourcing* means an employee who entered into a labour contract with an employer namely a labour outsourcing enterprise [being the first employer] is thereafter transferred to work for another employer and is subject to management by such other employer but maintains the labour relationship with the first employer.

2 Labour outsourcing is an industry or trade [business line] subject to conditions and may only be conducted by an enterprise with a licence for labour outsourcing activities and is only applicable to a number of specified jobs.

Article 53 *Principles for labour outsourcing [or sub-leasing]*

1 The maximum period of any labour sub-lease of an employee is twelve (12) months.

2 The labour sub-lessee may use the outsourced employee/worker in the following cases:

(a) To satisfy a temporary, unexpected increase in the need for labour during a specified period;

(b) To replace an employee during her period of maternity leave or during the time he or she was subject to a work accident, an occupational disease or having to discharge citizens' obligations;

(c) There is a need to employ an employee/s with high technical skills.

3 The labour sub-lessee is not permitted to use an outsourced employee in the following cases:

(a) To replace an employee currently exercising the right to strike or resolving a labour dispute;

(b) Where there is no agreement on liability to pay compensation for a labour accident or occupational disease of the sub-leased employee with the sub-leasing employer;

(c) To replace an employee who is retrenched due to structural or technological changes, for economic reasons or due to a division, separation, consolidation or merger.

4 The labour sub-lessee is not permitted to transfer the sub-leased employee to another employer; and is not permitted to employ sub-leased employees provided by an enterprise without a labour outsourcing licence.

Article 54 *Labour outsourcing enterprises*

1 A labour outsourcing enterprise must pay an escrow deposit and must be issued with a labour outsourcing licence.

2 The Government shall provide regulations on the escrow deposit, and the conditions, sequence and procedures for issuance, re-issuance, extension and revocation of a labour outsourcing licence and shall regulate the list of jobs for which labour is permitted to be outsourced.

Article 55 *Labour sub-lease contract*

1 The labour outsourcing enterprise and the sub-leasing employer [labour sub-lessee] must sign a labour sub-lease contract in writing, which contract must be made in two copies with each party to receive one copy.

2 A labour sub-lease contract must contain the following main particulars:

(a) Work address, description of the job which requires a sub-leased employee; specific contents of the job, and specific requirements applicable to the sub-leased employee;

(b) Term of the labour sub-lease, and date of commencement of work by the sub-leased employee;

(c) Working hours, rest breaks, and conditions on occupational safety and hygiene at the workplace;

(d) Liability to pay compensation for a labour accident or occupational disease;

(dd) Obligations of all parties owed to the employee.

3 A labour sub-lease contract must not contain agreements on the rights and interests of the employee which are less (favourable) than those in the labour contract which the labour outsourcing enterprise signed with the employee.

Article 56 *Rights and obligations of labour outsourcing enterprises*

A labour outsourcing enterprise has, in addition to the rights and obligations prescribed in article 6 of this Code, the following rights and obligations:

1 To ensure that the employee who is provided has the professional qualifications which match the requirements of the labour sub-lessee and the contents of the labour contract which the labour outsourcing enterprise signed with the employee.

2 To notify employees of the contents of labour sub-lease contract.

3 To notify the labour sub-lessee of the curriculum vita of the employee or of the requirements (if any) of the employee.

4 To ensure that the sub-leased employee receives a wage not lower than the wage of an employee of the sub-leasing employer with the same professional qualifications and doing the same job or a job of the same value.

5 To formulate a file recording the number of sub-leased employees and sub-leasing employers, and to report same periodically to the specialized agency for labour under the provincial people's committee.

6 To discipline any sub-leased employee in breach of labour discipline when the sub-leasing employer returns such employee because of a breach of labour discipline.

Article 57 *Rights and obligations of sub-leasing employers*

1 To inform and guide sub-leased employees of the internal labour rules and other regulations of the sub-leasing employer.

2 Not to discriminate regarding labour conditions as between sub-leased employees and other employees of such sub-leasing employer.

3 To reach agreement with any sub-leased employee on night work or overtime in accordance with the provisions of this Code.

4 To reach agreement with the sub-leased employee and the labour outsourcing enterprise to officially recruit the sub-leased employee to work for the sub-leasing employer in a case where the labour contract of the sub-leased employee with the outsourcing enterprise has not yet terminated.

5 To return the employee to the labour outsourcing enterprise if the former fails to satisfy the agreed requirements or is in breach of labour discipline.

6 To provide evidence to the labour outsourcing enterprise of any breach of labour discipline by the sub-leased employee in order to consider disciplinary measures to be taken.

Article 58 *Rights and obligations of sub-leased employees*

A sub-leased employee has, in addition to the rights and obligations prescribed in article 5 of this Code, the following rights and obligations:

1 To perform work in accordance with the labour contract signed with the labour outsourcing enterprise.

2 To comply with labour discipline and internal labour rules, and to comply with lawful management, executive operation and supervision of the sub-leasing employer.

3 To be paid a wage not lower than the wage of an employee of the sub-leasing employer with the same professional qualifications and doing the same job or a job of the same value.

4 To make a complaint to the labour outsourcing enterprise if the sub-leasing employer breaches the contents of the labour sub-lease contract.

5 To reach agreement on termination of the labour contract with the outsourcing labour enterprise aimed at entering into a labour contract with the sub-leasing employer.

CHAPTER 4

Vocational/Trade Training and Development of Vocational Skills

Article 59 *Vocational [trade] training and development of vocational skills*

1 Workers/employees have the right to themselves select vocational training and participation in assessment and recognition of their national occupational/trade skills and development of such skills suitable for their own job requirements and ability.

2 The State encourages employers with sufficient conditions to provide vocational training and to develop vocational skills of the employees working for such employer and for other workers in society via the following activities:

(a) Setting up a vocational training establishment or opening vocational training classes at the workplace in order to train, re-train, foster and raise job and professional skills and standards for the employees; or by co-ordinating with a vocational education establishment to arrange training classes at the preliminary, intermediate and college levels and other occupational training programs in accordance with regulations;

(b) Arranging vocational skills exams for employees; joining vocational skills councils; forecasting demand for and formulating occupational skill standards; arranging assessments and recognition of occupational skills; and developing the professional capacity of employees/workers.

Article 60 *Responsibilities of employers to train, foster and raise trade and professional skills and standards*

1 Employers shall formulate an annual plan and allocate funding for training and for organizing training and fostering the raising of trade and professional skills and standards for the employees working for them; and shall train employees before they are assigned to work in different jobs for such employer.

2 On an annual basis, employers must notify the results of their training and fostering the raising of trade skills and levels to the specialized agency for labour under the provincial people's committee.

Article 61 *Apprenticeship and practical training in order to work for an employer*

1 *Apprenticeship in order to work for the employer* means the employer recruits a worker to train him or her in the workplace. The duration of an apprenticeship shall be based on the training program at each level in accordance with the *Law on Vocational Education.*

2 *Providing practical training to a trainee in order to work for the employer* means the employer recruits the trainee to guide him or her in job training and practical training depending on the particular work or job, at the workplace. The duration of the practical training must not exceed three (3) months.

3 Employers who recruit people for apprenticeship or practical training to work for such employer are not required to register vocational education activities, must not collect tuition fees, and must sign training contracts in accordance with the provisions of the *Law on Vocational Education*.

4 Apprentices and trainees undergoing practical training must be aged a full fourteen (14) years or more and must have health adequate for the requirements of the apprenticeship or practical training. Apprentices and trainees for jobs on the list of heavy, hazardous, toxic or dangerous jobs or extremely heavy, toxic and dangerous jobs issued by the Minister of Labour must be aged a full eighteen (18) years or more except in the sectors of the arts, physical training and sports.

5 If during the period of apprenticeship or practical training the apprentice or trainee directly makes or participates in labour then the employer must pay such person a wage at a rate agreed by the two parties.

6 At the end of the apprenticeship or practical training period, the two parties must enter into a labour contract if all conditions prescribed in this Code are satisfied.

Article 62 *Vocational [trade] training contract between the employer and employee, and vocational training fees*

1 The two parties must sign a trade training contract if the worker is provided with training, job and professional skills improvement or re-training in Vietnam or overseas with funding provided by the employer, including funding donated to the employer by a business partner.

A trade training contract must be made in two copies, each party to retain one copy.

2 A trade training contract must include the following basic particulars:

(a) The trade in which training is provided;

(b) Location, period and wages during the training period;

(c) Time committed to compulsorily work after being trained;

(d) Training fees and responsibility to refund training fees;

(dd) Responsibilities of the employer;

(e) Responsibilities of the employee.

3 Training fees comprise fees with valid source vouchers for expenses paid to trainers, training materials, school classes, machinery, equipment and practical materials, other expenses paid to support the trainee, wages, and social insurance and health insurance and unemployment insurance [premiums] paid for the trainee during the training period. If a worker is sent overseas for training, then the training fees also include travelling and living expenses for the period the worker trains.

CHAPTER 5

Discussion at the Workplace, Collective Bargaining, and Collective Labour Agreements

Section 1

Discussion at the Workplace

Article 63 *Arranging discussion at the workplace*

1 *Discussion at the workplace* means sharing information, consulting, discussing and exchanging opinions as between the employer and the employees or organizational representing the employees on issues relevant to the rights, benefits and interests of the parties in the workplace, aimed at strengthening understanding, cooperation and mutual effort towards solutions solving problems in the joint interest [mutual benefit].

2 Employers must arrange discussions at the workplace in the following cases:

(a) Periodic discussion, at least once each year;

(b) Discussion when requested by either or both parties;

(c) In the cases prescribed in articles 36.1(a), 42, 44, 93, 104, 118 and 128.1 of this Code.

3 Employers and employees or organizations representing employees are encouraged to undertake discussions in addition to those prescribed in clause 2 above.

4 The Government shall regulate the arrangement of discussions and the implementation of the democratic regulations at the grassroots level at the workplace.

Article 64 *Contents of discussion at workplaces*

1 The contents of discussion at the workplace prescribed in article 63.2 of this Code are compulsory.

2 In addition to the compulsory discussion items prescribed in clause 1 above, the parties may select one or more of the following items to be discussed:

(a) Status of production and business of the employer;

(b) Performance of labour contracts, of the collective labour agreement, of internal labour rules and other regimes/rules, and of other undertakings and agreements at the workplace;

(c) Working conditions;

(d) Requests to the employer from the employees and organizations representing employees;

(dd) Requests from the employer to the employees and to organizations representing employees;

(e) Other matters in which either or both parties are interested.

Section 2

Collective Bargaining

Article 65 *Collective bargaining*

Collective bargaining means negotiation and reaching agreement between one party being one or more organizations representing employees with one other party being one or more employers or organizations representing employers, aimed at formulating labour conditions and provisions on the relationship between the parties and formulating a progressive, harmonious and stable labour relationship.

Article 66 *Principles for collective bargaining*

Collective bargaining is conducted on the principles of voluntariness, co-operation, goodwill, equality, publicity and transparency.

Article 67 *Matters subject to collective bargaining*

The parties engaging in collective bargaining may choose one or more of the following matters on which to conduct collective bargaining:

1 Wages, allowances, wage rises, bonuses, meal allowances and other regimes.

2 Labour rates and working hours, holidays, overtime and rest breaks between shifts.

3 Ensuring job security for employees.

4 Ensuring occupational safety and hygiene, and implementation of the internal labour rules.

5 Operational conditions and methods [means] of organizations representing employees; and the relationship between the employer and organizations representing employees.

6 Regimes and methods for preventing or resolving labour disputes.

7 Ensuring gender equality, protection of maternity, annual leave, and prevention of violence and sexual harassment at the workplace.

8 Other matters which are of interest to either or both parties.

Article 68 *Right to conduct collective bargaining of organizations representing the employees at the grassroots level at the enterprise*

1 An organization representing employees at the grassroots level has the right to require the conduct of collective bargaining when it has the minimum ratio of its members over the total number of employees at the enterprise as prescribed in Government regulations.

2 If there are several organizations representing employees at the grassroots level which satisfy the provision in clause 1 above, then the organization with the most members at the enterprise ["the most representative organization"] is the organization with the right to require conduct of collective bargaining. Other organizations representing employees at the grassroots level have the right to participate in collective bargaining arranged by the most representative organization when the latter consents.

3 If an enterprise has several organizations representing employees at the grassroots level but no such organization satisfies the provision in clause 1 above, then such organizations have the right to voluntarily coordinate with each other in requiring the conduct of collective bargaining, but the total number of members of such organizations must satisfy the minimum ratio prescribed in clause 1 above.

4 The Government shall provide regulations on resolution of disputes between the parties about the right [to require the conduct of] collective bargaining.

Article 69 *Representation at collective bargaining at the enterprise*

1 The number of people of each party participating in collective bargaining shall be as agreed upon by the parties.

2 The composition of participants of one party in collective bargaining shall be as decided by such party.

If the employer's party has a number of representative organizations participating in the collective bargaining as prescribed in article 68.2 of this Code, then such representative organizations have the right to request negotiation to decide on the number of representatives of each participating group.

If the employees' party has a number of representative organizations participating in the collective bargaining pursuant to article 68.3 of this Code, then the number of representatives from each such organization shall be as agreed by the organizations. If the organizations are unable to reach agreement, then the number of representatives from each such organization shall be determined on the basis of the ratio of the number of members of each organization over the total number of members of all the organizations.

3 Each collective bargaining party has the right to invite its higher level representative organization to appoint people to participate being collective bargaining representatives and the other party is not permitted to refuse same. The number of collective bargaining representatives of either party is not permitted to exceed the number prescribed in clause 1 above, unless the other party consents.

Article 70 *Sequence for collective bargaining at the enterprise*

1 When there is a request for collective bargaining made by the organization representing employees at the grassroots level which has the right to make such request as prescribed in article 68 of this Code or where a request is made by the employer, the party receiving such request is not permitted to refuse collective bargaining.

Within seven (7) working days after receipt of a request for collective bargaining and the items to be negotiated, the parties shall reach agreement on the location and time for commencing the collective bargaining session.

The employer is responsible to arrange the time, location and other necessary conditions in order to hold the collective bargaining session.

The commencement time of the collective bargaining session must be no later than thirty (30) days after receipt of the request for collective bargaining.

2 The duration of collective bargaining must not exceed ninety (90) days from the commencement date, unless the parties reach some other agreement.

The time which employees' representatives spend at collective bargaining sessions must be calculated as working time entitled to payment of wages. Where employees are members of an organization representing employees participating in a collective bargaining session, then the time spent to attend such sessions shall not be calculated in the time prescribed in article 176.2 of this Code.

3 If during the collective bargaining process there is a request from a representative of the employees, then within ten (10) days after the date of such request, the party being the employer is responsible to provide information about the status of production and business activities or about other matters directly related to the matter subject to collective bargaining within the scope of the enterprise, aimed at creating favourable conditions for the collective bargaining, but is not obliged to provide information about business secrets or technology secrets of the employer.

4 Organizations representing employees at the grassroots level have the right to hold discussions and obtain opinions from employees on the matters [subject to collective bargaining], on the methods for proceeding with same and on the results of such bargaining process.

Organizations representing employees at the grassroots level shall decide the time, location and method of holding such discussions and obtaining opinions from the employees, but without adversely affecting the normal production and business operation of the enterprise.

The employer is responsible not to cause difficulties or to hinder or interfere in the process of any organization representing employees discussing and obtaining opinions from employees.

5 Minutes of a collective bargaining session must be prepared, specifying the matters on which the two parties have reached agreement, and the matters on which they still have different opinions. Such minutes must be signed by the representatives of the negotiators and by the person preparing the minutes. An organization representing employees at the grassroots level must publicly and widely announce the minutes of the collective bargaining session to all employees.

Article 71 *Unsuccessful collective bargaining*

1 Collective bargaining is deemed unsuccessful in any one of the following cases:

(a) One of the parties refuses or fails to conduct negotiation within the time-limit prescribed in article 70.1 of this Code;

(b) The time-limit prescribed in article 70.2 has expired without the parties reaching any agreement;

(c) The time-limit prescribed in article 70.2 has not expired and the two parties jointly decide and announce that the collective bargaining has not resulted in an agreement.

2 If collective bargaining is unsuccessful, the parties shall conduct procedures to petition for labour dispute resolution in accordance with the provisions of this Code. During the period in which the labour dispute is being resolved, an organization representing employees is not permitted to hold a strike.

Article 72 *Industry collective bargaining, and collective bargaining involving participation of multiple enterprises [multi-enterprise collective bargaining]*

1 The principles and matters subject to industry collective bargaining and multi-enterprise collective bargaining are implemented in accordance with the provisions in articles 66 and 67 of this Code.

2 The process and method for conducting industry collective bargaining and multi-enterprise collective bargaining shall be as agreed and decided by the parties, and shall include reaching agreement on conducting collective bargaining via a collective bargaining Council as prescribed in article 73 of this Code.

3 The representatives to participate in negotiation during industry collective bargaining shall be as decided by the industry trade union and the industry level organization representing the employer.

The representatives to participate in negotiation during multi-enterprise collective bargaining shall be as decided by the negotiating parties on the basis of voluntariness and reaching agreement.

Article 73 *Multi-enterprise collective bargaining via a collective bargaining Council*

1 On the basis of consensus, the parties to multi-enterprise collective bargaining may request the provincial people's committee in the locality where the participating enterprises have their headquarters or if such enterprises have their headquarters in a number of provinces and cities under central authority then in the location selected by the parties, to establish a collective bargaining Council to conduct such bargaining.

2 On receipt of a request from multi-enterprise collective bargaining parties, the provincial people's committee shall make a decision establishing a collective bargaining Council to hold the collective bargaining. Such Council shall comprise:

(a) A chairman as decided by the parties who is responsible for co-ordinating the activities of the Council and for assisting the parties to conduct the collective bargaining;

(b) Representatives of the negotiating parties as appointed by each party., The number of such representatives of each party shall be as agreed by the parties;

(c) Representative of the provincial people's committee.

3 The Council shall hold negotiation as requested by the parties and to automatically terminate its activities when a multi-enterprise collective labour agreement is entered into or as agreed by the parties.

4 The Minister of Labour, War Invalids and Social Affairs shall regulate the functions, duties and operation of the collective bargaining Council.

Article 74 *Responsibilities of the provincial people's committee during collective bargaining*

1 To organize training and fostering on collective bargaining skills for participants in collective bargaining.

2 To formulate and provide information and data on socio-economics, the labour market and labour relationships in order to assist and promote collective bargaining.

3 On its own initiative or on request by the negotiators, to provide support to help the parties reach an agreement during the collective bargaining process; and in the absence of any request, the provincial people's committee shall only provide support if both parties agree for same.

4 To establish a collective bargaining Council with multi-enterprises on request by the negotiators as prescribed in article 73 of this Code.

Section 3

Collective Labour Agreements

Article 75 *Collective labour agreements*

1 *Collective labour agreement* means an agreement reached via collective bargaining and entered into [signed] by the parties in writing.

Collective labour agreements comprise an agreement of the enterprise labour collective, an agreement of the industry labour collective, a multi-enterprise collective labour agreement and other collective labour agreements.

2 The contents of a collective labour agreement must not be contrary to the provisions of law and it is encouraged that a collective labour agreement should have higher benefits for employees than those stipulated by law.

Article 76 *Obtaining opinions in favour and signing a collective labour agreement*

1 Before an enterprise collective labour agreement is signed/entered into, the draft agreement as negotiated by the parties must be provided to obtain opinions in favour from all the employees in the enterprise. An enterprise collective labour agreement may only be entered into when more than 50% of the employees of the enterprise vote in favour of it.

2 In the case of an industry collective labour agreement, the people from whom an opinion in favour must be obtained shall be all members being leaders of the organizations representing employees in all enterprises participating in the negotiation. An industry collective labour agreement may only be entered into when more than 50% of the total people from whom votes are taken are in favour of it.

In the case of a multi-enterprise collective labour agreement, the people from whom an opinion in favour must be obtained shall be all employees in the enterprises taking part in the bargaining or all

members being leaders of the organizations representing employees in the enterprises participating in the negotiations. Only enterprises with above 50% of the people from whom votes were taken in favour may sign a multi-enterprise collective labour agreement.

3 The organization representing employees shall make a decision on the time, location and method for obtaining opinions and voting on the draft collective labour agreement but must not adversely affect the normal production and business operation of enterprises participating in the negotiations. Employers are not permitted to cause difficulties, hinder or interfere in the process of such organization obtaining opinions and voting on the draft agreement.

4 Collective labour agreements shall be entered into by the legal representatives of the negotiating parties.

If a multi-enterprise collective labour agreement is reached via the collective bargaining Council, then it shall be signed by the chairman of such Council and by the legal representatives of the negotiating parties.

5 A collective labour agreement must be sent to each signing party and to the specialized agency for labour under the provincial people's committee prescribed in article 77 of this Code.

In the case of an industry collective labour agreement and a multi-enterprise collective labour agreement, each employer and each organization representing employees in the enterprises participating must receive one copy.

6 After a collective labour agreement is signed, the employer must publicly announce it for the information of all employees.

7 The Government shall provide detailed regulations on this article.

Article 77 *Sending copies of a collective labour agreement*

Within ten (10) days after the date of signing a collective labour agreement, the employer/s participating in such agreement must send one (1) copy of it to the specialized agency for labour under the provincial people's committee.

Article 78 *Effective date and term of collective labour agreement*

1 The effective date of a collective labour agreement shall be as agreed by the parties and must be recorded in the agreement. If the parties are unable to reach agreement, then the effective date of the collective labour agreement shall be the date of signing.

The parties must respectfully implement a collective labour agreement after it has been signed.

2 An enterprise collective labour agreement is effective and applicable to the employer and all the employees of the enterprise. An industry collective labour agreement and a multi-enterprise collective labour agreement are effective and applicable to all the employers and employees of the enterprises participating in such collective labour agreement.

3 The term of a collective labour agreement shall be from one (1) year up to three (3) years. The specific term shall be as agreed by the parties and recorded in the agreement. The parties have the right to reach agreement on different effective terms for different contents of a collective labour agreement.

Article 79 *Implementation of a collective labour agreement at the enterprise*

1 Employers, and employees including employees who commenced work after the effective date of the collective labour agreement, are obliged to fully implement such agreement while it is effective.

2 If the rights, obligations and interests of parties to a labour contract entered into prior to the effective date of a collective labour agreement are lower than the corresponding provisions of such agreement, then they must comply/implement the collective labour agreement. Rules of the employer which are inconsistent with the collective labour agreement must be amended for compliance; and during the period pending such amendment, the corresponding provisions of the collective labour agreement must be implemented.

3 If one party considers that the other party has failed to fully comply with or is in breach of the collective labour agreement, the former party has the right to require correct compliance with such agreement and the parties are responsible to jointly consider and resolve the problem; if the problem cannot be resolved, each party has the right to request settlement of the collective labour dispute in accordance with law.

Article 80 *Implementation of an enterprise collective labour agreement in a case of separation, division, consolidation or merger [of the enterprise]; or a sale, leasing out, conversion of enterprise type; or a transfer of the ownership or use right of the assets of the enterprise*

1 In a case of separation, division, consolidation or merger [of the enterprise]; or a sale, leasing out, conversion of enterprise type; or a transfer of the ownership or use right of the assets of the enterprise, the next employer and the organization representing the employees have the right to conduct collective bargaining pursuant to article 68 of this Code based on the labour usage plan, in order to consider and select to continue implementing the old enterprise collective or to amend it, or to negotiate and sign a new such agreement.

2 If an enterprise collective labour agreement becomes invalid because the employer terminates its [the employer's] operation, the interests of the employees shall be resolved in accordance with provisions of law.

Article 81 *Relationship between an enterprise collective labour agreement and an industry collective labour agreement and a multi-enterprise collective labour agreement*

1 If the enterprise collective labour agreement, multi-enterprise collective labour agreement and industry collective labour agreement have different provisions on the rights, obligations and interests of the employees, then the contents [provisions] which are most beneficial to the employees shall be implemented.

2 An enterprise which is subject to an industry collective labour agreement or multi-enterprise collective labour agreement and which does not yet have an enterprise collective labour agreement may formulate such enterprise collective labour agreement with provisions more beneficial to the employees compared to the industry collective labour agreement or multi-enterprise collective labour agreement.

3 Enterprises not yet parties to an industry collective labour agreement or multi-enterprise collective labour agreement are encouraged to implement the provisions of either of such agreements which are most beneficial to the employees.

Article 82 *Amendments and additions to collective labour agreement*

1 An amendment or addition to a collective labour agreement may only be made by voluntary agreement by the parties and via collective bargaining.

The amendment or addition to the collective labour agreement shall be made the same as negotiating and signing of a collective labour agreement.

2 If there is a change of law resulting in a collective labour agreement becoming inconsistent with provisions of law, then the parties must amend or supplement such agreement for compliance with

the new provisions of law. During the period of making amendments or additions to the collective labour agreement, the rights and interests of employees shall be implemented in accordance with law.

Article 83 *Expired collective labour agreement*

Within ninety (90) days prior to the expiry date of a collective labour agreement, the parties may negotiate to extend the term of such agreement or they may enter into a new agreement. If the term is extended, then opinions in favour from the employees must be obtained pursuant to article 76 of this Code.

When a collective labour agreement expires and the parties are continuing to negotiate, the old agreement shall continue to be implemented for a period not to exceed ninety (90) days after the date of expiry of the collective labour agreement, unless the parties have some other agreement.

Article 84 *Extension of the applicable scope of an industry collective labour agreement or multi-enterprise collective labour agreement*

1 When an industry collective labour agreement or multi-enterprise collective labour agreement has an applicable scope of above 75% of the employees or above 75% of the enterprises in the same industry or sector within an industrial zone, economic zone, export processing zone or high-tech zone, then the employer or organization representing employees [may] request the competent State agency to make a decision extending the applicable scope of part or all of such agreement to other enterprises in the same industry or sector within the industrial zone, economic zone, export processing zone or high-tech zone.

2 The Government shall provide detailed regulations on clause 1 above; and regulate the sequence, procedures and authority to issue a decision expanding the applicable scope of a collective labour agreement as prescribed in clause 1 above.

Article 85 *Accession to or withdrawal from an industry collective labour agreement or multi-enterprise collective labour agreement*

1 An enterprise may accede to an industry collective labour agreement or multi-enterprise collective labour agreement when there is consent from all the employers and the organizations representing employees in the enterprises which are members of such agreement, except in the case prescribed in article 84.1 of this Code.

2 An enterprise which is a member of an industry collective agreement or multi-enterprise collective labour agreement may withdraw from such agreement if there is consent from all employers and organizations representing employees in the enterprises which are members of such agreement, except in cases of special difficulty during business and production activities.

3 The Government shall provide detailed regulations on this article.

Article 86 *Invalid collective labour agreement*

1 A collective labour agreement is partially invalid if one or a number of items in it are contrary to law.

2 A collective labour agreement is wholly invalid in any of the following circumstances:

(a) The entire contents of the agreement are contrary to law;

(b) A person signing the agreement lacked authority;

(c) The negotiation or signing of the collective labour agreement did not comply with the collective bargaining process.

Article 87 *Authority to declare a collective labour agreement invalid*

People's courts have the right to declare a collective labour agreement invalid.

Article 88 *Dealing with an invalid collective labour agreement*

When a collective labour agreement is declared invalid, then the rights, obligations and interests of the parties set out in the collective labour agreement and corresponding to the entire or partial invalidity shall be resolved in accordance with provisions of the law on labour and the lawful agreements in labour contracts.

Article 89 *Expenses for collective bargaining and for signing collective labour agreement*

The employer's side is responsible to pay all expenses of negotiating, signing, amending, supplementing, sending and announcing the collective labour agreement.

CHAPTER 6

Wages

Article 90 *Wages*

1 *Wages* means the amount of money which the employer pays to the employee pursuant to the agreement in order for the latter to undertake work, and includes the wage rate for a job or position and all wage allowances and other additional items.

2 The wage rate of an employee for a job or position must not be lower than the minimum wage rate.

3 Employers must ensure that wages are paid equally and regardless of gender to employees for jobs or work of the same value.

Article 91 *Minimum wage rate*

1 *Minimum wage rate* means the lowest wage rate payable to employees doing the most basic work in normal working conditions, aimed at ensuring the minimum level living conditions for an employee and his or her family, in conformity with the socio-economic developmental conditions.

2 The minimum wage rate is formulated in accordance with areas or regions and is fixed on a monthly and/or hourly basis.

3 The minimum wage rate is adjusted on the basis of minimum level living conditions of workers and their families; the relationship between such minimum wage rate and the minimum market wage rate; the consumer price index and the economic growth rate; the relationship between labour supply and demand; jobs and unemployment; labour productivity; and the ability of enterprises to pay.

4 The Government shall provide detailed regulations on this article, and decides and announces the minimum wage rate on the recommendation of the National Wage Council.

Article 92 *National Wage Council*

1 The National Wage Council is an agency which advises the Prime Minister of the Government on the minimum wage rate and on wage policies applicable to workers.

2 The Prime Minister of the Government establishes the National Wage Council which is composed of representatives from the Ministry of Labour, War Invalids and Social Affairs, Vietnam General Confederation of Labour and a number of organizations representing employers at the central level and independent experts.

3 The Government provides regulations on the functions, duties, organizational structure and operation of the National Wage Council.

Article 93 *Formulation of wage scales, wage tables and labour rates*

1 An employer must formulate wage scales, wage tables and labour rates as the bases for recruiting and employing workers and reaching agreement with them on the wage rate in accordance with the job or title stipulated in their labour contract, and on payment of such wages to employees.

2 Labour rates must be the average rates, ensuring that a large number of employees are able to achieve same without having to extend their normal working hours, and rates must be tested for application prior to official promulgation.

3 The employer must, when formulating wage scales, wage tables and labour rates, seek an opinion from the organization representing employees at the grassroots level in the case of locations [enterprises] which have such an organization.

Wage scales, wage tables and labour rates must be publicly announced at workplaces prior to their implementation.

Article 94 *Principles for payment of wages*

1 Employers must pay the wage in full and on time and directly to the employee. If an employee is unable to receive his or her wage directly, then the employer may pay same to another person lawfully authorized by such employee.

2 Employers must not restrict or interfere with the right of employees to decide how to spend their wages and must not use force or coerce employees to spend their wages on the purchase of goods sold or use of services provided by the employer or by a unit appointed by the employer.

Article 95 *Payment of wages*

1 Employers pay wages to employees based on the wage agreed in the labour contract, and on productivity and the quality of completion of work.

2 Wages stipulated in the labour contract and wages to be paid to employees must be stipulated in Vietnamese dong [VND], and [wages paid to] employees being foreigners in Vietnam may be paid in foreign currency.

3 On each occasion of payment of wages, the employer must provide a list of the wage payment to the employee recording wage payment, overtime wage payments, night work wage payments, and the items and amount of money withheld or deducted (if any).

Article 96 *Method of payment of wages*

1 The employer and the employee shall reach agreement on the method of payment of wages calculated by reference to time or by reference to products produced or completed pieces of work.

2 Wages may be paid in cash or via the personal account of an employee opened at a bank.

In the case of payment via a personal account of the employee opened at a bank, the employer must pay the service fees for opening the bank account and for remitting wages [into the bank account].

3 The Government shall provide detailed regulations on this article.

Article 97 *Periodic payment of wages*

1 An employee entitled to a wage calculated by reference to hours, days or weeks shall be paid at the end of the working hour, day or week or shall be paid a lump sum as agreed by the two parties, provided that one payment of wages is made at least every fifteen (15) days.

2 An employee entitled to a wage calculated by reference to months shall be paid either monthly or half-monthly. The time for payment of wages shall be as agreed by the two parties but must be fixed for a specified time in a cycle.

3 An employee entitled to a wage calculated on the basis of products produced or completed pieces of work shall be paid in accordance with the agreement reached between the two parties; if the work to be performed must be carried out over many months, the employee is entitled to monthly payments in advance calculated on the amount of work performed within the month.

4 In a special case as a result of a force majeure event after which the employer sought all remedial measures but was unable to pay wages on time, payment must not be more than thirty (3) days late; and if wages are paid fifteen (15) or more days late then the employer must compensate the employee by paying a sum of money equal to at least interest on the amount paid late at the rate for raising deposits with a term of one (1) month as announced at the time of payment by the bank where the employer has opened its account for payment of wages to employees.

Article 98 *Wages for working overtime and for night work*

1 An employee who works overtime must be paid according to the wage unit price or actual wage of his or her current work as follows:

(a) On normal days, at a rate of at least one hundred and fifty per cent (150%);

(b) On weekly days off [weekends], at a rate of at least two hundred per cent (200%);

(c) On holidays, New Year [Tet] and paid leave at a rate of at least three hundred per cent (300%) but excluding the wage for such holiday, New Year or paid leave in the case of employees receiving a daily wage.

2 An employee working at night shall be paid an additional minimum thirty per cent (30%) of the wage calculated at the wage unit price or actual wage for such work conducted during day time on normal days .

3 An employee working overtime at night shall be paid, in addition to the wages prescribed in clauses 1 and 2 of this article, an additional twenty per cent (20%) of the wage calculated at the wage unit price or wage for such work conducted during day time on normal days or at the wage for weekly days off [weekends] or for other holidays or for New Year.

4 The Government shall provide detailed regulations on this article.

Article 99 *Wages on ceasing work*

An employee who must cease work shall be paid as follows:

1 If ceasing work was due to the fault of the employer, the employee is entitled to payment of the full monetary wage in accordance with the labour contract.

2 If ceasing work was due to the fault of the employee, the employee is not entitled to payment of wages; and other employees in the same unit who also have to cease work shall be paid wages at a rate agreed on by the two parties but not less than the minimum wage rate.

3 If there is a breakdown in electricity or water through no fault of the employer or due to a natural disaster, fire, dangerous epidemic, enemy destruction, relocation of operational address pursuant to a request of the competent State authority or for economic reasons, then the two parties shall reach agreement on the level of wages for ceasing work as follows:

(a) If work was ceased for fourteen (14) or less working days, then the wage for ceasing work shall be as agreed but not less than the minimum wage rate;

(b) If work was ceased for more fourteen (14) working days then the wage for ceasing work to be paid shall be as agreed by the two parties but ensuring that the wage for ceasing work in the first fourteen (14) days is not lower than the minimum wage rate.

Article 100 *Payment of wages by contractor's foreman*

1 In locations where a foreman or person with an equivalent intermediary role is employed, the employer being the principal must have a list of such persons together with their addresses and also a list of employees working with the foreman or equivalent person, and the employer must ensure compliance by the foreman or equivalent person with the law on payment of wages and on occupational safety and hygiene.

2 If such foreman or equivalent person fails to pay wages in full or at all and fails to ensure other interests of the employees, then the employer being the principal is responsible to make payment of wages and to ensure the interests of employees.

In such case of failure to pay, the employer being the principal has the right to require compensation from the (contractor's) foreman or equivalent person, or to request a competent State agency to resolve the dispute in accordance with law.

Article 101 *Payment of wages in advance*

1 An employee is entitled to be paid wages in advance in accordance with the conditions agreed by both parties and shall not be charged interest.

2 The employer must pay wages in advance to an employee who is temporarily absent from work due to discharging citizen's obligations, for the number of days of temporary absence from one or more week but at a maximum of one (1) month's monetary wage stipulated in the labour contract and the employee is not required to refund the advance wage payment.

An enlisted person as prescribed in the *Law on Military Obligation* is not entitled to payment of wages in advance.

3 When taking annual leave, employees are entitled to an advance payment of at least an amount of money equal to the wages for the holidays.

Article 102 *Withholding or deducting sums from wages*

1 Employers are only permitted to withhold sums from employees' wages in order to receive payment of compensation for loss and damage to tools, equipment and assets of the employer pursuant to article 129 of this Code.

2 Employees have the right to know the reasons why sums were withheld from their wages.

3 The amount held or deducted from the monthly wage of an employee shall not exceed thirty per cent (30%) of the actual monthly wage of the employee after deducting contributions to compulsory social insurance, health insurance, unemployment insurance and personal income tax.

Article 103 *Regime on wage increases, upgrades [promotion], allowances and subsidies*

The regime on wage increases, upgrades [promotion], allowances and subsidies and other encouragement regimes for employees shall be as agreed in the labour contract, the collective labour agreement or rules of the employer.

Article 104 *Bonuses*

1 *Bonus* means a sum of money or assets or other forms which the employer grants an employee based on production and business results [and] the level at which the employee has completed his or her work.

2 The rules on payment of bonuses shall be decided by the employer and publicly announced at workplaces after consulting the opinion of the organization representing the employees at the grassroots level in the case of locations [enterprises] which have such an organization.

CHAPTER 7

Working Hours and Rest Breaks

Section 1

Working Hours

Article 105 *Normal working hours*

1 Normal working hours shall not exceed eight (8) hours in one day and forty-eight (48) hours in one week.

2 Employers have the right to stipulate working hours on a daily or weekly basis but must notify same to the employee; if on a weekly basis, then normal working hours must not exceed ten (10) hours in one day and must not exceed 48 hours in one (1) week.

The State encourages employers to implement the forty (40) hour working week for employees.

3 Employers are responsible to ensure that the limits on working hours are consistent with dangerous elements and toxic elements in accordance with the national technical specifications and relevant laws.

Article 106 *Night working hours*

Night working hours shall be calculated from 10 pm until 6 am of the following day.

Article 107 *Additional working hours (overtime)*

1 Overtime means the period of time spent working in addition to normal working hours as stipulated by law, in the collective labour agreement or in internal labour rules.

2 Employers have the right to require employees to work overtime when all the following requirements are satisfied:

(a) The employer must have consent from the employee;

(b) The employer ensures the number of overtime hours of the employee does not exceed 50% of the normal working hours in one day, and if the employer stipulates normal working hours on a weekly basis then the total of normal working hours plus overtime hours must not exceed twelve (12) hours in one day, and must not exceed forty (40) hours in one (1) week;

(c) The employer ensures that overtime hours of the employee do not exceed two hundred (200) hours in any one (1) year, except in the case prescribed in clause 3 of this article.

3 An employer is permitted to employ employees to work overtime hours not in excess of three hundred (300) in one year in a number of industries, trades and jobs or in the following cases:

(a) Production and processing of export products being textiles, garments, leather, shoes, electrical and electronic components, and processing of agricultural, forestry, salt and aquatic products;

(b) Power production and supply, telecommunications, oil refining, water supply and water drainage;

(c) In order to resolve work requiring highly qualified technicians which the labour market is unable to fully and promptly supply;

(d) In order to resolve urgent work which cannot be delayed due to it being of a seasonal nature and the timing of [supply of] raw materials and products, or in the case of resolving work/jobs arising due to unforeseeable objective factors due to the consequences of weather, natural disaster, fire, enemy attack, power shortage, lack of raw materials, or technical problems with a production line;

(dd) In other cases as regulated by the Government.

4 When arranging overtime as prescribed in clause 3 above, an employer must provide written notice to the specialized agency for labour under the provincial people's committee.

5 The Government shall provide detailed regulations on this article.

Article 108 *Working hours in special cases*

Employers have the right to request employees to work overtime on any day at all and without restriction on the number of overtime hours as prescribed in article 107 of this Code and employees are not permitted to refuse in the following cases:

1 To implement a mobilization order to ensure national defence and security tasks in accordance with law.

2. To carry out work aimed at ensuring preservation of human life and assets of agencies, organizations and individuals during prevention and remedying consequences of a natural disaster, fire, dangerous epidemic or tragedy, except where there is a risk of adverse impact on the life or health of employees in accordance with the law on occupational safety and health.

Section 2

Rest Breaks

Article 109 *Rest breaks during working hours*

1 An employee who works working hours as prescribed in article 105 of this Code from six (6) or more hours in one (1) day is entitled to a break of at least thirty consecutive (30) minutes; and an employee working a night shift is entitled to a break of at least forty-five (45) consecutive minutes.

If an employee works a shift of at least six (6) consecutive hours or more, the rest break shall be included in working hours.

2 In addition to the rest breaks prescribed in clause 1 above, employers shall arrange for employees to have one-off rest breaks and the employer shall stipulate them in the internal labour rules.

Article 110 *Rest breaks in order to transfer between shifts*

Employees working on shifts are entitled to a break of at least twelve (12) hours before moving to another shift.

Article 111 *Weekly days off*

1 In every week, an employee is entitled to a break of at least twenty-four consecutive hours. Where in special cases as a result of the labour cycle it is impossible for an employee to have weekly leave, the employer is responsible to ensure that the employee on average has at least four days off in one month.

2 An employer has the right to arrange scheduled weekly breaks for employees either on Sunday or other specified days in the week but must stipulate such arrangements in the internal labour rules.

3 When a weekly day off coincides with a public holiday or the New Year holiday prescribed in article 112.1 of this Code, then the employee is entitled to take a weekly day off on the following working day.

Article 112 *Festivals (public holidays) and New Year*

1 An employee is entitled to have fully paid days off on the following public holidays and New Year:

(a) Western New Year: one day (the first day of January of each calendar year);

(b) Lunar New Year Holiday: five days;

(c) Victory Day: one day (the thirtieth day of April of each calendar year);

(d) International Labour Day: one day (the first day of May of each calendar year);

(dd) National Day: two (2) days (the second day of September of each calendar year plus the immediately preceding or immediately following day);

(e) Hung Kings Commemoration Day: one day (the tenth day of March of each Lunar year);

2 Workers being foreigners working in Vietnam are, in addition to the public holidays prescribed in clause 1 above, also entitled to one traditional public holiday and one national day of their country.

3 Each year, based on the actual conditions, the Prime Minister for the Government shall make a specific decision on the holidays prescribed in sub-clauses (b) and (dd) of clause 1 above.

Article 113 *Annual leave*

1 An employee who has worked a full twelve (12) months for an employer is entitled to annual leave on full pay pursuant to the labour contract as follows:

(a) Twelve (12) working days for people who work in normal conditions;

(b) Fourteen (14) working days for employees who are juniors or who are disabled and for people performing heavy, toxic or dangerous trades or work;

(c) Sixteen (16) working days for employees performing extremely heavy, toxic or dangerous trades or work.

2 An employee working but who has not worked for any one (1) employer for a full twelve (12) months is entitled to annual leave at the ratio corresponding to the number of months for which he or she worked.

3 If an employee loses his or her job or is retrenched and has not taken all of his or her annual leave, such employee is entitled to payment of wages for the days for which leave has not yet been taken.

4 Employers are responsible to provide an annual leave schedule for their employees after consulting the employees and such schedule must be notified to employees for their information. An employee may reach agreement with the employer on taking annual leave in instalments or combining leave for a maximum three (3) years at one time.

5 When taking annual leave before a pay period, the employee is entitled to an advance payment of wages pursuant to article 101.3 of this Code.

6 If an employee on annual leave travels by road, rail or waterway and the number of days of the return trip is more than two (2), then the third and subsequent travelling days shall be calculated as travelling time in addition to annual leave [but] shall only be so calculated on one occasion of leave during the year.

7 The Government shall provide detailed regulations on this article.

Article 114 *Additional leave according to years of employment*

For every full five (5) years working for the one employer, the number of annual leave days of the employee as prescribed in article 113.1 of this Code shall be increased by one (1) day.

Article 115 *Personal leave of absence and leave without pay*

1 An employee is entitled to fully paid leave of absence for personal reasons and must notify the employer in the following circumstances:

(a) Marriage: three (3) days;

(b) Marriage of a natural or adopted child: one (1) day;

(c) Death of a natural or adoptive parent; or of a natural or adoptive parent of the employee's spouse [parent-in-law]; or of a spouse, or natural or adopted child: three (3) days.

2 An employee is entitled to one (1) day leave of absence without pay and must notify the employer on the death of a grandparent or sibling, or on the marriage of a parent or sibling.

3 In addition to the provisions in clauses 1 and 2 of this article, an employee may reach agreement with the employer on leave of absence without pay.

Section 3

Working hours and Rest Breaks for Workers on Jobs of a Special Nature

Article 116 *Working hours and rest breaks for workers on jobs of a special nature*

The managing ministry or branch [line ministry] shall provide specific regulations on working hours, rest breaks and holidays after reaching agreement with the Ministry of Labour, War Invalids and Social Affairs and in compliance with article 109 of this Code in the case of jobs of a special nature in the sectors of road transport, rail transport, waterways transport and aviation transport, and exploration and mining of petroleum at sea; in the case of offshore work; in the arts sector; use of radiation and nuclear technology; application of high radio frequency technology; in the case of informatics and informatics technology; research and application of advanced science and technology, in the case of industrial design; work of divers or work in underground mines; production of a seasonal nature and processing goods pursuant to orders; and work requiring attendance 24 hours per day and other work of a special nature as regulated by the Government.

CHAPTER 8

Labour Discipline and Liability for Damage

Section 1

Labour Discipline

Article 117 *Labour discipline*

Labour discipline means rules governing compliance with the timetable, technology and executive management of business and production as set out in the internal labour rules issued by the employer and stipulated by law.

Article 118 *Internal labour rules*

1 Employers must issue internal labour rules; employers who employ ten (10) or more employees must have internal labour rules in writing.

2 The contents of internal labour rules must not be contrary to the law on labour or other relevant laws. Internal labour rules must contain the following main items:

(a) Working hours and rest breaks;

(b) Order in the workplace;

(c) Occupational safety and hygiene;

(d) Prevention of sexual harassment in the workplace; and the sequence and procedures for dealing with a breach being an act of sexual harassment in the workplace;

(dd) Protection of assets, business secrets and confidentiality of technology and of intellectual property of the employer;

(e) Cases in which an employee may be temporarily transferred to undertake work different from that specified in his or her labour contract;

(g) Conduct by employees constituting a breach of labour discipline and forms of penalty imposed for those breaches;

(h) Liability for material damage;

(i) Who is the person authorized to impose disciplinary penalties.

3 The employer must, prior to issuing, amending or supplementing the internal labour rules, consult the opinion of the organization representing the employees at the grassroots level in the cases of location [enterprises] which have such an organization.

4 The internal labour rules must be notified to employees and the main items must be posted at essential locations in the workplace.

5 The Government shall provide detailed regulations on this article.

Article 119 *Registration of internal labour rules*

1 An employer employing ten (10) or more employees must register the internal labour rules with the specialized agency for labour under the provincial people's committee in the locality where the employer has registered business.

2 The employer must lodge a file for registration of the internal labour rules within ten (10) days after the date of issuing such rules.

3 Within seven (7) working days after the date of receipt of the file for registration of the internal labour rules, if such rules contain any provision contrary to law, the specialized agency for labour under the provincial people's committee shall notify and guide the employer to amend or supplement such rules and re-register them.

4 An employer with a branch, unit or production and business establishment in a different locality shall send the registered internal labour rules to the specialized agency for labour under the provincial people's committee in the locality of such branch, unit or establishment.

5 Based on specific conditions, the specialized agency for labour under the provincial people's committee may authorize the specialized agency for labour under district people's committees to register internal labour rules as prescribed in this article.

Article 120 *File for registration of internal labour rules*

A file for registration of internal labour rules comprises:

1 Written request for registration of the internal labour rules.

2 The internal labour rules.

3 Written opinion (if any) of the organization representing employees at the grassroots level in the cases of places [enterprises] which have such an organization.

4 Documents of the employer which contain regulations relevant to labour discipline and liability for material damage (if any).

Article 121 *Effective date of internal labour rules*

Internal labour rules are effective fifteen (15) days after the competent State agency prescribed in article 121 of this Code receives a complete file for registration of such internal labour rules.

When an employer employing less than ten (10) employees issues written internal labour rules, such rules are effective as decided by the employer within such rules..

Article 122 *Principles, sequence and procedures for dealing with breach of labour discipline*

1 The sequence for dealing with a breach of labour discipline is as follows:

(a) The employer must be able to prove the employee's fault;

(b) The organization representing employees at the grassroots level of which the employee being dealt with is a member must participate;

(c) The employee must be present and has the right to defend himself or herself or to employ a lawyer or an organization representing employees to do so; if the employee is under 15 years of age, the legal representative must participate;

(d) Minutes must be prepared of any dealing with a breach of labour discipline.

2 Multiple forms of penalty for breach of labour discipline shall not be applied to any one act of breach of labour discipline.

3 If any one employee commits multiple breaches of labour discipline at the same time, then only the highest form of penalty corresponding to the most serious breach shall be applied.

4 An employee shall not be dealt with for a breach of labour discipline during the following periods:

(a) The employee is on sick leave, is on leave for medical treatment or recuperation, or is on leave with the consent of the employer;

(b) The employee is detained or temporarily held in prison;

(c) The employee is awaiting results from a competent investigative agency on verifying and concluding whether conduct was in breach as prescribed in clauses 1 and 2 of article 125 of this Code;

(d) A female employee is pregnant or on maternity leave; or the employee is nursing a child under the age of 12 months.

5 An employee shall not be examined [dealt with] for a breach of labour discipline when he or she is suffering from a mental or other illness resulting in lack of awareness or inability to control his or her actions.

6 The Government shall provide regulations on the sequence and procedures for dealing with breaches of labour discipline.

Article 123 *Limitation period for dealing with breach of labour discipline*

1 The limitation period for dealing with a breach of labour discipline is six (6) months after the date the breach occurred; in a case of a breach directly relating to finance, property/assets, or disclosure of technological or business secrets of the employer, then the limitation period for dealing with the breach of labour discipline is twelve (12) months.

2 If on expiry of any period prescribed in article 122.4 of this Code the statute of limitations has expired or a period of sixty (60) days has not expired, the period for dealing with a breach of labour discipline may be extended but not to exceed sixty (60) days from the expiry of the above-mentioned time-limits.

3 The employer must issue a decision dealing with a breach of labour discipline within the period prescribed in clauses 1 and 2 of this article.

Article 124 *Forms of dealing with breach of labour discipline*

1 Reprimand.

2 Deferral of wage increase for a maximum six months..

3 Demotion.[2]

4 Dismissal.

Article 125 *Application of dismissal as a form of dealing with breach of labour discipline*

The employer may apply the form of dismissal in the following cases:

1 The employee commits an act of theft, embezzlement, gambling, deliberate violence causing injury, or uses drugs at the workplace.

2 The employee discloses technology or business secrets or infringes intellectual property rights of the employer, or is guilty of conduct causing serious loss and damage or of conduct which threatens to cause particularly serious loss and damage to property or interests of the employer or commits an act of sexual harassment at the workplace as defined in the internal labour rules.

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[2] Allens footnote: The meaning here is that the employee is relieved from his or her current position in the enterprise and demoted to the rank of an ordinary employee.

3 The employee is dealt with by the form of deferral of a wage increase [extending the period for the wage increase] or demotion and then commits a second offence during the period when the initial disciplinary measure had not been absolved. *Second [repeated] offence* means the employee continues the conduct in breach for which a disciplinary penalty was imposed but such penalty has not yet been absolved or cleared in accordance with article 126 of this Code.

4 The employee arbitrarily leaves the job for an accumulated five (5) days within thirty (30) days or an accumulated twenty (20) days within three hundred and sixty-five (365) days calculated from the first day of leaving work, without a justifiable reason.

The following shall be deemed to be a justifiable reason namely a natural disaster, fire, or illness of the employee or his or her relatives as certified by a competent medical diagnostic and treatment establishment or other circumstances prescribed in the internal labour rules.

Article 126 *Absolving or clearing a labour disciplinary decision, and reducing the term of compliance with a labour disciplinary decision*

1 The labour disciplinary decision/penalty shall automatically be absolved or cleared after three (3) months for an employee who is reprimanded; after six (6) months for an employee who is subject to the penalty of delaying a wage increase; and after three (3) years for an employee who is demoted, if the employee does not continue the conduct in breach.

2 An employee who was disciplined in the form of deferral of a wage increase and who has observed half of the term of the discipline and shows improvement, may be considered by the employer for a reduction of such term or period.

Article 127 *Conduct which is strictly prohibited when dealing with a breach of labour discipline*

1 Infringing the health, honour, life, prestige or dignity of employees.

2 Imposing a fine or reducing wages instead of dealing with the breach of labour discipline.

3 Dealing with an employee for conduct in breach of labour discipline when such conduct is not stipulated in the internal labour rules or is not subject to an agreement in the signed labour contract or the law on labour does not contain any provision on such conduct.

Article 128 *Temporary suspension of work*

1 An employer has the right to temporarily suspend an employee from working if the breach committed is complex in nature and it is considered that any further work carried out by the employee may jeopardize the investigation. An employee may only be temporarily suspended from work after consultation with the organization representing employees at the grassroots level of which the employee in question is a member.

2 A period of temporary suspension shall not exceed fifteen (15) days, or ninety (90) days in special circumstances. During that period, the employee shall be advanced fifty (50) per cent of his or her wage prior to the temporary suspension.

Upon expiry of the period of temporary suspension, the employer must receive the employee back to work.

3 Where the employee is dealt with for a breach of labour discipline, he or she shall not be required to repay the amount of wage advanced to him.

4 Where the employee is not dealt with for a breach of labour discipline, the employer must pay the full wage for the period of temporary suspension.

Section 2

Liability for Material Loss [Damage]

Article 129 *Payment of compensation for loss and damage*

1 An employee who damages tools or equipment or whose other conduct causes loss and damage to the assets of the employer must pay compensation in accordance with law or the internal labour rules of the employer.

Where an employee due to his or her negligence causes loss and damage which is not serious in that the value of the loss and damage does not exceed 10 months' minimum area wage as announced by the Government applicable to the place where the employee works, then the employee must pay a maximum compensation of three (3) months' wages which shall be deducted monthly from wages in accordance with the provisions in article 102.3 of this Code.

2 An employee who loses tools, equipment or assets of the employer or other property which the employer assigned to the employee, or who consumes materials in excess of the permitted norm must pay full or partial compensation at market prices or in accordance with the internal labour rules. If there is a contract on liability then the employee must pay compensation in accordance with such contract; no compensation is required if the loss was the result of a natural disaster, fire, enemy destruction, dangerous epidemic, tragedy or other objective event which was both unforeseen and irremediable although all necessary and permissible measures (to remedy same) were applied.

Article 130 *Principles, sequence and procedures for ordering payment of compensation for loss and damage*

1 An examination and decision on the amount of compensation for loss and damage must be based on fault, the actual level of loss and damage, and the actual family, personal and property status of the employee.

2 The Government shall regulate the sequence, procedures and limitation period for dealing with cases in which compensation for loss and damage is payable.

Article 131 *Complaints about labour discipline and about liability for loss and damage*

Where a person who is disciplined, temporarily suspended from work or ordered to pay compensation in accordance with the regime on liability for loss and damage is dissatisfied with the decision, he or she has the right to complain to the employer or to a competent agency in accordance with law, or to request resolution of a labour dispute in accordance with the procedures stipulated by law.

The Government shall provide detailed regulations on this article.

CHAPTER 9

Occupational Safety and Hygiene

Article 132 *Compliance with law on occupational safety and hygiene*

Employers, employees, and other agencies, organizations and individuals involved in labour activities, business or production must comply with the law on occupational safety and hygiene.

Article 133 *Program on occupational safety and hygiene*

1 The Government makes a decision on the national program on occupational safety and hygiene.

2 Provincial people's committees make a submission to the same level people's council to issue a decision on the local program on occupational safety and hygiene and include same within the [local] plan on socio-economic development.

Article 134 *Ensuring occupational safety and hygiene in the workplace*

1 Employers are responsible to fully implement solutions aimed at ensuring occupational safety and hygiene in the workplace.

2. Employees are responsible to observe regulations, rules, processes and requirements regarding occupational safety and hygiene; to comply with law and to master knowledge about and capacity for applying measures to ensure occupational safety and hygiene in the workplace.

CHAPTER 10

Separate Provisions on Female Employees and on Ensuring Gender Equality

Article 135 *State policies*

1 Ensuring equal rights for male and female employees in the workplace and ensuring gender equality and prevention of sexual harassment in the workplace.

2 Encouraging employers to facilitate male and female employees to have regular employment, and to widely apply an employment regime based on a flexible timetable with part-time work and home-based work.

3 Taking measures for creating jobs, improving working conditions, raising professional standards, improving health standards, and strengthening the material and spiritual welfare of female employees for the purpose of assisting them to achieve their professional potential and to harmoniously combine a working life with their family life.

4 Reducing tax of employers employing multiple female employees in accordance with the law on tax.

5 The State has a plan and measures for arranging nurseries [creches] and kindergartens at locations with numerous employees, and the State expands various forms of training favourable to female workers in order for them to gain additional skills and trades and to facilitate employment suitable to their biological and physiological characteristics as well as to their role as mothers.

6 The Government shall provide detailed regulations on this article.

Article 136 *Responsibilities of employers*

1 To ensure implementation and promotion of gender equality during recruitment, during arrangement of jobs and work, during training, and regarding working hours, rest breaks and holidays, wage rates and other regimes.

2 To consult the opinion of female employees or their representatives when making decisions on matters relevant to the rights and interests of women.

3 To ensure that female employees have adequate and suitable shower facilities and toilets in the workplace.

4 To provide assistance for the construction of nurseries and kindergartens, or to assist in covering part of the expenses incurred by employees with children in nurseries and kindergartens.

Article 137 *Protecting pregnancy*

1 An employer is not permitted to employ an employee to do night shift work, overtime, or to go on business trips to remote areas in the following circumstances:

(a) As from the employee's seventh month of pregnancy, or as from the sixth month of pregnancy in the case of work in mountainous or remote areas, border areas or on islands;

(b) The employee is nursing a child under twelve (12) months of age, except in a case where the employee consents.

2 A female employee with a job or work being heavy, toxic or dangerous work or particularly heavy, toxic or dangerous work or with a job or work adversely affecting reproductive function and the raising of children when pregnant and who notifies same to the employer, must be transferred to lighter or safer duties or her working hours must be reduced by one (1) hour each day and the employee's wages, other rights and interests must not be reduced until the end of the period of rearing the child under twelve (12) months of age.

3 An employer is not permitted to dismiss or unilaterally terminate the labour contract of an employee due to [her] marriage, pregnancy, maternity leave or nursing a child under twelve (12) months of age, except where the employer being an individual dies, or is declared by a court to have lost legal capacity for civil acts or to be missing or to be deceased; or the employer not being an individual terminates its operation or notification is issued by the professional agency for business registration under the provincial people's committee that the employer [enterprise] no longer has a legal representative or an authorized representative to exercise the rights and discharge the obligations of the legal representative.

In a case where the labour contract expires while the female employee is pregnant or nursing a child under twelve (12) months of age, priority must be given to entering into a new labour contract.

4 A female employee is entitled during her menstruation to a break of thirty (30) minutes every day, and during the period of nursing a child under twelve (12) months of age is entitled to a break of sixty (60) minutes every day in the working hours and must still be paid the same wage pursuant to her labour contract.

Article 138 *Right of female employee who is pregnant to unilaterally terminate or temporarily postpone performance of labour contract*

1 A female employee who is pregnant and has a certificate from a competent medical consulting or treating facility certifying that continued employment would adversely affect her foetus, has the right to unilaterally terminate or temporarily postpone implementation of her labour contract.

In a case of unilateral termination of the labour contract or temporary postponement of performance of the labour contract, notice must be provided to the employer enclosing certification from the competent medical consulting or treating facility that continued employment would adversely affect the foetus.

2 In a case of temporarily postponing performance of the labour contract, the period of such postponement shall be as agreed between the employer and the employee, but the minimum period shall equal the duration proposed by the competent medical consulting or treating facility. If such facility did not determine any period, then the duration of the temporary postponement of performance of the labour contract shall be as agreed upon by the two parties.

Article 139 *Maternity leave*

1 A female employee is entitled to prenatal and postnatal leave of six (6) months, but the maximum period of prenatal leave shall be two (2) months.

If a female employee gives birth to more than one child at the one time, she is entitled to an additional one (1) month's leave for each child counted from the second child.

2 During maternity leave, female employees are entitled to the regime on maternity leave prescribed in the law on social insurance.

3 On expiry of the maternity leave period prescribed in clause 1 above, if so required, the female employee may take additional leave without pay after reaching agreement with the employer.

4 Prior to expiry of the maternity leave period prescribed in clause 1 of this article, the female employee may return to work if she has had at least four (4) months' rest but must provide advance notice to the employer and must have consent from the employer and also a certificate from a competent medical consulting or treating facility that early resumption of work will not adversely affect the health of the employee. In this case, in addition to the wage for the days worked which the employer pays, the female employee is entitled to continue to receive a maternity leave allowance pursuant to the law on social insurance.

5 Male employees when their wives give birth, employees who adopt children under six (6) months of age, female employees who are surrogate mothers and employees being mothers requesting surrogacy may take leave and are entitled to the regime on maternity leave in accordance with the law on social insurance.

Article 140 *Guaranteeing jobs of employees on maternity leave*

Employees shall be guaranteed their old jobs on returning to work on expiry of their maternity leave period prescribed in clauses 1, 3 and 5 of article 139 of this Code, and their wages, rights and interests shall not be reduced as compared to what they were prior to maternity leave; if the employee's old job is no longer available, then the employer must arrange another job for the employee with a wage rate not lower than the wage rate prior to the employee taking maternity leave.

Article 141 *Subsidies during the time of taking care of a sick child, during the time of giving birth and when implementing contraceptive measures*

Employees are entitled to subsidies pursuant to the law on social insurance when taking leave to care for a sick child under seven (7) years of age, when attending a pregnancy examination, or for abortion including suction and curettage, or when suffering a stillbirth, or for pathologically induced abortion, or when implementing contraceptive measures, or for sterilization.

Article 142 *Occupations and work which have an adverse effect on the function of bearing and raising children*

1 The Minister of Labour shall issue a list of occupations and work which have an adverse effect on the function of bearing and raising children.

2 Employers must provide complete information about the dangerous nature, dangers and requirements of work in order for employees to make a selection and employers must ensure the conditions on occupational safety and hygiene for employees in accordance with regulations when employing them to undertake work on the list referred to in clause 1 above.

CHAPTER 11

Separate Provisions on Junior Workers and some other Classes of Workers

Section 1

Junior Workers

Article 143 *Junior workers*

1 *Junior worker* means a worker who is under eighteen (18) years of age.

2 Persons aged from a full fifteen (15) years to under eighteen (18) years of age must not work at jobs or workplaces prescribed in article 147 of this Code.

3 Persons aged from a full thirteen (13) years to under fifteen (15) years of age may only do light jobs on the list issued by the Ministry of Labour.

4 Persons under thirteen (13) years of age may only do the jobs prescribed in article 145.3 of this Code.

Article 144 *Principles on employing junior workers*

1 Junior workers are only permitted to do work suitable to their health so as to ensure their physical, spiritual and personal development.

2 Employers when employing junior workers are responsible to take care of them regarding their labour, health and study throughout the course of their employment.

3 An employer when employing a junior worker must have consent from the parent or guardian; and must formulate a separate monitoring book for the employee recording his or her full name, date of birth, current job and results of periodical health checks, and this record must be presented to the competent State authority on request.

4 Employers must facilitate cultural and vocational education and training including fostering to raise vocational skills and qualifications of junior workers.

Article 145 *Employment of workers under the age of fifteen (15) years*

1. Employers, when employing workers under the age of fifteen (15) years on jobs, must comply with the following provisions:

(a) A written labour contract must be entered into with the worker under fifteen (15) years of age and with the worker's legal representative;

(b) The arrangement of working hours must not adversely affect school study time of the employee under fifteen (15) years of age;

(c) There must be a health certificate from a competent medical consulting or treating facility confirming that the health of the worker under fifteen (15) years of age is appropriate for the job, and a health check must be conducted at least once every six months during employment;

(d) The working conditions must be ensured and occupational safety and hygiene conditions must be appropriate for the employee's age.

2 Employers are only permitted to recruit and employ workers from the age of a full thirteen (13) years to under fifteen (15) years in light work/jobs as prescribed in article 143.3 of this Code.

3 Employers are not permitted to recruit and employ workers under the age of thirteen (13) years to do jobs except those involving the arts, physical education and sports and which do not harm the

physical, intellectual and personal development of the worker under thirteen (13) years, and the employer must have consent from the professional agency for labour under the provincial people's committee.

4 The Minister of Labour shall provide detailed regulations on this article.

Article 146 *Working hours of juniors*

1 The working hours of a worker under the age of fifteen (15) years must not exceed four (4) hours per day and twenty (20) hours per week; and such junior employee is not permitted to work overtime or do night shift work.

2 The working hours of a worker aged from a full fifteen (15) years to under eighteen (18) years must not exceed eight (8) hours per day and forty (40) hours per week. A person aged from a full fifteen (15) years to under eighteen (18) years may work overtime and do night shift work in a number of trades and jobs on the list issued by the Minister of Labour.

Article 147 *Prohibited jobs and prohibited workplaces in the case of employees aged from a full fifteen (15) years to under eighteen (18) years*

1 It is prohibited to employ workers aged from a full fifteen (15) years to under eighteen (18) years of age in the following jobs:

(a) Carrying or lifting heavy objects beyond the physical capacity of a junior;

(b) Production and trading of alcohol, spirits, beer, tobacco, mentally addictive substances or other addictive substances;

(c) Production, use or transport of chemicals, gas or explosives;

(d) Maintenance of machinery and equipment;

(dd) Demolition of construction works;

(e) Boiling, melting, casting, grinding, stamping or welding metal;

(g) Scuba dividing, fishing or offshore aquaculture;

(h) Other work/jobs which are harmful to the physical, intellectual and personal development of the junior worker.

2 It is prohibited for employees aged from a full fifteen (15) years to under eighteen (18) years to work in the following locations:

(a) Underwater, underground, in caves or in tunnels;

(b) Construction sites;

(c) Abattoirs;

(d) Casinos, bars, dance halls, karaoke parlours, hotels, rest houses, saunas or massage parlours, or locations of lotteries or electronic games business services;

(dd) Other working locations which are harmful to the physical, intellectual and personal development of the junior worker.

3 The Minister of Labour shall regulate the list mentioned in clause 1(h) and clause 2(dd) above.

Section 2

Senior Workers

Article 148 *Senior workers*

1 *Senior worker* means a person who continues to work after he or she has reached the age prescribed in article 169.2 of this Code.

2 Senior workers have the right to reach agreement with their employer to reduce the number of working hours in a day or to apply the part-time work regime to them.

3 The State encourages employment of senor workers in jobs appropriate for their health in order to ensure the right to work and the effective employment of manpower resources.

Article 149 *Employment of senior workers*

1 When senior workers are recruited, the two parties may reach agreement on entering into a number of definite term labour contracts[3].

2 When a senior employee is receiving a pension pursuant to the *Law on Social Insurance* but continues to work pursuant to a new labour contract, such senior employee is also entitled, in addition to benefits under the retirement regime, to wages and other benefits stipulated by law and in the labour contract.

3 An employer is prohibited from assigning a senior employee to heavy, toxic or dangerous work or jobs or to particularly heavy, toxic or dangerous work or jobs which might have adverse effects on the health of the senior employee, unless safe working conditions are guaranteed.

4 Employers are responsible to take care of the health of senior employees in the workplace.

Section 3

Vietnamese Working Abroad; Labour for Foreign Organizations or Individuals in Vietnam; Foreign Employees Working in Vietnam

Article 150 *Vietnamese working abroad, and Vietnamese working for foreign organizations and individuals in Vietnam*

1 The State encourages enterprises, agencies, organizations and individuals to search and expand the labour market in order to send Vietnamese workers to work in foreign countries.

Vietnamese workers working abroad must comply with the law of Vietnam and the law of the foreign country, unless an international treaty of which Vietnam is a member contains some other provision.

2 Vietnamese citizens working in foreign organizations in Vietnam, in industrial zones, economic zones, export processing zones and hi-tech zones or working for individuals being foreign citizens in Vietnam, must comply with the law of Vietnam and shall be protected by law.

3 The Government shall provide detailed regulations on recruitment and management of Vietnamese working for foreign organizations and individuals in Vietnam.

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[3] Allens footnote: In other words, the policy is not to enter into indefinite term labour contracts with seniors; but to sign a definite term contract say for one year, and then at the end of the year to sign a further definite term contract.

Article 151 *Conditions for foreigners to work in Vietnam*

1 *Foreigners working in Vietnam* means people with foreign nationality who must satisfy the following conditions:

(a) Being a full eighteen (18) years of age and having full legal capacity for civil acts;

(b) Having professional qualifications, technical and other skills, work experience and good health as stipulated in regulations of the Minister of Health;

(c) Not being a person currently serving a sentence or with a criminal conviction which has not yet been absolved/removed from the record, and not subject to prosecution for criminal liability in accordance with the law of the foreign country or the law of Vietnam;

(d) Having a work permit issued by the competent Vietnamese authority except in the cases prescribed in article 154 of this Code.

2 The term of a labour contract of a foreigner working in Vietnam must not exceed the term of the work permit. On employment of a foreigner to work in Vietnam, the two parties may reach agreement on entering into a number of definite term labour contracts.

3 Foreigners working in Vietnam must comply with the law of Vietnam on labour and shall be protected by the law of Vietnam unless an international treaty of which Vietnam is a member contains some other provision.

Article 152 *Conditions for recruiting and employing foreigners to work in Vietnam*

1 Enterprises, agencies, organizations, individuals and contractors are only permitted to recruit foreigners to work in positions as managers, operators, experts and technicians, and if Vietnamese workers are not yet been able to satisfy the production and business requirements.

2 Before enterprises, agencies, organizations and individuals recruit a foreigner to work in Vietnam, they must explain their need to employ the worker to the competent State authority and receive written consent from such authority.

3 Before a contractor is permitted to recruit and employ a foreigner to work in Vietnam, the contractor must declare in detail the job position and the technical and professional qualifications required, and work experience and working time for which it is necessary to employ such foreigner in order to implement a tender package and the contractor must have written consent from the competent State agency.

Article 153 *Responsibilities of employers and of foreign employees*

1 Workers being foreigners are required to present their work permits when requested by competent State authorities.

2 Foreigners working in Vietnam without a work permit shall be forced to exit or shall be deported in accordance with provisions in the law on entry, exit, transit and residence of foreigners in Vietnam.

3 Employers employing foreign workers without work permits to work for them shall be dealt with in accordance with law.

Article 154 *Foreign workers working in Vietnam not required to have work permits*

[The following foreigners working in Vietnam are not required to have work permits:]

1 The owner or a member contributing capital of a limited liability company with a value of such capital contribution as stipulated by the Government.

2 Chairman or member of the board of management of a shareholding company with a value of his or her capital contribution as stipulated by the Government.

3 Head of a representative office or of a project or person mainly responsible for the operation of an international organization or foreign non-governmental organization in Vietnam.

4 Entering Vietnam for a period under three (3) months in order to offer services.

5 Entering Vietnam for a period under three (3) months in order to resolve a breakdown or technically or technologically complex situation arising and affecting or with the risk of affecting production or business, with which Vietnamese experts or foreign experts currently in Vietnam are unable to deal.

6 A foreign lawyer issued with a Certificate to practise law in Vietnam in accordance with the *Law on Lawyers*.

7 Other cases in accordance with an international treaty of which Vietnam is a member.

8 Foreigners married to Vietnamese and living in the territory of Vietnam.

9 In other cases pursuant to Government regulations.

Article 155 *Valid duration of work permits*

The maximum duration of a work permit shall be two (2) years; an extension may be granted but only on one occasion for a maximum (2) years.

Article 156 *Circumstances in which validity of work permit expires*

[A work permit is no longer valid in the following cases:]

1 The work permit expires.

2 The labour contract is terminated.

3 The contents of the labour contract are inconsistent with the contents of the issued work permit.

4 Working incorrectly in terms of the items stipulated in the issued work permit.

5 The contract in the sector which was the basis for issuing the work permit has expired or terminated.

6 There is a written notice from the foreign party terminating the appointment of the foreigner to work in Vietnam.

7 The Vietnamese enterprise, organization or party, or foreign organization in Vietnam which employs the foreigner terminates its operation.

8 The work permit is withdrawn.

Article 157 *Issuance, reissuance, extension and withdrawal of work permits and of certificates that the employee is not in the category requiring a work permit*

The Government shall provide regulations on conditions, sequence and procedures for issuance, reissuance, extension and withdrawal of work permits and of certificates that a worker is not in the category required to have a work permit, for foreign workers working in Vietnam.

Section 4

Disabled Workers

Article 158 *State policies on disabled workers*

The State protects the right to work including self-employment of disabled workers, and has policies encouraging and granting incentives appropriate for employers to create jobs and to employ disabled workers in accordance with the law on disabled persons.

Article 159 *Employment of disabled persons*

1 An employer must ensure suitable working conditions, tools and equipment, and occupational safety and hygiene for disabled employees and organize periodical health checks suitable for employees being disabled persons.

2 An employer must consult the opinion of a disabled employee when making a decision on any matter relevant to his or her rights and interests.

Article 160 *Strictly prohibited conduct when employing disabled workers*

1 It is prohibited to allow a person with a mild disability whose ability to work has been reduced by fifty one (51) per cent or more, or a person with a severe disability or a particularly severe disability to work overtime or at night, except where the disabled worker provides consent.

2 An employer is prohibited from assigning disabled workers to heavy, toxic or dangerous work as stipulated in the list issued by the Ministry of Labour without the consent of the disabled worker after the employer has provided him or her with full information about such job or work.

Section 5

Workers being Domestic Servants

Article 161 *Workers being domestic servants*

1 *Worker being a domestic servant* means a worker who conducts regular work within a family of one or more households.

Work within a family comprises work of housekeeping, acting as steward or butler, taking care of children, taking care of sick or elderly people, driving, gardening and doing other jobs for the household unrelated to commercial activity.

2 The Government shall regulate workers being domestic servants.

Article 162 *Labour contracts of workers being domestic servants*

1 The employer must enter into a written labour contract with a worker being a domestic servant.

2 The duration of a labour contract with a domestic servant shall be as agreed by the two parties. Either party has the right to unilaterally terminate the labour contract at any time, but must provide at least fifteen (15) days' advance notice to the other party.

3 The two parties shall reach agreement on the method of payment of wages, the period for payment of wages, daily working hours, and accommodation in the labour contract.

Article 163 *Obligations of employers when employing workers being domestic servants*

1 To fully implement the agreement reached in the executed labour contract.

2 To pay the domestic servant money for social insurance and health insurance in accordance with law in order for the employee to himself or herself arrange social insurance and health insurance.

3 To respect the honour and dignity of the domestic servant.

4 To arrange a clean and hygienic meal place and accommodation for the domestic servant, if so agreed.

5 To facilitate opportunities for the domestic servant to be educated or to participate in vocational training.

6 To pay travelling expenses when the domestic servant ceases work to return home, except in a case where the domestic servant terminates the labour contract prior to its expiry.

Article 164 *Obligations of workers being domestic servants*

1 To fully implement the agreements reached in the executed labour contract.

2 To pay compensation as agreed or in accordance with law if assets of the employer are broken or lost.

3 To promptly notify the employer of any risks of accidents, or threats to the safety, health, life or assets of the employer's family and the domestic servant himself/herself.

4 To make a denunciation to the competent authority if the employer conducts any act of abuse or maltreatment, sexual harassment, labour coercion or any other act in breach of law.

Article 165 *Conduct by employers which is strictly prohibited*

1 Abuse, sexual harassment, labour coercion or use of force against an employee being a domestic servant.

2 Assigning work to the domestic servant which is not prescribed in the labour contract.

3 Retaining personal papers of the employee.

Section 6

A Number of Other Workers

Article 166 *Employees in the artistic sector, sports and physical training sector, maritime and aviation sectors*

Employees who work in the artistic sector, sports and physical training sector, in the maritime and aviation sectors are entitled to appropriate regimes with respect to training, retraining, raising vocational qualifications and skills, on labour contracts; on wages and bonuses, on working hours and rest breaks; and on occupational safety and hygiene in accordance with Government regulations.

Article 167 *Workers performing home-based work*

A worker may reach agreement with an employer to accept home-based work.

CHAPTER 12

Social Insurance, Health Insurance and Unemployment Insurance

Article 168 *Participation in social insurance, health insurance and unemployment insurance*

1 Employers and employees must participate in compulsory social insurance, health insurance and unemployment/job loss insurance, and employees are entitled to the regimes stipulated in the law on social insurance, the law on health insurance and the law on job loss insurance.

Employers and employees are encouraged to participate in [take out] other forms of insurance cover for employees.

2 During the period when an employee on leave receives social insurance benefits, the employer is not required to pay wages to such employee except where the two parties reach some other agreement.

3 For employees ineligible to participate in compulsory social insurance, health insurance and job loss insurance, the employer must pay such employees at the same time as periodic payment of wages, a sum of money equivalent to the amount of the contribution of the employer to compulsory social insurance, health insurance and job loss insurance for such employee in accordance with the law on social insurance, health insurance and job loss insurance.

Article 169 *Retirement age*

1 An employee who satisfies the conditions on the period for which social insurance contributions were paid as stipulated in the law on social insurance is entitled to pension benefits on reaching the retirement age.

2 The retirement age for employees in normal working conditions will be adjusted in accordance with a roadmap for male employees who reach a full sixty-two (62) years of age in year 2028 and for female employees who reach a full sixty (60) years of age in year 2035.

As from 2021, the retirement age of a worker in normal labour conditions will be a full sixty (60) years plus three (3) months for a male, and a full fifty-five (55) years plus four (4) months for a female; and thereafter, each year such age will increase by three (3) months for men and by four (4) months for women.

3 An employee whose ability to work is reduced; who performs particularly heavy, toxic or dangerous work/jobs; who performs heavy, toxic or dangerous work/jobs; or who works in areas where the socio-economic conditions are particularly difficult may retire at an earlier age but no earlier than five (5) years compared to the age prescribed in clause 2 above as at the time of retirement, except where the law contains some other provision.

4 Employees with professional qualifications or high technical expertise and [employees] in a number of other special cases may retire at an older age but not more than five (5) years later than the age prescribed in clause 2 of this article as at the time of retirement, except where the law contains some other provision.

5 The Government shall provide detailed regulations on this article.

CHAPTER 13

Organizations Representing Employees at the Grassroots Level

Article 170 *Right to establish, join and participate in the activities of an organization representing employees at the grassroots level*

1 Workers/employees have the right to establish, join and operate a trade union in accordance with the *Law on Trade Unions*.

2 Employees in an enterprise have the right to establish, join and participate in the activities of an organization representing employees in the enterprise in accordance with articles 172, 173 and 174 of this Code.

3 Organizations representing employees prescribed in clauses 1 and 2 above shall be equal regarding rights and obligations to represent and protect the lawful and legitimate rights and interests of employees in the labour relationship.

Article 171 *Grassroots trade union belonging to the system of Vietnam Trade Union Organizations*

1 A grassroots trade union belonging to the system of *Vietnam Trade Union Organizations* may be established at agencies, organizations, units and enterprises.

2 The establishment, dissolution, organization and operation of a grassroots trade union is implemented in accordance with the *Law on Trade Unions.*

Article 172 *Establishing and joining an organization of employees at the enterprise*

1 An organization of employees at the enterprise may be lawfully established and operate after the competent State agency has issued registration.

An organization of employees at the enterprise must be organized and operate on the principle of complying with the Constitution, the law and [its] charter; and must be organized and operate on a voluntary basis, be self-governing, democratic and transparent.

2 An organization of employees at the enterprise shall have its registration revoked if it violates the principles and objectives of such organization prescribed in article 174.1(b) of this Code, or if the organization of employees at the enterprise terminates its existence in a case of division, separation, consolidation, merger, dissolution or enterprise dissolution or bankruptcy.

3 If an organization of employees at the enterprise joins Vietnam Labour Union, then [such joinder] shall be implemented in accordance with the *Law of Trade Unions*.

4 The Government regulates the application file, sequence and procedures for registration, authority and procedures to issue or withdraw registration, and State management of financial and property issues of organizations of employees at the enterprise, and separation, division, consolidation, merger, dissolution, and the right of association of organizations of employees at the enterprise.

Article 173 *Leaders and members of an organization of employees at the enterprise*

1 As at the time of its registration, an organization of employees at the enterprise must have the minimum number of members being employees working at the enterprise as stipulated in Government regulations.

2 Members of an organization of employees at the enterprise shall elect leaders of such organization who must be Vietnamese workers currently working at the enterprise; and the following are ineligible as leaders namely any person subject to criminal prosecution or currently serving a sentence or subject to a criminal sentence which has not been expunged from the record for an infringement of

national security, or a crime of infringing the freedom of the people or the freedom or democracy of the citizens, or any other crime being an ownership infringement as stipulated in the *Criminal Code*.

Article 174 *Charter of an organization of employees at the enterprise*

1 The charter of an organization of employees at the enterprise must contain the following main items:

(a) Name and address of the organization; and logo (if any);

(b) Principles, objectives and operational scope of the organization namely protection of the rights and lawful and legitimate interests of the members of such organization in the labour relationship at the enterprise; and together with the employer, resolution of issues relevant to the rights, obligations and interests of both the employees and the employer; and formulation of a progressive, harmonious and stable labour relationship;

(c) The conditions and procedures for employees to join or leave the organization of employees at the enterprise.

Any one such organization must not concurrently have members who are ordinary workers and also members who are employees directly involved in the decision-making process regarding working conditions, recruitment of employees, labour discipline, termination of labour contracts or transferring workers [assignment] to do other jobs;

(d) Organizational structure, term of office and representative of the organization;

(dd) Principles on organization and operation;

(e) Procedures to pass decisions of the organization.

The matters which must be decided by a majority of members include passing or making amendment or addition to the charter of the organization; electing or dismissing the head and members of the leadership of the organization, division, separation, consolidation, merger, change of name, dissolution or association by the organization; and joining Vietnam Trade Union;

(g) Membership fees, resources being assets and finances and their management and use by the organization;

Financial collection and expenditure by the organization of employees at the enterprise must be monitored, archived and annually notified to members of the organization.

(h) Recommending and resolving recommendations of members internally within the organization.

2 The Government shall provide detailed regulations on this article.

Article 175 *Conduct of employers which is strictly prohibited regarding establishing, joining and operating an organization representing employees at the enterprise*[4]

1 Discriminating against employees and members of the leadership of an organization representing employees at the enterprise for the reason that they established, joined or operate such organization, comprising:

(a) Requesting [a worker] to join or not to join or to withdraw from an organization representing employees at the enterprise in order to be recruited or to enter into or extend a labour contract;

(b) Dismissing, disciplining, unilaterally terminating the labour contract or not continuing to enter into or extend the labour contract, or transferring an employee to do a different job or work;

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[4] Allens footnote: Note the Code uses different expressions being "an organization representing employees at the enterprise"; "an organization of employees at the enterprise"; and "an organization representing employees at the grassroots level".

(c) Discriminating in terms of wages, working hours or other rights and obligations in the labour relationship;

(d) Obstructing or causing job-related difficulties aimed at diminishing the operation of such organization.

2 Intervening in or manipulating the process of establishment, election, formulating working plans and organizing activities of an organization representing employees at the enterprise, including providing financial support or other economic measures aimed at neutralizing or diminishing the exercise of the representative function of such organization, or discriminating between organizations representing employees at the grassroots level.

Article 176 *Rights of members of the leadership of an organization representing employees at the enterprise*

1 Members of the leadership of an organization representing employees at the enterprise have the following rights:

(a) To have access to employees in the workplace during the process of undertaking the duties and tasks of the organization representing employees at the enterprise, but the exercise of this right must ensure that it does not adversely affect the normal operation of the employer;

(b) To approach the employer to undertake the representative tasks of the organization representing employees at the enterprise;

(c) To use working time in accordance with clauses 2 and 3 below to conduct work of such organization and still be paid wages by the employer;

(d) To enjoy other guarantees within the labour relationship and during performance of the representative function in accordance with law.

2 The Government shall regulate the minimum time which an employer must reserve for all members of the leadership of an organization representing employees at the enterprise to undertake the tasks of such organization on the basis of the number of its members.

3 The organization representing employees at the enterprise and the employer shall reach agreement on additional time compared to that prescribed in clause 2 above and on the method of using the working time of members of the leadership of the organization representing employees at the enterprise as appropriate for the actual conditions.

Article 177 *Obligations of employer owed to an organization representing employees at the enterprise*

1 Not to hinder or cause difficulties when employees carry out lawful activities aimed at establishing, joining or participating in activities of an organization representing employees at the enterprise.

2 To recognize and respect the rights of a lawfully established organization representing employees at the enterprise.

3 [The employer] must reach agreement in writing with the leadership of the organization representing employees at the grassroots level when unilaterally terminating the labour contract of or transferring the employee to another job or when applying the disciplinary of dismissal to the employee being a member of the leadership of the organization representing employees at the grassroots level. If agreement is unable to be reached, the two parties must report to the professional agency for labour under the provincial people's committee. Only after thirty (30) days have expired from such notification does the employer have the right to make a decision. If the employer's decision is not agreed to, then an employee and the leaders of the organization representing employees at the grassroots level have the right to require labour dispute resolution in accordance with the sequence and procedures stipulated by law.

4 To extend the labour contract already entered into until the end of the term of office of any employee being a member of the leadership of an organization representing employees at the enterprise if his or her labour contract expires during the term of such office.

5 To discharge other obligations stipulated by law.

Article 178 *Rights and obligations of organizations representing employees at the enterprise within the labour relationship*

1 To engage in collective bargaining with the employer as prescribed in this Code.

2 To organize dialogues at the workplace in accordance with the provisions of this Code.

3 To consult opinions on formulation and supervision of implementation of wage scales, payrolls, labour norms, wage payment rules, bonus rules and internal labour rules; and on issues related to the rights and interests of employees who are members of such organization.

4 To represent an employee in resolution of complaints and individual labour disputes when so authorized by the employee.

5 To organize and to lead strikes as prescribed in this Code.

6 To receive technical assistance from agencies and organizations lawfully operating in Vietnam in order to learn about the law on labour, about the sequence and procedures for establishing an organization representing employees, and about the conduct of representative activities within the labour relationship after such organization is registered.

7 To have the employer arrange working space and to be provided with necessary information and conditions for operation of the organization representing employees at the enterprise.

8 Other rights and obligations as stipulated by law.

CHAPTER 14

Resolution of Labour Disputes

Section 1

General Provisions on Resolution of Labour Disputes

Article 179 *Labour dispute*

1 *Labour dispute* means a dispute about the rights, obligations and interests arising between the parties during the process of establishing, implementing or terminating the labour relationship; [or] a dispute between organizations representing employees; or a dispute arising from relationships directly relevant to the labour relationship. The various types of labour disputes are:

(a) Individual labour dispute between the employee and the employer; between an employee and an enterprise or organization sending the employee to work overseas pursuant to a contract; and between a sub-leasing employer and the sub-leased employee;

(b) A collective labour dispute about rights or benefits between one (1) or more organizations representing employees on the one hand and the employer or one (1) or more organizations of the employer on the other hand.

2 *Collective labour dispute about rights* means a dispute between one (1) or more organizations representing employees on the one hand and the employer or one (1) or more organizations of the employer on the other hand, arising in the following circumstances:

(a) There are different ways of interpreting and implementing provisions in the collective labour agreement, internal labour rules, regulations or other lawful agreements;

(b) There are different ways of interpreting and implementing provisions of the law on labour;

(c) The employer has discriminated against an employee or a member of the leadership of an organization representing employees because of establishing, joining or operating such organization; or has intervened in or manipulated such organization, or breached the obligation to negotiate in goodwill.

3 *Collective labour disputes about benefits* comprise:

(a) A labour dispute arising during the process of collective bargaining;

(b) [A labour dispute arising] when one party refuses to negotiate or does not conduct negotiations within the time-limit prescribed by law.

Article 180 *Principles for resolution of labour disputes*

1 Respect for the right of self-determination via negotiation of the parties during the process of labour dispute resolution.

2 Paying attention to resolution of a labour dispute via conciliation and arbitration on the basis of respect for the rights and interests of the two parties to the dispute, and respect for the common interests of society and ensuring there is no unlawful conduct.

3 Resolution must be achieved publicly, transparently, objectively, promptly, quickly and lawfully.

4 Ensuring participation of representatives of the parties during the process of resolution of the labour dispute.

5 A labour dispute is resolved by an agency, organization or individual competent to resolve same after a request is made by the parties in dispute, or on the proposal of another competent entity with agreement from the parties in dispute.

Article 181 *Responsibilities of agencies and organizations for resolution of labour disputes*

1 State administrative authorities for labour are responsible to coordinate with organizations representing employees and organizations representing employers to guide, support and assist the parties to resolve a labour dispute.

2 The Ministry of Labour arranges training to raise the professional capacity of labour conciliators and labour arbitrators for resolution of labour disputes.

3 When requested, the professional agency for labour under the people's committee acts as the focal agency to receive requests to resolve labour disputes, and is responsible to classify, guide, support and assist the parties in resolving same.

Within five (5) working days, the agency receiving the request to resolve the labour dispute is responsible to refer such request to a labour conciliator in a case where it is compulsory to conduct labour conciliation procedures, or transfer it to the arbitration Council if a request is made for such Council to resolve the dispute, or provide guidelines to forward the request to the Court to resolve.

Article 182 *Rights and obligations of the two parties during resolution of a labour dispute*

1 The parties have the following rights during resolution of a labour dispute:

(a) To participate in the resolution process either directly or via a representative;

(b) To withdraw the request for resolution or to amend the items of the request;

(c) To request that the person directly resolving the labour dispute be replaced if there is any ground to believe that such person may not be objective or fair.

2 The parties have the following obligations during resolution of a labour dispute:

(a) To promptly provide all relevant documents and evidence in order to prove the party's requests;

(b) To strictly comply with all agreements reached, with decisions of the labour arbitration tribunal, and with legally effective judgments or decisions of the Court.

Article 183 *Rights of agencies, organizations and individuals competent to resolve labour disputes*

Agencies, organizations and individuals competent to resolve labour disputes have the right, within the scope of their respective duties and powers, to require the disputing parties and other entities concerned to provide data and evidence; and have the right to seek assessments and to invite attendance by witnesses and other relevant people.

Article 184 *Labour conciliators*

1 *Labour conciliator* means a person appointed by the chairman of the provincial people's committee in order to conciliate a labour dispute or a dispute about a vocational training contract; and to assist development of the labour relationship.

2 The Government regulates the criteria, sequence and procedures for appointing conciliators and the operational regime and conditions of conciliators and also regulates their management; and the authority, sequence and procedures for appointing labour conciliators.

Article 185 *Labour arbitration Councils*

1 The chairman of the provincial people's committee decides to establish a labour arbitration Council and also appoints the president, secretary and labour arbitrators of such Council. The term of office of such Council is five (5) years.

2 The number of labour arbitrators in the labour arbitration Council is decided by the chairman of the provincial people's committee but the minimum shall be fifteen (15) people to include equal numbers nominated by the parties as follows:

(a) At least five (5) members nominated by the professional agency for labour under the provincial people's committee of which the president of the Council shall be the representative of the leadership of and the secretary of such Council shall be a senior employee of such agency;

(b) At least five (5) members shall be nominated by the provincial labour union;

(c) At least five (5) members shall be nominated by organizations representing employers in the province after such organizations have reached agreement.

3 The criteria for and working regime of labour arbitrators are regulated as follows:

(a) Labour arbitrators must have legal knowledge, experience in the labour relations sector, and be reputable and unbiased;

(b) When nominating arbitrators pursuant to clause 2 above, the professional agency for labour under the provincial people's committee, the provincial trade union or an organization representing employers may appoint its personnel or any other person who satisfies all the criteria applicable to labour arbitrators as stipulated in regulations;

(c) The secretary of the labour arbitration Council shall conduct the duties of the standing body of such Council. Labour arbitrators may work in accordance with the full-time or part-time [concurrent] working regime.

4 When there is a request to resolve a labour dispute pursuant to articles 189, 193 or 197 of this Code, the labour arbitration Council issues a decision establishing a labour arbitration tribunal to resolve the dispute as follows:

(a) The representative of each party in dispute selects one (1) arbitrator from the list of labour arbitrators;

(b) The arbitrators selected by the parties in accordance with sub-clause (a) above reach agreement on selecting another labour arbitrator to act as head of the tribunal;

(c) If the parties in dispute select the same arbitrator to resolve the labour dispute, then the labour arbitration tribunal consists of that one labour arbitrator.

5 The labour arbitration tribunal works on the basis of the collective principle and majority decision, except in the case prescribed in clause 4(c) above.

6 The Government shall provide detailed regulations on the criteria, conditions, sequence and procedures for appointing and dismissing labour arbitrators, and on the operational regime and conditions of labour arbitrators and of the labour arbitration Council; and on organization and operation of the labour arbitration Council; and on establishment and operation of labour arbitration tribunals as prescribed in this article.

Article 186 *Unilateral actions prohibited while a labour dispute is being resolved*

When a labour dispute is being resolved by a competent entity within the time-limit prescribed by this Code, neither party is permitted to act unilaterally against the other party.

Section 2

Authority and Sequence for Resolving Individual Labour Disputes

Article 187 *Authority to resolve individual labour disputes*

The following agencies, organizations and individuals are authorized to resolve individual labour disputes:

1 Labour conciliators.

2 The labour arbitration Council.

3 People's Courts.

Article 188 *Sequence and procedures for resolving individual labour disputes by labour conciliators*

1 An individual labour dispute must pass through procedures for conciliation by a labour conciliator prior to a petition to the labour arbitration Council or a Court to resolve the dispute, except for the following labour disputes for which it is not mandatory to conduct conciliation procedures:

(a) [A dispute] relating to the disciplinary measure of dismissal or arising from unilateral termination of a labour contract;

(b) [A dispute] relating to payment of compensation for loss and damage or payment of allowances upon termination of a labour contract;

(c) [A dispute] between a domestic servant and the employer;

(d) [A dispute] relating to social insurance in accordance with the law on social insurance, or health insurance in accordance with the law on health insurance, or job loss insurance in accordance with

the law on employment, or relating to insurance covering a labour accident or occupational disease in accordance with the law on occupational safety and hygiene;

(dd) [A dispute] relating to payment of compensation for loss and damage between an employee and an enterprise or organization sending a worker to work overseas pursuant to a contract;

(e) [A dispute] between a sub-leasing employer and the sub-leased employee.

2 A labour conciliator must end [finalize] the conciliation within five (5) working days after the date on which such conciliator receives the request from a party requesting dispute resolution or from an agency prescribed in article 181.3 of this Code.

3 The two disputing parties must be present at a conciliation session but may appoint authorized representatives to participate on their behalf.

4 The labour conciliator is responsible to guide and assist the parties in their negotiations to resolve the dispute:

If the parties reach a settlement then the labour conciliator shall prepare minutes of successful conciliation to be signed by the conciliator and the parties in dispute.

If the parties do not reach a settlement, the labour conciliator shall provide a conciliation proposal for consideration by the parties. If the parties agree to the conciliation proposal, then the labour conciliator shall prepare minutes of successful conciliation to be signed by the conciliator and the parties in dispute.

If the conciliation proposal is not agreed or if one of the parties has been validly summonsed twice but is still absent without a legitimate reason, then the labour conciliator shall prepare minutes of unsuccessful conciliation, such minutes to be signed by the conciliator and by the party in dispute who was present.

5 Copies of minutes of successful conciliation or minutes of unsuccessful conciliation must be sent to the parties in dispute within one (1) working day after the date of preparation of such minutes.

6 If one of the parties fails to implement the agreement set out in the minutes of successful conciliation, the other party has the right to petition the labour arbitration Council or the Court to resolve the matter.

7 If it is not mandatory to conduct conciliation as prescribed in clause 1 above, or if the time-limit for conciliation set out in clause 2 above has expired without the conciliator conducting a conciliation, or if the conciliation was unsuccessful as referred to in clause 4 above, then the parties in dispute have the right to select either of the following methods to resolve the dispute:

(a) To request the labour arbitrator Council to resolve the dispute in accordance with article 189 of this Code;

(b) To petition the Court to resolve the matter.

Article 189 *Resolution of an individual labour dispute by the labour arbitration Council*

1 The parties in dispute, on the basis of consensus, have the right to request the labour arbitration Council to resolve their dispute in accordance with article 188.7 of this Code. If such request is made, the parties are not permitted to also petition the Court to resolve the matter, except in the case prescribed in clause 4 below.

2 Within seven (7) business days after receipt of a request to resolve a dispute as prescribed in clause 1 above, a labour arbitration tribunal must be established in order to resolve the dispute.

3 The labour arbitration tribunal must issue a decision on dispute settlement within thirty (30) days after establishment, and such decision must be sent to the parties in dispute.

4 If the time-limit prescribed in clause 2 expires without a tribunal being established or the time-limit prescribed in clause 3 above expires without a decision on resolution, then the parties have the right to petition the Court to resolve the matter.

5 If one of the parties fails to enforce [comply with] the decision resolving the dispute made by the labour arbitration tribunal, then the parties have the right to petition the Court to resolve the matter.

Article 190 *Limitation period for requesting resolution of an individual labour dispute*

1 The limitation period for requesting a labour conciliator to conciliate an individual labour dispute is six (6) months from the date of discovery of the conduct which a disputing party claims breaches his or her lawful rights and interests.

2 The limitation period for requesting a labour arbitration Council to resolve an individual labour dispute is nine (9) months from the date of discovery of the conduct which a disputing party claims breaches his or her lawful rights and interests.

3 The limitation period for requesting a Court to resolve an individual labour dispute is one (1) year from the date of discovery of the conduct which a disputing party claims breaches his or her lawful rights and interests.

4 If the person making the request proves that due to a force majeure event, an objective obstacle or some other reason prescribed by law the request was unable to be made within the time-limit prescribed in this article, then the period of such force majeure event, objective obstacle or other reason shall not be included in the limitation period for requesting resolution of an individual labour dispute.

Section 3

Authority and Sequence for Resolving Collective Labour Disputes about Rights

Article 191 *Authority to resolve collective labour disputes about rights*

1 Agencies, organizations and individuals authorized to resolve collective labour disputes about rights comprise:

(a) Labour conciliators;

(b) The Labour Arbitration Council;

(c) People's Courts.

2 A collective labour dispute about rights must be conciliated by a conciliator prior to requesting the labour arbitration Council or a Court to resolve it.

Article 192 *Sequence and procedures for resolving a collective labour dispute about rights*

1 The sequence and procedures for conciliating a collective labour dispute about rights shall be implemented in accordance with clauses 2 to 6 inclusive of article 188 of this Code.

In the case of the disputes prescribed in sub-clauses (b) and (c) of article 179.2 of this Code, on determination that there was a breach of law, the labour conciliator shall prepare minutes and transfer the file and data to the agency authorized to consider and deal with the matter in accordance with law.

2 If a conciliation is unsuccessful or if on expiry of the time-limit prescribed in article 188.2 of this Code the conciliator has not conducted a conciliation, then the parties in dispute have the right to select either of the following methods to resolve the dispute:

(a) To request the labour arbitration Council to resolve the dispute in accordance with article 193 of this Code;

(b) To request a Court to resolve the matter.

Article 193 *Resolution by a labour arbitration Council of a collective labour dispute about rights*

1 On the basis of consensus, the parties in dispute have the right to request the labour arbitration Council to resolve their dispute if a conciliation was unsuccessful or if on expiry of the deadline for [finalizing] the conciliation as prescribed in article 188.2 of this Code the conciliator failed to carry out a conciliation or one of the parties failed to implement the agreement set out in the minutes of successful conciliation.

2 Within seven (7) business days after receipt of a request as prescribed in clause 1 above, a labour arbitration tribunal must be established to resolve the dispute.

3 Within thirty (30) days after establishment of a labour arbitration tribunal, and based on the provisions of the law on labour, the collective labour agreement, the registered internal labour rules and other lawful regulations and agreements, such tribunal must issue a decision resolving the dispute and send it to the parties in dispute.

For a dispute prescribed in sub-clauses (b) or (c) of article 179.2 of this Code in which it is determined that there was a breach of law, the labour arbitration tribunal shall not issue a decision on resolution but shall prepare minutes and transfer the file and data to the agency competent to consider and deal with the matter in accordance with law.

4 If the parties select dispute resolution by the labour arbitration Council in accordance with the provisions of this article, then during the period such dispute is being resolved by such Council the parties are not permitted to also petition a Court to resolve the matter.

5 If on expiry of the time-limit prescribed in clause 2 above a labour arbitration tribunal has not been established, or if on expiry of the time-limit prescribed in clause 3 above such tribunal has not issued a decision resolving the dispute, then the parties have the right to petition a Court to resolve the matter.

6 If one of the parties fails to implement the decision resolving the dispute of the labour arbitration tribunal, then the parties have the right to petition a Court to resolve the matter.

Article 194 *Limitation period for requesting resolution of a collective labour dispute about rights*

1 The limitation period for requesting a labour conciliator to conciliate a collective labour dispute about rights is six (6) months from the date of discovery of the conduct which a disputing party claims breaches its lawful rights.

2 The limitation period for requesting a labour arbitration Council to resolve a collective labour dispute about rights is nine (9) months from the date of discovery of the conduct which a disputing party claims breaches its lawful rights.

3 The limitation period for requesting a Court to resolve a collective labour dispute about rights is one (1) year from the date of discovery of the conduct which a disputing party claims breaches its lawful rights.

Section 4

Authority and Sequence for Resolving a Collective Labour Dispute about Benefits

Article 195 *Authority to resolve a collective labour dispute about benefits*

1 The following organizations and individuals are authorized to resolve collective labour disputes about benefits:

(a) Labour conciliators;

(b) The labour arbitration Council.

2 A collective labour dispute about benefits must be resolved via conciliation procedures of a labour conciliator prior to requesting the labour arbitration Council to resolve the matter or before conducting procedures to strike.

Article 196 *Sequence and procedures for resolving a collective labour dispute about benefits*

1 The sequence and procedures for conciliating a collective labour dispute about benefits are implemented in accordance with clauses 2, 3, 4 and 5 of article 188 of this Code.

2 If conciliation is successful, minutes of same must be prepared recording the matters on which the parties reached agreement, and the minutes must be signed by the disputing parties and by the conciliator. Such minutes shall have the same legal validity as an enterprise labour collective agreement.

3 If the conciliation is unsuccessful or if on expiry of the time-limit for conciliation prescribed in article 188.2 of this Code the conciliator has not conducted a conciliation or one of the parties has failed to implement the agreements set out in the minutes of successful conciliation, then the disputing parties may select either of the following methods to resolve the dispute:

(a) Request the labour arbitration Council to resolve the dispute in accordance with article 197 of this Code;

(b) The organization representing employees has the right to conduct procedures prescribed in articles 200, 201 and 202 of this Code to hold a strike.

Article 197 *Resolution by the labour arbitration Council of a collective labour dispute about benefits*

1 On the basis of consensus, the parties in dispute have the right to request the labour arbitration Council to resolve their dispute if conciliation was unsuccessful or if on expiry of the time-limit for conciliation prescribed in article 188.2 of this Code the labour conciliator has not conducted a conciliation or one of the parties has failed to implement the agreements in the minutes of successful conciliation.

2 Within seven (7) business days after receipt of a request as prescribed in clause 1 above, a labour arbitration tribunal must be established in order to resolve the dispute.

3 Within thirty (30) days after its establishment, based on the provisions on the law on labour, the collective labour agreement, the registered internal labour rules and other lawful regulations and agreements, the labour arbitration tribunal must issue a decision resolving the dispute and send it to the parties in dispute.

4 Where the parties select dispute resolution via the labour arbitration Council as prescribed in this article, the organization representing employees is not permitted to hold a strike while the labour arbitration Council is resolving the dispute.

If on expiry of the time-limit prescribed in clause 2 above the tribunal has not been established, or if on expiry of the time-limit prescribed in clause 3 above the tribunal has not issued a decision resolving the dispute or the employer being a party to the dispute has failed to implement a decision resolving the dispute of the tribunal, then the organization representing employees being a party to the dispute has the right to conduct procedures to hold a strike as prescribed in articles 200, 201 and 202 of this Code.

Section 5

Strikes

Article 198 *Strikes*

Strike means a temporary and voluntary cessation of work organized by the employees aimed at achieving demands during the process of resolution of a labour dispute, and where the organization representing the employees with the right to conduct collective bargaining is one of the parties to the collective labour dispute which organizes and leads the strike.

Article 199 *Cases in which employees have the right to strike*

The organization representing employees which was a party to a collective labour dispute about benefits has the right to conduct the procedures prescribed in articles 200, 201 and 202 of this Code to strike in the following cases.

1 Conciliation was unsuccessful or after expiry of the time limit prescribed in article 188.2 of this Code the conciliator failed to conduct a conciliation.

2 A labour arbitration tribunal was not established or was established but failed to issue a decision resolving the dispute or the employer being a party to the dispute failed to implement the decision of the labour arbitration tribunal resolving the dispute.

Article 200 *Sequence for a strike*

1 Obtaining opinions on the strike in accordance with article 201 of this Code.

2 Issuing a decision to strike and notifying same in accordance with article 202 of this Code.

3 Holding the strike.

Article 201 *Obtaining opinions on a strike*

1 Before holding a strike, the organization representing the employees with the right to organize and lead the strike as prescribed in article 198 of this Code is responsible to obtain opinions from all of the employees or from members of the leadership of the organizations representing employees participating in the collective bargaining.

2 Opinions must be obtained on the following matters:

(a) Agreement or non-agreement to hold a strike;

(b) The plan prepared by the organization representing the employees with the contents prescribed in sub-clauses (b), (c) and (d) of article 202.2 of this Code.

3 Opinions may be obtained directly by way of voting slips or signatures or by some other method.

4 The organization representing the employees shall make a decision on the time, location and method for obtaining opinions on the strike, and must provide at least one day's advance notice thereof to the employer. The obtaining of opinions must not adversely affect the normal production and business

operation of the employer. The employer must not cause difficulties, hinder or interfere in the process of obtaining of opinions about a strike by the organization representing the employees.

Article 202 *Decision to strike and notification of time of commencement of a strike*

1 When there are opinions in agreement from more than fifty (50) per cent of the employees on the proposal to strike prescribed in article 201.2 above, then the organization representing the employees shall issue a written decision to strike.

2 A decision to strike must contain the following particulars:

(a) Results of obtaining opinions on the strike;

(b) Time of commencement of the strike and the location of the strike;

(c) Scope within which the strike will be conducted;

(d) Demands of the employees;

(dd) Full name and contact address of the representative of the organization representing the employees which is organizing and leading the strike.

3 At least five (5) working days prior to the date of commencing a strike, the organization representing the employees which is organizing and leading the strike must send a document regarding the decision to strike to the employer, to the district people's committee and to the specialized agency for labour under the provincial people's committee.

4 If by the time for commencing the strike the employer still fails to agree to the demands of the employees, then the organization representing the employees shall organize and lead the strike.

Article 203 *Rights of parties before and during a strike*

1 To continue to reach agreement on resolution of the contents of the collective labour dispute, or to jointly propose that a labour conciliator or labour arbitration Council conduct conciliation and/or resolve the dispute.

2 The organization representing the employees with the right to organize and lead the strike as prescribed in article 198 of this Code has the following rights:

(a) To withdraw the decision to strike if the strike has not yet taken place, or to end a strike which has commenced;

(b) To petition a Court to declare that the strike is lawful.

3 An employer has the following rights:

(a) To agree with all or a part of the demands and to provide written notification thereof to the organization representing the employees which is organizing and leading the strike;

(b) To temporarily close workplaces during the duration of a strike if there are insufficient conditions for maintaining normal activities or in order to protect assets;

(c) To petition a Court to declare that the strike is unlawful.

Article 204 *Circumstances in which a strike is illegal*

1 The case does not fall within those in which a strike is permitted as prescribed in article 199 of this Code.

2 The strike was not organized by an organization representing employees with the right to organize and lead a strike.

3 There was a breach of the provisions on the sequence and procedures for holding the strike as prescribed in this Code.

4 Resolution of the collective labour dispute is currently being conducted by a competent agency, organization or individual in accordance with the provisions of this Code.

5 The strike is to be held in a case in which it is not permitted to strike as prescribed in article 209 of this Code.

6 There is already a decision of a competent agency staying or suspending the strike as prescribed in article 210 of this Code.

Article 205 *Notification of decision to temporarily close a workplace*

An employer must, at least three (3) working days prior to the date on which it temporarily closes a workplace, publicly list such decision on temporary closure at the workplace and also notify the following agencies and organizations:

1 The organization representing the employees which is organizing and leading the strike.

2 The provincial people's committee in the locality of the workplace which is proposed to close.

3 The district people's committee in the locality of the workplace which is proposed to close.

Article 206 *Circumstances in which it is prohibited to temporarily close a workplace*

1 Within twelve (12) hours of the time of commencement of the strike as recorded in the decision to strike.

2 After the employees have stopped striking.

Article 207 *Wages and other lawful benefits of employees during the duration of a strike*

1 Any employee not participating in a strike who must cease work because of the strike shall be paid a salary for cessation of work in accordance with article 99.2 of this Code and is entitled to other benefits in accordance with the law on labour.

2 Employees participating in a strike shall not be paid salary or other benefits pursuant to law, unless the parties agree otherwise.

Article 208 *Conduct which is strictly prohibited before, during and after a strike*

1 Interfering with exercise of the right to strike; inciting, embroiling or coercing employees to strike; preventing an employee not participating in a strike from going to work.

2 Using violence; causing damage to machinery, equipment or assets of the employer.

3 Infringing public order and safety.

4 Terminating a labour contract or applying a labour disciplinary penalty to employees or to leaders of a strike, or transferring employees or leaders of a strike to do other work or to work at another location because of their preparation for or participation in a strike.

5 Taking revenge on or victimizing any employee participating in a strike or any person leading a strike.

6 Taking advantage of a strike in order to act contrary to law.

Article 209 *Places employing workers at which strikes are prohibited*

1 A strike is prohibited at any place employing workers where a strike could threaten national defence and security, public order or human health.

2 The Government issues a list of places employing workers where a strike must not be held and [regulations] on resolution of labour disputes at places employing workers where strikes are not permitted as prescribed in clause 1 above.

Article 210 *Decision staying or suspending a strike*

1 If it is considered that a strike poses a danger of causing serious loss and damage to the national economy or public interests, or threatens national defence and security or threatens public order and human health, then the chairman of the provincial people's committee may issue a decision staying or suspending the strike.

2 The Government shall provide detailed regulations on staying or suspending strikes and on resolving the interests of employees.

Article 211 *Dealing with a strike which does not comply with sequence and procedures*

Within twelve (12) hours after receiving a notice that a strike does not comply with articles 200, 201 and 202 of this Code, the chairman of the district people's committee shall preside over instructing the specialized agency for labour to co-ordinate with the same level trade union and other agencies and organizations involved to directly meet the employer and representatives of the leaders of the organization representing employees at the grassroots level in order to listen to opinions and provide support to the parties to find measures for resolving the matter and for returning to normal production and business activities.

If a breach of law is detected, minutes shall be prepared and the breach shall be dealt with or a recommendation made to the competent authority to deal with the individual or organization in breach in accordance with law.

In the case of a labour dispute, depending on the type of such dispute, guidance and support shall be provided to the parties to conduct procedures to resolve the dispute in accordance with the provisions of this Code.

CHAPTER 15

State Administration of Labour

Article 212 *Contents of State administration of labour*

[State administration of labour comprises the following contents:]

1 Promulgating and arranging implementation of legal instruments on labour.

2 Monitoring, maintaining statistics on, and supplying information about labour supply and demand and changes in such market; making decisions on the wage policy applicable to employees; deciding the policies, master plan and plans on manpower, and on allocation and employment of labour in all sections of society and on vocational education and development of trade skills; on formulation of the framework of national vocational qualifications and the framework of Vietnamese national qualifications. Regulating a list of trades and occupations in which only employees who have already passed training courses on vocational education or who have national trade certificates are permitted to be employed.

3 Organizing and conducting scientific research on labour and collecting statistics and information on labour and the labour market, on living standards and on wages and income levels of workers; managing labour in terms of numbers, quality and labour changes.

4 Formulating mechanisms and regimes to support the development of progressive, harmonious and stable labour relations; promoting the application of the provisions of this Code to workers without a labour relationship; and undertaking registration and management of operation of organizations representing employees in enterprises.

5 Conducting checks and inspections, dealing with breaches of the law and resolving complaints and denunciations on labour; resolving labour disputes in accordance with law.

6 Conducting international co-operation on labour.

Article 213 *Authority for State administration of labour*

1 The Government uniformly carries out State administration of labour throughout the entire country.

2 The Ministry of Labour is responsible before the Government to carry out State administration of labour.

3 Ministries and Ministerial equivalent agencies are responsible, within the scope of their respective duties and powers, to implement and coordinate with the Ministry of Labour in implementing State administration of labour.

4 People's committees at all levels carry out State administration of labour within their respective localities.

CHAPTER 16

Labour Inspection and Dealing with Breaches of the Law on Labour

Article 214 *Contents of labour inspection*

1 To inspect compliance with provisions of the law on labour.

2 To investigate work related accidents and breaches of occupational safety and hygiene regulations.

3 To participate in guiding application of the systems of standards and technical specifications on labour conditions, and occupational safety and hygiene.

4 To resolve complaints and denunciations relating to labour in accordance with law.

5 To deal with breaches of the law on labour or make recommendations to other competent agencies to deal with them.

Article 215 *Specialized inspection regarding labour*

1 The *Law on Inspections* applies to authority/competence for specialized inspections regarding labour.

2 The provisions of the *Law on Occupational Safety and Hygiene* applies to inspections of occupational safety and hygiene.

Article 216 *Rights of labour inspectors*

A labour inspector has the right to inspect and investigate the entities and objects subject to the assigned inspection in accordance with the inspection decision.

It is not necessary to provide advance notice of an extraordinary/one-off inspection pursuant to a decision of the competent/authorized person in an emergency situation where there is a danger that the safety, life, health, honour or dignity of employees in the workplace is threatened.

Article 217 *Dealing with breaches*

1 Any person whose conduct breaches the provisions of this Code shall, depending on the nature and seriousness of the breach, be disciplined, be subject to an administrative penalty or be prosecuted for criminal liability; and if such conduct caused loss and damage, then the offender must pay compensation in accordance with law.

2 When there is a decision of the Court that a strike is unlawful, the employees participating in the strike must immediately stop striking and return to work; and an employee who fails to do so, depending on the seriousness of the breach, may be subject to a labour disciplinary measure in accordance with the law on labour.

If a strike is unlawful and causes loss and damage to the employer, then the organization representing the employees which organized and lead the strike must pay compensation for loss and damage in accordance with law.

3 Any person who takes advantage of a strike to cause a loss of public order and safety, or who causes damage to machinery, equipment or assets of the employer; any person whose conduct obstructs exercise of the right to strike, or who incites, induces or coerces workers to strike; any person who commits an act of retaliation or revenge against a person participating in a strike or a leader of a strike shall, depending on the seriousness of such conduct, be subject to an administrative penalty or shall be prosecuted for criminal liabilities; and if such conduct caused loss and damage, then the offender must pay compensation in accordance with law.

CHAPTER 17

Implementing Provisions

Article 218 *Exemption or reduction of procedures applicable to an employer employing below ten (10) employees*

Any employer employing less than ten (10) employees shall comply with the provisions of this Code but is entitled to exemption or reduction of a number of procedures as prescribed in Government regulations.

Article 219 *Amendment to a number of articles of laws relating to labour*

1 Amendments and additions to a number of articles of *Law 58/2014/QH13 on Social Insurance* as amended by *Law 84/2015/QH13* and *Law 35/2018/QH14*:

(a) Article 54 is amended as follows:

"**Article 54** *Conditions for receiving retirement pension*

1 When the employees/workers prescribed in sub-clauses (a), (b), (c), (d), (g), (h) and (i) of article 2.1 of this Law cease work, except in the case prescribed in clause 3 of this article, with a full twenty (20) years or more social insurance premiums/contributions paid, they are entitled to a pension in the following cases:

(a) Having reached the age prescribed in article 169.2 of the Labour Code;

(b) Having reached the age prescribed in article 169.3 of the Labour Code and having worked for a full fifteen (15) years in a heavy, toxic or dangerous job or a particularly heavy, toxic or dangerous job on the list issued by the Ministry of Labour or having worked for a full fifteen (15) years in an area with

especially difficult socio-economic conditions including working time in a place with a regional allowance of 0.7 or more prior to 1 January 2021;

(c) The employee is a maximum ten (10) years below the retirement age for workers prescribed in article 169.2 of the Labour Code and has worked for a full fifteen (15) years in an underground coal mine;

(d) The employee is infected with HIV/AIDS as a result of an occupational risk whilst carrying out his or her assigned tasks.

2 An employee prescribed in sub-clauses (dd) and (e) of article 2.1 of this Law who ceases work and has paid social insurance premiums/contributions for a full twenty (20) years or more is entitled to a pension in any of the following cases:

(e) The employee is a maximum five (5) years younger than the retirement age prescribed in article 169.2 of the Labour Code, except where the *Law on Officers of the Vietnamese People's Army*, the *Law on People's Public Security,* the *Law on Ciphers* or the *Law on Professional Military Personnel*, *Defence Workers and Officials* contain some other provision;

(f) The employee is a maximum five (5) years younger than the retirement age prescribed in article 169.3 of the Labour Code and has worked for a full fifteen (15) years in a heavy, toxic or dangerous job or a particularly heavy, toxic or dangerous job on the list issued by the Ministry of Labour or has worked for a full fifteen (15) years in an area with especially difficult socio-economic conditions including working time in a place with a regional allowance of 0.7 or more prior to 1 January 2021;

(g) The employee is infected with HIV/AIDS as a result of an occupational risk whilst carrying out his or her assigned tasks.

3 Female employees who are commune officials or who work part-time at the commune, ward or township level and who when ceasing work participated in social insurance for a full fifteen (15) years up to below twenty (20) years and who reach the retirement age prescribed in article 169.2 of the Labour Code are entitled to a retirement pension.

4 The conditions for retirement pension age in a number of special cases is implemented in accordance with Government regulations."

(b) Article 55 is amended as follows:

"**Article 55** *Conditions for receiving retirement pension on reduction of working capacity*

1. The employees/workers prescribed in sub-clauses (a), (b), (c), (d), (g), (h) and (i) of article 2.1 of this Law when they cease work with a full twenty (20) years or more social insurance premiums paid are entitled to a pension in a lower amount than that applicable to people who fully satisfy the conditions for a pension prescribed in sub-clauses (a), (b) and (c) of article 54.1 of this Law, when falling within any one of the following cases:

(a) Being a maximum five (5) years younger than the retirement age prescribed in article 169.2 of the Labour Code on suffering a working capacity decrease of 61% to below 81%;

(b) Being a maximum ten (10) years younger than the retirement age prescribed in article 169.2 of the Labour Code on suffering a working capacity decrease of 81% or more;

(c) Having worked for a full fifteen (15) years or more in a particularly heavy, toxic or dangerous job on the list issued by the Ministry of Labour on suffering a working capacity decrease of 61% or more.

2. The employees/workers prescribed in sub-clauses (dd) and (e) of article 2.1 of this Law when they cease work after having paid social insurance premiums/contributions for a full

twenty (20) years or more and have suffered a working capacity decrease of 61% or more, are entitled to a pension lower than that applicable to people who fully satisfy the conditions prescribed in sub-clauses (a) and (b) of article 54.2 of this Law when they fall into either of the following cases:

(a) Being a maximum ten (10) years younger than the retirement age prescribed in article 169.2 of the Labour Code;

(b) Having worked for a full fifteen (15) years or more in a particularly heavy, toxic or dangerous job on the list issued by the Ministry of Labour".

(c) Article 73.1 is amended as follows:

"[**Article 73** *Conditions for receiving retirement pension*]

1. Employees/workers are entitled to receive retirement pensions on satisfaction of both the following conditions:

(h) They have reached the retirement age prescribed in article 169.2 of the Labour Code;

(i) They have paid/contributed social insurance premiums for a full twenty (20) years or more."

2 Amendments and additions to article 32 of the *Civil Proceedings Code 92/2015/QH13*:

(a) The name of clause 1 is amended, and clauses 1a, 1b and 1c are added to clause 1 as follows:

"**Article 32** *Labour disputes and disputes related to labour falling within the jurisdiction of the Court*

[The following disputes fall within the jurisdiction of the Court:]

1. Individual labour disputes between an employee and an employer which must go through conciliation procedures conducted by a labour conciliator where the conciliation is successful but the parties fail to perform or correctly perform the conciliation [results]; or the conciliation is unsuccessful or at the end of the time-limit stipulated by the law on labour the labour conciliator fails to conduct a conciliation, except for the following labour disputes for which conciliation procedures are not compulsory:

(a) A labour dispute about labour discipline in the form of dismissal or about a case of unilateral termination of the labour contract;

(b) A labour dispute about compensation for loss and damage or over allowances on termination of the labour contract;

(c) A labour dispute between a domestic servant and the employer;

(d) A labour dispute about social insurance in accordance with provisions of the law on social insurance, about health insurance in accordance with provisions of the law on health insurance, about job loss insurance in accordance with provisions of the law on employment, or about a labour accident or occupational disease in accordance with provisions of the law on occupational safety and hygiene;

(dd) A labour dispute about compensation for loss and damage between an employee and an enterprise or organization which sent such employee to work overseas pursuant to a contract;

(e) A labour dispute between the sub-leased employee and the sub-leasing employer.

1a Individual labour disputes in which the two parties reach agreement on selection of a labour arbitration Council to resolve the dispute but on expiry of the time-limit prescribed by the law on labour a labour arbitration tribunal has not been established, or the labour arbitration tribunal fails to issue a decision resolving the dispute or one of the parties fails to implement the decision of such tribunal, in which case [the parties] have the right to petition the Court to resolve the matter.

1b Conciliation procedures for a collective labour dispute about rights as stipulated in the law on labour have been conducted by a labour conciliator but the conciliation was unsuccessful or on expiry of the time-limit prescribed for conciliation by the law on labour the labour conciliator failed to conduct a conciliation or one (1) of the parties failed to implement the minutes of conciliation, in which case the parties have the right to petition the Court to resolve the matter.

1c In a collective labour dispute about rights, the two parties reach agreement on selection of a labour arbitration Council to resolve the matter but on expiry of the time-limit prescribed in the law on labour a labour arbitration tribunal has not been established, or such tribunal has failed to issue a decision resolving the dispute or one of the parties has failed to implement the decision of such tribunal, in which case the parties have the right to petition the Court to resolve the matter."

(b) Article 32.2 [defining labour disputes] is repealed.

Article 220 *Effectiveness*

1 This Code is of full force and effect as from 1 January 2021.

As from the effective date of this Code, the following shall no longer be effective: Law 10/2012/QH13 promulgating the Labour Code.

2 As from the effective date of this Code:

Labour contracts, collective labour agreements and other lawful agreements which have already been entered into and which do not have contrary contents [to the provisions of this Code] or which guarantee more favourable rights and conditions for employees than those stipulated in this Code shall continue to be implemented; except where the parties have reached an agreement on amendments and additions for compliance with and in order to apply the provisions of this Code;

3 The provisions of this Code shall, depending on each of the following subjects, apply to the labour regimes applicable to civil servants and State employees, to members of the People's Army and of the People's Security Forces, to social organizations, members of cooperatives and workers without a labour relationship and which are regulated by other legal instruments.

This Code was passed by the National Assembly of the Socialist Republic of Vietnam at Legislature XIV, at its eighth session on 20 November 2019.

Chairman of the National Assembly

NGUYEN THI KIM NGAN