## 5.1 Employment Types & Contents

The Vietnamese Labour Code No. 45/2019/QH14, effective since 1st January 2020 ("VLC") and its implementing Decree No. 145/2020/ND-CP, effective since 1st January 2021 ("Decree 145"), govern employment matters in Vietnam. The VLC defines an employment contract as any "*agreement between an employee and an employer on a paid job, salary, working conditions, and the rights and obligations of each party in the labour relations.*", regardless of whether the document is called "employment contract" or not. Before recruiting an employee, an employer must conclude an employment contract in writing, except for employment for less than one month.

### 5.1.1 Indefinite and fixed-term employment contracts:

Art. 20 VLC distinguishes two types of employment contracts:

- **Indefinite-term employment contracts** and
- **Fixed-term (definite-term) employment contracts** with a duration of up to 36 months. If an employee keeps working upon expiry of a fixed-term employment contract, within 30 days from the expiration date, the employer may either conclude a new employment contract or finalize the employee's leaving the company. Until such time, the parties' rights, obligations and interests specified in the old employment contract shall remain effective. If a new employment contract is not concluded after the 30-day period, the existing fixed-term employment contract shall become an indefinite employment contract. In practice, it is therefore essential that the employer does not passively tolerate the employee's continuous working after expiration but notifies the employee about either conclusion of a new employment contract or the fact that no additional employment contract will be concluded.

Employers can, after the first fixed-term employment contract expires, only enter into **one (1)** more fixed-term employment contract, and the third employment contract must then always be indefinite.

However, employers often argue that this rule does not apply to foreign employees, as the duration of their work permit is limited to two (2) years and Art. 34 (12) VLC in addition stipulates that employment contracts are (automatically) terminated in case the foreign employee's work permit expires. On the other hand, however, work permits can be extended before they expire, and if work permits are not extended, employment agreements may also contain an extraordinary termination right for such case. Therefore, one could also well argue that the rule of having only up to two (2)

definite-term contracts applies to both Vietnamese and foreign employees. If an employer, despite the above, still wants to enter into more than two (2) fixed-term contracts, it is therefore recommended that the employment contract then contains at least a "severability clause" stating that: *"If a provision of this employment contract is held to be illegal, invalid or unenforceable, in whole or in part, the Employer and Employee intend that the legality, validity and enforceability of the remainder of this Contract remains unaffected."*

### 5.1.2 Probation contract / probation period:

Under Art. 24 VLC, the parties may either include the probation time in the employment contract or enter into a separate probation contract (except for employment contracts with a duration of less than one month). For higher-qualified jobs (especially in foreign-invested enterprises) separate probation contracts are the exception and the probationary period will be included in the employment contract. Art. 25 VLC provides that the probationary period shall not exceed:

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| **180 calendar days** | For the position of enterprise executives under the Law on Enterprises, such as (general) directors and other company executives. |
| **60 calendar days** | For positions that require a junior college degree or above. |
| **30 calendar days** | For positions requiring a secondary vocational certificate, professional secondary school and positions for technicians and skilled employees. |
| **Six (6) working days** | For all other jobs. |

During the probationary period, either party has the right to terminate the probation- or employment contract without prior notice and compensation obligation. The probationary salary shall not be lower than 85% of the offered salary. Upon the expiry of the probationary period, the employer shall inform the employee of the probation result. If the result is satisfactory, the employer shall keep implementing the already concluded employment contract or conclude the employment contract. (i.e., replacing the separate probation contract). If the result is not satisfactory, the employer may terminate the employment- or probation contract with immediate effect.

### 5.1.3 Minimum and recommended contents:

Under Art. 21 VLD, both indefinite- and fixed-term employment contracts must include at least the following contents:

- The employer's name, address and full name and position of the person who concludes the contract on the employer's side.
- The employee's full name, date of birth, gender, residence, identity card number or passport number.
- The job title and place of work.
- The duration of the employment contract.
- The salary including the form and (monthly) due date of salary payments, including allowances and other additional payments (bonuses).
- The schedule for salary raises and promotions.
- Working hours and rest periods.
- Personal protective equipment for the employee (if applicable).
- Social insurance, health insurance and unemployment insurance.
- Basic training and advanced training, occupational skill development.

If the job is directly related to any of the employer's business secrets or technological know-how, the employer has the right to request signing of a separate confidentiality agreement, covering scope of confidentiality and consequences of violation by the employee, including contract penalties and damages.

In addition to the above minimum provisions, employers should always include in their standard employment contracts additional provisions for their protection, including for example provisions on confidentiality, non-competition (i.e., working for or advising the employer's competitors, prohibition of multiple employments with other employers (even if non-competing), non-poaching, rules on conflict of interest and anti-corruption, ideally supported by a local "Code of Conduct" (CoC) that covers all major compliance topics in one document.

### 5.1.4 Overtime work:

According to Art. 105 VLC, working hours must not exceed eight hours per day or 48 hours per week. Overtime work is the duration of any work performed beyond the agreed working hours. An employer has the right to request an employee to work overtime when all of the following conditions are met:

- The employee agrees to work overtime.
- The total normal working hours plus overtime working hours shall not exceed 12 hours in 01 day, and 40 hours in one (1) month.
- The total overtime working hours do not exceed 200 hours in one (1) year.

Beyond the above, an employer may request an employee to work overtime for up to 300 hours in one (1) year in the following fields, works, jobs and cases:

- Manufacturing, processing of textiles, garments, footwear, electric (products), processing of agricultural, forestry, aquaculture products, salt production.
- Generation and supply of electricity, telecommunications, refinery operation; water supply and drainage.
- Works that require highly skilled workers that are not available on the labour market at the time.
- Urgent works that cannot be delayed due to seasonal reasons or availability of materials or products, bad weather, natural disasters, fire, hostility, shortage of power or raw materials, or technical issue of the production line.

Employees who work overtime will be paid based on their salary as follows:

- On normal days: at least 150%.
- On weekly days off: at least 200%
- During public holidays, paid leave, at least 300%, not including the daily salary during the public holidays or paid leave for employees receiving daily salaries.

An employee who works at night will be paid an additional amount of at least 30% of the normal salary. An employee who works overtime at night will be paid, in addition to the above, an amount of at least 20% of the day work salary of a normal day, weekend or public holiday.

While many employers would like to fully exclude in the employment contract the employee's right to overtime compensation, this is not generally permitted. However, an overtime clause in the employment contract may specify the requirements for overtime compensation, for example as follows:

*"The Employee is expected to fulfil his / her tasks under this Labour Contract in his / her regular working time, and overtime should therefore generally not be required. Overtime requested by the Employee in writing can only be compensated if i) the Employer approves in writing the Employee's written overtime request before the overtime occurs and ii) the Employee has worked the full number of hours per week in accordance with this Employment Contract. Overtime requests and approvals must be made monthly, within five (5) working days after the end of each calendar month. If the Employer approves the Employee's written overtime request in writing, overtime shall generally be compensated in the form of equivalent time off. Overtime compensation not claimed within three (3) months after the Employer's approval shall be forfeited."*

### 5.1.5 Leave entitlements:

An employee working for at least 12 months is entitled to annual leave of 12 days in addition to public holidays and at least one weekly day off. The annual leave of an employee shall increase by at least one day for every five years of employment with the same employer. An employee who has been working for an employer for less than 12 months will have a number of paid leave days proportional to the number of working months. An employee who, due to employment termination or job loss, has not taken or not entirely taken up his/her annual leave shall be paid in compensation for the untaken leave days. In addition, an employee is entitled to take a fully paid personal leave in the following circumstances: i) Marriage: three days, ii) Marriage of his/her biological or adopted child: one day, iii) Death of his/her biological or adoptive parent; death of his/her spouse's biological or adoptive parent; death of spouse, biological or adopted child: three days. An employee is further entitled to take one day of unpaid leave and must inform the employer in the case of the death of his/her grandparent or biological sibling; marriage of his/her parent or natural sibling. Employee and employer may also agree on additional unpaid leave.

## 5.2 Employment Termination

### 5.2.1 Case groups:

Art. 34 VLC stipulates the following cases of termination of an employment contract:

1. The employment contract expires.
2. The tasks stated in the employment contract have been completed.
3. Both parties agree to terminate the employment contract.
4. The employee is sentenced to imprisonment without being eligible for suspension or release, in case of capital punishment or the employee is prohibited from performing the work stated in the employment contract by an effective verdict or judgment of the court.
5. The foreign employee working in Vietnam is expelled by an effective verdict or judgment of the court or a decision of a competent authority.
6. The employee dies; is declared by the court as a legally incapacitated person, missing or dead.
7. The employer that is a natural person dies; is declared by the court as a legally incapacitated person, missing or dead. The employer that is not a natural person ceases to operate.
8. The employee is dismissed for disciplinary reasons.

9. The employee unilaterally terminates the employment contract.
10. The employer unilaterally terminates the employment contract.
11. The employer allows the employee to resign according to Art. 43 VLC.
12. The work permit of a foreign employee expires according to Art. 156 VLC.
13. The employee fails to perform his/her tasks during the probationary period under the employment contract or gives up the probation.

### 5.2.2 Unilateral termination by employee:

**Termination without cause:**

Employees have the right to unilaterally terminate their employment contract, provided they notify the employee in advance:

- at least 45 days in case of an indefinite-term employment contract.
- at least 30 days in case of a fixed-term employment contract of 12-36 months.
- at least three working days in case of a fixed term of contract under 12 months.

**Immediate termination with cause:**

Employees have the right to unilaterally terminate their employment contract without prior notice if they are:

a. not assigned to the work or workplace or not provided with the working conditions as agreed in the employment contract.
b. not paid adequately or on schedule.
c. maltreated, assaulted, physically or verbally insulted by the employer in a manner that affects the employee's health, dignity or honour or forced to work against their will.
d. sexually harassed in the workplace.
e. pregnant and have to stop working in accordance with Art. 138 VLC.
f. reaching the retirement age unless otherwise agreed by the parties, or
g. they find that the employer fails to provide truthful information in accordance with Art. 16 VLC in a manner affecting employment contract performance.

### 5.2.3 Unilateral termination by the employer:

Under Art. 36 VLC, an employer has the right to unilaterally terminate an employment contract in one of the following circumstances:

a. The employee repeatedly fails to perform his/her work according to the criteria for assessment of employees' fulfilment of duties established by the employer. The criteria for assessment of employees' fulfilment of duties shall be

established by the employer with consideration taken of opinions offered by the representative organization of employees (if any).

b. The employee is sick or has an accident and remains unable to work after having received treatment for a period of 12 consecutive months in the case of an indefinite-term employment contract, for 06 consecutive months in the case of an employment contract with a fixed term of 12 – 36 months, or more than half the duration of the contract in case of an employment contract with a fixed term of less than 12 months. Upon recovery, the employer may consider concluding another employment contract with the employee.

c. In the event of a natural disaster, fire, major epidemic, hostility, relocation or downsizing requested by a competent authority, the employer has to lay off employees after all possibilities have been exhausted.

d. The employee is not present at the workplace after the time limit specified in Art. 31 VLC.

e. The employee reaches the retirement age specified in Art. 169 VLC.

f. The employee quits his/her fails to go to work without acceptable excuses for at least five consecutive working days.

g. The employee fails to provide truthful information during the conclusion of the employment contract in accordance with Art. 16 VLC in a manner that affects the recruitment.

When unilaterally terminating the employment contract in any of the cases specified in above points a, b, c, e and g, the employer shall inform the employer in advance:

- at least 45 days in case of an indefinite-term employment contract.
- at least 30 days in case of fixed-term employment between 12 – 36 months.
- at least three working days in case of fixed-term employment of less than 12 months and in the cases stipulated in point b above.

When unilaterally terminating the employment contract in points d and f above, the employer is not required to inform the employee in advance. Employers are prohibited from unilaterally terminating an employment contract if the employee:

- is suffering from an illness or work accident, occupational disease and is being treated or nursed under the decision of a competent health institution, except for the cases stipulated in Art. 36 (1b) VLC.
- is on annual, personal or any other type of leave permitted by the employer.
- is pregnant, on maternal leave or raising a child under 12 months of age.

### 5.2.4 Consequences of illegal unilateral termination:

**By employee:** The employee who illegally unilaterally terminates his/her employment contract shall: i) not receive the severance allowance, ii) pay the employer a compensation that is worth his/her half a month's salary plus an amount equal to his/her salary for the remaining notice period from the termination date, and iii) reimburse the employer with training costs.

**By employer:** The employer that illegally unilaterally terminates an employment contract with an employee shall reinstate the employee in accordance with the original employment contract, and pay the salary, social insurance, health insurance and unemployment insurance premiums for the period during which the employee was not allowed to work, plus at least two months' salary specified in the employment contract. After the reinstatement, the employee must return the severance allowance or redundancy allowance (if any) to the employer. Where there is no longer a vacancy for the position or work as agreed in the employment contract and the employee still wishes to work, the employer shall negotiate revisions to the employment contract. In case the employee does not wish to return to work, the employer shall pay an additional severance allowance in accordance with above principles. Where the employer does not wish to reinstate the employee and the employee agrees, both parties shall negotiate, beyond the severance payment, an additional compensation which shall be at least an additional two months' salary under the employment contract in order to terminate the employment contract.

### 5.2.5 Termination for economic reasons:

Art. 42 VLC allows employers to unilaterally terminate employees in case of "changes in structure, technology or changes due to economic reasons." Changes in structure and technology include i) changes in the company's organizational structure or personnel rearrangement, ii) changes in processes, technology, equipment associated with the employer's business lines and changes in products or product structure. Changes due to economic reasons include economic crisis or economic depression and changes in law and state policies upon restructuring of the economy or implementation of international commitments. In addition, Art. 43 VLC allows employers to terminate employees in cases of restructuring such as e.g., full or partial division, consolidation, conversion, merger or sale of the enterprise.

Employers who want to terminate employees for economic reasons or due to restructuring must first implement a "labour utilization plan" if the change affects the employment of a large number of employees. In case of new vacancies, priority shall be given to retraining the existing employees. If the employer is unable to create

alternative employment and is forced to terminating employees, the employer is obliged to pay redundancy allowances to the affected employees.

### 5.2.6 Severance and redundancy payments:

In case an employment contract is terminated as prescribed in above 6.2.1 No. 1, 2, 3, 4, 6, 7, 9 and 10, the employee has worked for the employer on a regular basis for at least 12 months, the employer shall pay the employee a severance allowance amounting to **half a month's salary for each year of work**, except for the cases in which the employee is entitled to receive retirement benefits as prescribed by social insurance laws.

In case an employment contract is terminated for economic reasons or due to restructuring, and the employee has worked on a regular basis for the employer for at least 12 months, the employer shall pay a redundancy allowance amounting to **one month's salary for each year of work**, with the total redundancy allowance being at least two month's salaries. The qualified period of work as the basis for calculation of severance or redundancy allowance shall be the total period during which the employee actually worked for the employer minus the period over which the employee participated in the unemployment insurance in accordance with unemployment insurance laws and the period for which severance allowance or redundancy allowance has been paid by the employer.

The salary as the basis for calculation of both severance and redundancy allowance shall be the average salary of the last six months under the employment contract before the termination.

## 5.3 Internal Labour Regulations & Labour Discipline

### 5.3.1 Minimum content of ILRs:

According to Art. 118 VLC, every employer with at least 10 employees must have Internal Labour Regulations ("ILRs") and register these at their local Department of Labour, Invalids and Social Affairs ("DOLISA"). The ILRs must include the following:

- Working hours and rest periods.
- Order at the workplace.
- Occupational safety and health.
- Actions against sexual harassment in the workplace.
- Protection of employer's assets, business secrets and intellectual property.
- Cases in which reassignment of employees are permitted.
- Violations against the ILRs and disciplinary measures.

- Material responsibility for damages.
- The persons(s) having the competence to take disciplinary measures.

Once issued, the employees must be notified of the ILRs by displaying them at the workplace and/or in the company's Intranet.

### 5.3.2 Types of labour discipline:

The employee's violation of the ILRs authorizes the employer, under the requirements laid out in the ILRs, to i) reprimand the employee, ii) defer a due salary raise for up to 6 months, iii) demote the employee or iv) dismiss the employee.

Art. 125 VLC allows an employer to dismiss an employee in the following cases:

- The employee commits an act of theft, embezzlement, gambling, deliberate infliction of injuries or uses drug at the workplace.
- The employee discloses technological or business secrets or infringes the intellectual property rights of the employer.
- The employee commits acts which are seriously detrimental or are posing a seriously detrimental threat to the assets or interests of the employer.
- The employee commits sexual harassment in the workplace.
- The employee repeats a violation which was priorly disciplined by deferment of salary raise or demotion and has not been absolved. A repeated violation means a violation which was disciplined and is repeated before it is absolved in accordance with Art. 126 VLC (according to which an employee who is disciplined by reprimand, deferment of salary raise or demotion will have the previous violation absolved after three months, six months or three years respectively from the day on which the disciplinary measure is imposed if he/she does not commit any other violation against the ILRs).
- The employee fails to go to work for a total period of five days in 30 days, or for a total period of 20 days in 365 days from the first day he/she fails to go to work without acceptable excuses. Justified reasons include natural disasters, fires, the employee or his/her family member suffers from illness with a certification by a competent health facility; and other reasons as stipulated in the ILRs.

When imposing disciplinary measures in the workplace, employers must not:

- Harm the employee's health, life, honour or dignity.
- Apply monetary fines or deducting amounts from the employee's salary.
- Impose a disciplinary measure against an employee for a violation which is not stipulated in the ILRs, the employee's employment contract or the VLC.

### 5.3.3 Work suspension:

An employer has the right to suspend an employee if an alleged violation of the employment contract, the ILRs or the VLC is of a complicated nature and where the continued presence of the employee at the workplace is deemed to cause difficulties for the investigation. However, an employee can only be suspended from work after consultation with the representative organization of the employees. The suspension shall not exceed 15 days, or 90 days in special circumstances. During the suspension, the employee shall receive an advance of 50% of his/her salary. Upon the expiry of the work suspension, the employer shall reinstate the employee. Where the employee is disciplined, he/she shall not be required to return the advanced salary. If the employee is not disciplined, he/she is entitled to full salary for the suspension period.

### 5.3.4 Procedural requirements:

Disciplinary measures against an employee require the following:

- The employer is able to prove the employee's fault.
- A representative organization of employees to which the employee is a member participates in the procedure.
- The employee is physically present and has the right to defend him/herself, request a lawyer or the representative organization of employees to defend him/her; if the employee is under 15 years of age, his/her parent or a legal representative must be present.
- The disciplinary process is recorded in writing.

In practice, dismissal of employees is not easy: It requires the Employer to evidence the employee's fault, for example by providing written statements of witnesses, and a prior written warning letter to the employee stating exactly when he / she has committed each violation of the ILRs (with signature/stamp of the employer, to be acknowledged by the employee). Warning emails are insufficient and it is therefore recommended to have two (2) warning letters, with the first warning letter setting a deadline for the employee to correct his/her wrong behaviour or actions.

It is prohibited to impose more than one disciplinary measure for one violation of the ILRs. Where an employee commits multiple violations of the ILRs, he/she shall be subjected to the heaviest disciplinary measure for the most serious violation. In addition, no disciplinary measure shall be taken against an employee if the employee:

- is taking leave on account of illness or convalescence or on other types of leave with the employer's consent.
- is being held under temporary custody or detention.

- is waiting for verification and conclusion of the competent agency for violations.
- is pregnant, on maternal leave or raising a child under 12 months.
- commits a violation of the ILRs while suffering from the mental illness or another disease which causes the loss of consciousness or the loss of his/her behavioural control.

The time limit for taking disciplinary measures against a violation is six months from the date of the occurrence of the violation. For violations directly relating to finance, assets and disclosure of technological or business secrets the time limit is 12 months.

**5.3.5 Individual labour dispute settlement:**

Art. 187 VLC stipulate the competence to settle individual labour disputes as follows:

**Settlement by labour mediators:**

Individual labour disputes shall generally be settled through mediation by labour mediators before being brought to the Labour Arbitration Council ("LAC") or the Court, except for the following labour disputes for which mediation is not mandatory (amongst others): Disputes over dismissal and unilateral termination of employment contracts, disputes over damages and/or allowances upon termination of employment contracts, disputes over social-, health or unemployment insurance. The time limit to request a labour mediator to settle an individual labour dispute is six (6) months from the date on which a party discovers the act of infringement of their lawful rights and interests.

**Settlement by Labour Arbitration Council:**

The parties may, by consensus, request the LAC to settle a dispute if mediation is not mandatory. Within 30 working days from establishment of the arbitral tribunal, it shall issue a decision on the settlement of the labour dispute. In case an arbitral tribunal is not established by the deadline, a decision on the settlement of the labour dispute is not issued by the deadline or a disputing party fails to comply with the decision of the arbitral tribunal, the parties are entitled to bring the case to People's Court. The time limit to request the LAC to settle an individual labour dispute is nine (9) months from the date on which a party discovers the violation of their rights, interests or applicable laws.

**Settlement by the People's Court:**

The parties are generally entitled to request the People's Court to settle the case if mediation is not mandatory and/or arbitration is not agreed on. The time limit to bring an individual labour dispute to the People's Court is one (1) year from the day on which a party discovers the violation of their rights, interests or applicable laws.

## 5.4 Labour Outsourcing

Labour outsourcing means that an employee enters into an employment contract with an outsourcing agency, which subsequently outsources its employee to work for a client enterprise. Labour outsourcing is a conditional business, requires a labour outsourcing license, is permitted for up to 12 months and only for certain types of work as follows:

- The employment is necessary for the sharp increase in labour demand over a limited period of time.
- The outsourced employee is meant to replace another employee who is taking maternal leave, has an occupational accident or occupational disease or has to fulfil his/her citizen's duties.
- The work requires highly skilled workers.

The client enterprise may not employ an outsourced employee in the following cases:

- The outsourced employee is meant to replace another employee during a strike or settlement of labour disputes;
- There is no agreement with the outsourcing agency on responsibility for compensation for the outsourced employee's occupational accidents and diseases;
- The outsourced employee is meant to replace another employee who is dismissed due to changes in organizational structure, technology, economic reasons, full division, partial division, consolidation or merger of the enterprise.

The client enterprise must not outsource an outsourced employee to another employer; must not employ an employee outsourced by an agency that does not have a valid labour outsourcing license. The outsourcing agency and the client enterprise must conclude a written labour outsourcing contract with the following major contents:

- The work location, the vacancy to be filled by the outsourced employee, detailed description of the work, and detailed requirements for the outsourced employee;
- The labour outsourcing duration; the starting date of the outsourcing period;
- Working hours, rest periods, occupational safety and health at the workplace;
- Compensation responsibility in case of occupational accidents and diseases;
- Obligations of each party to the outsourced employee.

The labour outsourcing contract shall not include any agreement on the rights and benefits of employee which are less favourable than those stipulated in the concluded employment contract between the employee and the outsourcing agency.

**Rights and obligations of the outsourcing agency:**

- Provide an outsourced employee who meets the requirements of the client enterprise and the employment contract signed with the employee;
- Inform the outsourced employee of the content of the outsourcing contract;
- Provide the client enterprise with the curriculum vitae of the outsourced employee, and his/her requirements.
- Pay the outsourced employee a salary that is not lower than that of a directly hired employee of the client enterprise who has equal qualifications and performs the same or equal work;
- Keep records of the number of outsourced employees, the client enterprise, submit periodic reports to the provincial labour authority.
- Take disciplinary measures against the outsourced employee if the client enterprise returns the employee for violations against labour regulations.

**Rights and obligations of the client enterprise:**

- Inform and guide the outsourced employee about its ILRs and other regulations.
- Not to discriminate between the outsourced employee and its directly hired employees in respect of the working conditions.
- Reach an agreement with the outsourced employee on night work and overtime work in accordance with the VLC.
- The client enterprise may negotiate with the outsourced employee and the outsourcing agency on official employment of the outsourced employee while the employment contract between the outsourced employee and the outsourcing agency is still unexpired.
- Return the outsourced employee who does not meet the agreed conditions or violates the work regulations to the outsourcing enterprise.
- Provide evidence of violations against work regulations by the outsourced employee to the outsourcing agency for disciplinary measures.

**Rights and obligations of the outsourced employee:**

- Perform the work in accordance with the employment contract with the outsourcing agency;
- Obey ILRs, management, administration and supervision by client enterprise;
- Receive a salary which is not lower than that of a directly hired employee of the client enterprise with equal qualifications and performing the same or equal job;
- File a complaint with the outsourcing enterprise in case the client enterprise violates agreements in the labour outsourcing contract.

- Negotiate termination of the employment contract with the outsourcing agency in order to conclude an employment contract with the client enterprise.

## 5.5 Social Security Obligations

While social insurance ("SI") and health insurance ("HI") contributions are mandatory for both foreign and Vietnamese employees, unemployment insurance ("UI") contributions are mandatory for Vietnamese employees only. Statutory employer contributions do not constitute a taxable benefit to the employee; however, the employee's contributions are PIT deductible. SI/HI/UI contributions are based on the employees' monthly gross income (salary, allowances and other regular payments).

**Health- and social insurance contributions:**

Both Vietnamese and foreigners employed in Vietnam for three (3) months or more are subject to compulsory HI contributions. In addition, since January 2022, both Vietnamese and foreigners employed in Vietnam for 12 months or more are also subject to compulsory social insurance contributions, in which employers are obliged to contribute from the employee's gross salary 3% to the "sickness and maternity fund", 0.5% to the "occupational accidents and occupational diseases fund" and 14% to the "retirement and death fund" (total 17.5%). The employee contributes 8% only to the retirement and death fund. The maximum monthly salary that is subject to SI/HI contributions is capped at 29,800,000 VND, being 20 times the **minimum basic wage** (applicable to public sector employees, currently VND 1,490,000 VND per month).

**Unemployment insurance contributions:**

Unemployment insurance compensates Vietnamese employees for job loss or termination. Employer and employee will each contribute to the UI 1% of the employee's gross salary, up to 20 times the **minimum regional salary** (which applies to non-public sector employees). The government distinguishes, depending on the cost of living, four zones as follows:

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| **Zone 1:** VND 4,420,000 (approximately USD 193) - Hanoi and Ho Chi Minh City urban areas and certain neighbouring industrial areas in Binh Duong and Dong Nai. |
| **Zone 2:** VND 3,920,000 (approximately USD 172) - Hanoi and Ho Chi Minh City rural areas and other major urban areas such as Can Tho, Danang and Hai Phong |
| **Zone 3:** VND 3,430,000 (approximately USD 150) - Provincial cities and the districts of Bac Ninh, Bac Giang and Hai Duong |
| **Zone 4:** VND 3,070,000 (approximately USD 134) - Rest of the country |

**In summary, the following contribution requirements apply:**

| Contribution: | Employer: | Employee: |
|---|---|---|
| Social Insurance (SI) | Sickness and maternity fund: 3%<br>Occupational disease and accident fund: 0.5%<br>Retirement and death fund: 14% | 8% |
| Health insurance (HI) | 3% | 1.5% |
| Unemployment insurance (UI) | 1% | 1% |
| **Total** | **21.5%** | **10.5%** |

**Statutory retirement benefits:**

Vietnamese and foreign employees who have paid social insurance for a period of time as prescribed by social insurance laws shall receive a retirement pension when he/she reaches the retirement age. The retirement ages of employees in normal working conditions shall be gradually increased to 62 for males by 2028 and 60 for females in 2035. Since 2021, the retirement ages of employees are 60 years and three months for males and 55 years and four months for females, and it annually increases by three / four months for males/ females.

## 5.6 Local Employment of Foreigners

The local employment of foreigners in Vietnam is governed by the VLC and Decree No. 152/2020/ND-CP on "*Foreign workers working in Vietnam and Recruitment and Management of Vietnamese workers working for foreign employers in Vietnam*" (Decree 152) effective since 1st January 2021. According to Art. 152 VLC, foreigners should only be employed in Vietnam to hold highly qualified positions of e.g., managers, executives, specialists and technical workers/engineers and if professional requirements for those cannot be met by Vietnamese employees. Prior to hiring foreign employees, employers must therefore file an annual report of demand on their use of foreign employees to the local DOLISA for approval by the People's Committee, and an application for a work permit cannot be processed until obtaining this approval.

### 5.6.1 Work permit requirement and exemptions:

Art. 153 VLC stipulates that unless an exemption applies, all foreign nationals who want to work in Vietnam must obtain a work permit. Employing foreign nationals or

foreigners working in without a valid work permit constitutes a violation of Vietnamese law and is subject to penalties and sanctions for employer and foreign employee (who may even be deported or forced to leave Vietnam). Art. 154 VLC and Art. 7 of Decree 152 detail that a foreigner working in Vietnam is exempt from a work permit if he/she

- is the owner or capital contributor of a limited liability company with a capital contribution value of at least 3 billion VND.
- is the Chairperson or a member of the Board of Directors of a joint-stock company with a capital contribution value of at least 3 billion VND.
- is an intra-company transferee within 11 sectors in the schedule of commitments in services between Vietnam and WTO, including: business services, communication services, construction services, distribution services, educational services, environmental services, financial services, health services, tourism services, recreational and cultural services, and transport services.
- is the manager of a representative office, project or the person in charge of the operation of an international organization or a foreign non-governmental organization in Vietnam.
- enters Vietnam for a period of less than 3 months to do marketing of a service.
- enters Vietnam for a period of less than 3 months to a resolve complicated technical or technological issue which (i) affects or threatens to affect business operation and (ii) cannot be resolved by Vietnamese experts or any other foreign experts currently in Vietnam.
- is a foreign lawyer who has been granted a lawyer's practising certificate in Vietnam in accordance with the Law on Lawyers.
- is granted a communication and journalism practicing certificate in Vietnam by the Ministry of Foreign Affairs as per the law.
- is one of the cases specified in an international treaty to which the Socialist Republic of Vietnam is a signatory applies.
- enters Vietnam to provide professional and engineering consulting services or perform other tasks intended for research, formulation, appraisal, supervision, evaluation, management and execution of programs and projects using official development assistance (ODA) in accordance with regulations or agreement in international treaties on ODA signed between the competent authorities of Vietnam and foreign countries.
- is sent by a foreign competent authority or organization to Vietnam to teach and study at an international school under management of a foreign diplomatic

mission or the United Nations; or of a facility established under an agreement to which Vietnam is a signatory.

- is a volunteer as specified in Art. 3 of Decree 152.
- enters Vietnam to hold the position of a manager, executive, expert or technical worker for a period of work of less than 30 days and up to 3 times a year.
- enters Vietnam to implement an international agreement to which a central or provincial authority is a signatory as per the law.
- is a student studying at a foreign school or training institution which has a probation agreement with an agency, organization or enterprise in Vietnam; or a probationer or apprentice on a Vietnam sea-going ship.
- is a relative of a member of foreign representative body in Vietnam as specified in Art. 2 of Decree 152.
- obtains an official passport to work for a regulatory agency, political organization, or socio-political organization.
- takes charge of establishing a commercial presence.
- is certified by the Ministry of Education and Training as a foreign worker entering Vietnam for teaching and research purpose.

Despite being exempted by law from the work permit requirement, foreigners falling under one of the above exemptions still need a "*certification of exemption from work permit*" which is granted by the DOLISA of the province where the foreign worker is expected to work. The employer shall request the DOLISA to certify that such foreign worker is eligible for exemption from a work permit at least 10 working days before he/she starts to work. The validity period of a certification of exemption from work permit is up to 2 years. If a certification of exemption from work permit is re-issued, the corresponding validity period is up to 2 years.

**5.6.2 Work application procedure and validity:**

If a work permit must be obtained, the application process is supposed to only take 15 working days but may take longer in practice. Therefore, companies planning to employ a non-exempted employee in Vietnam must apply for the work permit 15 working days prior to the foreign employee's intended contract start date. To apply for a work permit, the foreign employee must provide the employer before submission of the application at the DOLISA, with at least the following documents:

- Legalized copy of their passport,

- "Fitness to work certificate" issued by a foreign or Vietnamese competent health facility issued within 12 months before the submission date of the application or the certificate as specified in regulations of the Minister of Health.
- Legalized police (clearance) certificate or a document certifying that the foreign worker is not serving a sentence, has a criminal record expunged or is not facing a criminal prosecution issued by a foreign or Vietnamese authority issued within 6 months before the submission date of the application.
- Proof as a manager, executive or expert (such as university degree or evidence of relevant experience, curriculum vitae).
- Two colour photos (4cm x 6cm size, white background, front view, bare head, no colour glasses), taken within 6 months before application.
- An acceptance of demand for foreign workers unless it is not required.

After initial approval, a work permit is valid for a maximum of two (2) years and can be extended in a procedure similar to obtaining the original work permit. A work permit is or becomes invalid if:

- the employment contract is terminated and/or the contents of the employment contract are inconsistent with the contents of the work permit granted.
- The work performed does not conform with the contents of the work permit.
- The contract on which the work permit was granted expires or is terminated.
- The foreign party issues a written notice which terminates the outsourcing of the foreign employee to Vietnam.
- The Vietnamese party or foreign organization that hires the foreign employee ceases its operation.
- The work permit is revoked.

## 5.7 Practical Tips

### 5.7.1 Tips for expat assignments to Vietnam:

In case of expatriate employees ("Expats") transferred by their overseas employer to Vietnam, the local Vietnamese employment contract will often not be the only relevant legal document with regards to the Expat's employment in Vietnam (from the foreign company's point of view). Rather, an assignment contract and / or an overseas employment contract (active or "dormant") will often complement the local Vietnamese employment. As the Vietnamese local employment contract, assignment contract and the applicable law may conflict, the following should be considered:

- **Conclude a local employment contract:** In some cases, employers will try to not even conclude a local Vietnamese employment contract for the assignment time to Vietnam but comply with their Vietnamese legal obligations by providing to the authorities a translation of the overseas assignment contract only. While this is legally possible, it may create uncertainties for both the Expat and the Employer for example with regards to minimum Vietnamese legal requirements. It is therefore recommended to conclude for every assignment to Vietnam a Vietnamese local employment contract to supplement the Expat's overseas and/or assignment contract to Vietnam.
- **Return clauses or reinstatement guarantee:** If the employer wishes to cancel the overseas employment contract and replace it **only** with a local Vietnamese employment contract, the Expat should consider requesting at least a "return clause" or "reinstatement guarantee" in addition to the local employment contract. More favourable for the Expat is an assignment contract according to which the overseas contract is not cancelled but set as "dormant" for the duration of the assignment and then automatically "revives" once the assignment is completed.
- **Consider "dual" termination protection:** With regards to employment termination, the best-case for the Expat (and worst-case for the employer) is where two valid employment contracts exist: A local Vietnamese employment contract and in addition, a (dormant) overseas employment contract with an assignment component or assignment contract that connects both contracts. In such case, to fire the employee, employers must subsequently terminate first the local Vietnamese employment contract and then the ("revived") overseas employment contract, thereby doubling their efforts and risks.
- **Consider local social insurance contributions:** As Expats will be subject to mandatory Vietnamese social security and PIT obligations for the time of their assignment, the assignment contract should address precisely who will pay the ongoing overseas social security obligations during the time of the assignment. The same is true for the Expat's accumulation of overseas pension benefits and contributions to respective mandatory or voluntary pension funds overseas. With regards to the Expat's potentially additional PIT burden resulting from the assignment to Vietnam, the assignment contract may either include a "net-salary clause" or a "tax- equalization" clause stating that the employer must burden or neutralize any PIT disadvantages resulting from the assignment.

- **Accumulation of severance payments in subsequent expats postings:** With regards to severance payments in the event of termination of the Expat's employment during the assignment abroad, some employers try to limit their severance obligations to the time of the assignment according to local Vietnamese law and ignore the Expat's overall employment time with the global employer. Therefore, a "severance clause" in the (active or dormant) overseas contract should clearly address the Expat's entry date to the company headquarters / company group and stipulate clearly that severance entitlements apply for the entire time period from the entry date to the termination date (regardless of where the employment was terminated). In addition, it should be stipulated which severance amount and calculation should apply under which applicable law (e.g., headquarters or assignment location or combined).
- **Check relocation clauses carefully:** Employers usually aim at a high degree of flexibility with regards to Expat relocation and phrase relocation- / transfer clauses broadly. Expats should therefore carefully look at the wording of such clauses to avoid the uncertainty to be transferred at any time to any location. At least, some objective criteria should be established according to which the employer may relocate the employee (such as e.g., comparability of new location in terms of both job requirements and environment).
- **Agree on applicable law for all employment contracts:** With regards to the applicable law, some employers like to exclude in the assignment contract or even the local employment contract the application of Vietnamese labour laws even though Vietnamese law is territorially applicable. It should be clearly defined here that the employer does not have such "cherry-picking" right. Rather, in cases of conflict between Vietnamese and overseas laws, the more favourable law for the Expat should apply.

### 5.7.2 Do's and Don'ts for local employment in Vietnam:

- **Don't rely on CV information alone:** Next to CVs, you also ask for copies of candidate's academic records (such as, e.g., university degrees, English tests etc.). In addition, candidates should provide reference letters and reference contacts to allow you to call former employers directly. While reference letters are generally phrased too well-meaning, only a direct call with (former) employer(s) may generate more candid statements about the candidate's actual skills in reality.

- **Use recruiters for pre-selection:** The pre-selection process saves you time and may include initial interviews and certain tests to validate the candidate's skills, qualifications and experience. Also, recruiters can pre-select based on the candidate's salary expectation and check the candidate's motives. However, while the use of recruiters is useful, employers should not limit their pre-selection to just 2-3 "final" candidates but ask for at least 10-15 CVs to get a better picture of who may be available in the market.
- **Don't hire "friends and family":** It is generally recommended to dismiss recommendations of "friends and family" by existing company staff to avoid conflict of interest at the workplace in principle. If, exceptionally, such recommendations are considered, a careful and thorough background screening of such candidates should be conducted.
- **Understand local salary standards**: Employers should have a salary range for their positions, based on competitive market rates. If candidates ask for less than market standard despite formally meeting qualifications, they may not be seriously interested in the job and have other motives instead (for example, setting-up or already running their own side business)
- **Don't enter into indefinite employment contracts:** Employers should always enter into a fixed-term employment contract (usually 12-24 months for the first employment) rather than signing an indefinite contract right away. Employers may enter into up to two fixed-term employment contracts and the third contract must generally be an indefinite-term contract. For foreign employees, however, this rule is disputed and if more than two fixed-term contracts are made, a severability clause should be included in the contract according to which both parties agree with the additional fixed-term contract(s).
- **Include a probation time in the employment contract:** A probation time should be agreed with all candidates. The probation time can be up to 180 days for executive positions. This gives you sufficient time to assess the candidate "on the job" and terminate the employment either during probation or when the employment contract ends.
- **Make professional employment contracts:** Employers should make sure the employment contract contains at least the legal minimum requirements and is made in Vietnamese language. In addition, include employer-protective clauses to the employment contract such as specifically provisions on confidentiality, non-competition, non-poaching, rules on conflict of interest and anti-corruption.

- **Include job description and targets in employment contracts:** Clearly agree on the standards for the employee's expected performance to make it easier for the company to terminate the employee for non-performance. If no job description and no key performance indicators and performance requirements are agreed upon in writing (by annexing both to the employment contract), Vietnamese courts will generally argue that employees are not obliged to deliver specific results but only offer their work as specified in the employment contract. (no results- or success guarantee).
- **Have Internal Labour Regulations (ILRs) registered with the DOLISA:** In addition to job description and performance targets, the ILRs allow you to define in great detail the requirements for sanctioning an employee's violation of company rules and other misconduct. The ILRs will make it easier for you to terminate an employee who violates laws, regulations and internal rules. For Vietnamese companies with at least 10 employees, they are mandatory in any case and may therefore also be considered before the threshold is reached.
- **Limit signing authority of executives:** If you hire General Directors or other executives, make sure that their signing authority for business and financial transactions is limited or controlled. This is particularly true if those executives are appointed as Legal Representatives of your company at the same time. With regards to bank transactions, clearly register with the bank the individuals allowed to transact, alone or together, up to which amounts.