

NATIONAL ASSEMBLY

SOCIALIST REPUBLIC OF VIETNAM

Independence - Freedom - Happiness

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## **LABOUR CODE OF SOCIALIST REPUBLIC OF VIETNAM**

Labour is the most important activity of a human being creating both material products and social values. High labour productivity, quality and efficiency are significant factors which determine the level of development of a country.

By regulating the rights and obligations of employees and employers, labour standards, and labour utilization and management principles, the labour laws contribute to increased production, and thereby play an important role in society and in the legal system of the nation. Since since the August revolution of 1945, this Code institutionalizes the "renovation" policy of the Communist Party of Vietnam and provides for detailed implementation of the provisions of the 1992 Constitution of the Socialist Republic of Vietnam on labour, and its utilization and management.

The Labour Code protects the right to work, benefits, and other rights of employees and, at the same time, protects the legal rights and benefits of employers, thereby creating conditions for harmonious and stable labour relations, contributing to the development of the creativity and talents of intellectual and manual workers and of labour managers in order to achieve productivity, quality and social advancement in labour, production, and services, effective utilization and management of labour, and contributing to industrialization and modernization of the country, for a wealthy and strong country, and a fair and civilized society.

### **CHAPTER I**

#### **General Provisions**

##### **Article 1**

The Labour Code regulates the labour relationship between a wage earning worker and his employer, and the social relationships which are directly related to the labour relationship.

##### **Article 2**

The Labour Code applies to all workers, and organizations or individuals utilizing labour on the basis of a labour contract in any sector of the economy and in any form of ownership.

This Code also applies to trade apprentices, domestic servants, and other forms of labour stipulated in this Code.

### **Article 3**

A Vietnamese citizen who works in an enterprise with foreign owned capital in Vietnam or in a foreign or international organization operating in the territory of Vietnam, and a foreigner who works in an enterprise or organization or for a Vietnamese individual operating in the territory of Vietnam, shall be subject to the provisions of this Code and other provisions of the law of Vietnam, except where the provisions of an international treaty to which the Socialist Republic of Vietnam is a signatory or participant provide otherwise.

### **Article 4**

The labour regime which applies to State employees and officials, elected and appointed officials, members of units of the people's armed forces and police force, members of public organizations, members of other political and social organizations, and members of co-operatives shall be governed by other separate legislation and a number of the provisions of this Code which shall be applied to each particular entity.

### **Article 5**

1. Every person shall have the right to work, to choose freely the type of work or trade, to learn a trade, and to improve his professional skill without being discriminated against on the basis of his gender, race, social class, beliefs, or religion.
2. Maltreatment of workers and all forms of forced labour are prohibited.
3. Any activity which creates employment, which is a form of selfemployment, which teaches a skill or trade to assist others to find work, and any production or business activity which employs a high number of workers shall be encouraged, facilitated or assisted by the State.

### **Article 6**

An employee shall be a person of at least fifteen (15) years of age who is able to work and has entered into a labour contract.

An employer shall be an enterprise, body, or organization, or an individual who is at least eighteen (18) years of age, recruiting, employing and paying wages to an employee.

#### **Article 7**

1. An employee shall be paid a wage on the basis of an agreement reached with the employer provided that the wage is not less than the minimum wage stipulated by the State, and is in accordance with his ability and the quality and standard of the work performed; shall be entitled to labour protection, and safe and hygienic working conditions; shall be entitled to stipulated rest breaks and holidays, paid annual leave, and social insurance benefits in accordance with the provisions of the law. The State shall stipulate a labour regime and a social policy aimed at protecting female workers and occupations having special characteristics.

2. An employee shall have the right to form, join, or participate in union activities in accordance with the *Law on Trade Unions* in order to protect his legal rights and benefits; he shall be entitled to collective welfare and be permitted to participate in the management of the business in accordance with the internal regulations of the enterprise and the provisions of the law.

3. An employee shall have an obligation to perform the labour contract and the collective labour agreement, and to comply with labour rules, internal labour regulations, and the lawful orders of the employer.

4. An employee shall have the right to strike in accordance with the provisions of the law.

#### **Article 8**

1. An employer shall have the right to recruit labour and to assign, arrange or manage labour in accordance with the requirements of business production; shall have the right to reward and to deal with breaches of labour discipline in accordance with the provisions of the laws on labour.

2. An employer shall have the right to appoint a representative to negotiate and sign a collective labour agreement of the enterprise or a collective labour agreement of an industry and shall have the responsibility to cooperate with trade unions in

discussing issues relating to labour relations and to improve the material and spiritual lives of employees.

3. An employer shall have an obligation to perform the labour contract, the collective labour agreement, and other agreements reached with the employees, to respect their honour and dignity, and to treat employees properly.

#### **Article 9**

The labour relationship between an employee and an employer is established and developed through negotiation and agreement on the principles of voluntary commitment, fairness, co-operation, mutual respect of legal rights and benefits, and full performance of undertakings.

The State shall encourage agreements which provide the employee with more favourable conditions than those stipulated in the laws on labour.

The employee and the employer shall have the right to request a competent body or organization to resolve a labour dispute. The State encourages the resolution of labour disputes by way of conciliation and arbitration.

#### **Article 10**

1. The State shall uniformly manage human resources and labour sources in accordance with law and shall formulate policies to increase and apportion human resources and to develop various forms of labour utilization and employment introduction.

2. The State shall provide guidelines for employees and employers to establish harmonious and stable labour relationships for the purpose of mutual co-operation in the development of businesses.

#### **Article 11**

The State shall, in order to achieve highly efficient management of labour and production within businesses, encourage democratic, fair and civilized labour management and all measures which increase an employee's interest in the efficiency of the business, including bonuses in the form of profit-sharing.

The State shall formulate policies which enable an employee to purchase shares and contribute capital for the development of a business.

#### **Article 12**

Trade unions shall, in conjunction with State bodies and economic and social organizations, look after and protect the rights of employees; and inspect and supervise the implementation of the provisions of the laws on labour.

## CHAPTER II

### **Employment**

#### **Article 13**

Any labour activity which creates a source of income and which is not prohibited by law shall be recognized as employment.

The creation of employment for all who are able to work shall be the responsibility of the State, enterprises, and the whole society.

#### **Article 14**

1. The State shall determine a target number of new jobs in both its annual and five-year social economic development plans. The State shall create the necessary conditions, provide financial assistance and loans, reduce or exempt payment of tax, and apply other incentive measures in order to assist those who are able to work to find work, and to assist organizations, entities, and individuals in all sectors of the economy to create and develop new occupations for the purpose of creating employment for many employees.

2. The State shall formulate preferential policies on creation of employment in order to attract and use employees being ethnic minority people.

3. The State shall establish policies to encourage and create favourable conditions for investment by domestic and foreign organizations and individuals, including Vietnamese residing abroad, in the development of business and production for the purpose of creating employment for employees.

#### **Article 15**

1. The Government shall establish national employment programmes and investment projects for economic and social growth, and relocate people to new economic zones in accordance with its job creation programmes; establish a national employment fund with funds from the State Budget and from other sources; and develop a network of employment introduction agencies. The

Government shall submit annually a national employment programme and fund to the National Assembly.

2. People's committees of provinces and cities under central authority shall establish local employment programmes and funds for submission to the people's council at the same level for decision.

3. State bodies, economic organizations, mass organizations and social organizations shall, within the scope of their respective duties and powers, be responsible for participating in the implementation of employment programmes and funds.

#### **Article 16**

1. An employee shall have the right to be employed by any employer in any location not prohibited by law. A person who is seeking work shall have the right to make a direct approach or to register with an employment introduction agency in order to find a job which matches his aspiration, ability, trade skill, and health.

2. An employer shall have the right to recruit labour directly or through employment introduction agencies, and to increase or reduce the number of employees in accordance with production and business requirements and in compliance with the provisions of the law.

#### **Article 17**

1. Where, as a result of organizational restructuring or technological changes, an employee who has been employed in the business for a period of twelve (12) months or more becomes unemployed, the employer shall have the responsibility to re-train and assign the employee to a new job; if a new job cannot be created, the employer must pay an allowance for loss of work equivalent to the aggregate amount of one month's wages for each year of employment, but no less than two months' wages.

2. In cases where it is necessary to apply the retrenchment referred to in clause 1 of this article to a number of employees, the employer must publish a list thereof and, on the basis of business requirements, seniority, skill, family conditions, and other factors of each employee, the employer shall gradually retrench the employees after consulting and agreeing with the executive committee of the trade union of the

enterprise in accordance with the procedure stipulated in clause 2 of article 38 of this Code.

Retrenchment shall only be permitted after notification of the local body in charge of State administration of labour.

3. Business enterprises must establish a reserve for retrenchment payouts in accordance with the provisions of the Government in order to ensure that employees retrenched from their enterprises are paid in a timely manner.

4. In order to create favourable conditions for employees to find work or be self-employed, the Government shall formulate policies and measures to provide trade skills, re-training, business and production guidance, and low interest loans from the national employment fund; it shall also provide financial assistance to localities or branches which have high unemployment or retrenchment rates due to organizational restructuring or technological changes.

#### **Article 18**

1. An employment service agency shall have a duty to provide consultancy services, to introduce employment to workers, to supply and recruit labour at the request of employers, and to collect and provide information on the labour market, and other duties as provided by law.

The Government shall provide for the conditions and procedures for establishment and operation of employment service agencies.

2. An employment service agency shall be permitted to collect fees, be considered for tax reduction or exemption by the State, and organize trade training in accordance with the provisions of Chapter III of this Code.

3. The Ministry of Labour, War Invalids and Social Affairs shall carry out State administration of employment service agencies.

#### **Article 19**

Any conduct which is intended to deceive workers or to use an employment service as a means of breaching the law is strictly prohibited, including forms of enticement, false promises, or false advertising.

### **CHAPTER III**

#### **Trade Apprenticeship**

## **Article 20**

1. Each person shall have the right to choose freely a trade and a place to learn that trade in accordance with his work needs.
2. An enterprise, organization, or individual satisfying the conditions stipulated by law shall be permitted to establish trade training centres. The Government shall promulgate provisions on the establishment of trade training centres.

## **Article 21**

1. A trade training centre must be registered and must operate in accordance with the provisions on trade training. It shall be permitted to collect fees and shall be subject to payment of tax in accordance with the provisions of the law.
2. Trade training centres which cater for war invalids, injured soldiers, the disabled, and ethnic minorities; those which are located in areas of high unemployment and retrenchment; and those which teach traditional trades in factories or at home shall be considered for tax exemption or reduction.

## **Article 22**

Students at a trade training centre must be at least thirteen (13) years of age, except in the case of trades in respect of which the Ministry of Labour, War Invalids and Social Affairs determines otherwise, and must be sufficiently healthy to satisfy the requirements of the trade.

## **Article 23**

1. A business enterprise shall be responsible for arranging improvement of the trade skills of its employees and for re-training employees who are assigned to other jobs within the enterprise.
2. A business enterprise which recruits apprentices or trainees for a fixed period specified in the apprenticeship or training contract shall not be required to register, but shall be prohibited from collecting fees. The training or apprenticeship period shall be included in the employment period of an employee of the enterprise. Where a trainee or an apprentice directly produces or participates in the production of products for the enterprise during his training or apprenticeship period, he shall be paid a wage at a rate agreed between the two parties.

## **Article 24**

1. Trade training must be accompanied by a written or oral contract entered into between the student and the teacher of the trade or the representative of the trade training centre. Where the trade training contract is in writing, it must be made in duplicate with each party retaining a copy.
2. The main contents of a trade training contract must include the objective of the training programme, the venue, the fee, the duration, and the amount of compensation for breach of contract.
3. Where an enterprise recruits an apprentice to work in its operation, the trade training contract must specify the term of employment and a provision which guarantees the signing of a labour contract upon the completion of the apprenticeship. If, after completion of the apprenticeship, the apprentice refuses to continue working in accordance with the contractual undertakings, he must pay compensation for the costs of the apprenticeship.
4. Where the trade training contract terminates prior to expiry due to reasons of force majeure, payment of compensation shall not be required.

#### **Article 25**

Enterprises, organizations and individuals are strictly prohibited from exploiting workers for self-interest motives, or enticing or compelling an apprentice or trainee to carry out illegal activities, in the name of apprenticeship programmes or trade training.

### **CHAPTER IV**

#### **Labour Contract**

##### **Article 26**

A labour contract is an agreement between the employee and the employer on the paid job, working conditions, and the rights and obligations of each party in the labour relationship.

##### **Article 27**

1. A labour contract shall be entered into in one of the following forms:

(a) An indefinite term labour contract:

An indefinite term labour contract is a contract in which the two parties do not determine the term and the time for termination of the validity of the contract;

(b) A definite term labour contract:

A definite term labour contract is a contract in which the two parties determine the term and the time for termination of the validity of the contract as a period of twelve (12) months to thirty six (36) months;

(c) A labour contract for a specific or seasonal job with a duration of less than twelve (12) months.

2. Where a labour contract stipulated in sub-clauses (b) and (c) of clause 1 of this article expires and the employee continues to work, within a period of thirty (30) days from the date of expiry of the contract, the two parties shall enter into a new labour contract; if no new labour contract is entered into, the signed contract shall become an indefinite term labour contract.

Where the two parties enter into a new labour contract which has a definite term, they may only do so for one additional term; if the employee continues to work after that, an indefinite term labour contract must be entered into.

3. Parties are prohibited from signing specific or seasonal job labour contracts for a term of less than twelve (12) months in respect of a job which is regular and has a duration of twelve (12) months or more, except in the case of the temporary replacement of an employee who has taken leave of absence for military obligations, pregnancy, or other temporary reasons.

#### **Article 28**

A labour contract shall be entered into in writing and must be made in duplicate with each party retaining one copy. An oral agreement may be entered into in respect of certain temporary works which have a duration of less than three months, and in respect of domestic servants. In the case of an oral agreement, the parties must comply with the provisions of the Labour Code.

#### **Article 29**

1. A labour contract must contain the following main provisions: work to be performed, working hours and rest breaks, wages, location of job, duration of contract, conditions on occupational safety and hygiene; and social insurance for employee.

2. Where the whole or a part of a labour contract provides to the employee less rights than those stipulated in the laws on labour, in the collective labour

agreement, or in the existing internal labour regulations of the enterprise, or limits other rights of an employee, the whole contract or the relevant part must be amended or added to accordingly.

3. Where a labour inspector discovers a contract with provisions as referred to in clause 2 of this article, he shall provide guidelines for parties to amend or add to the contract accordingly. Where the parties refuse to so amend or add, the labour inspector shall have the right to compel the deletion of such provisions; the rights, obligations and interests of the parties shall be dealt with in accordance with law.

### **Article 30**

1. A labour contract shall be entered into directly between the employee and the employer.

2. A labour contract may be signed by the employer and an employee who is legally authorized to represent a group of employees. In this case, the labour contract shall be enforceable and effective as if it were entered into with each employee.

3. An employee may enter into one or more labour contracts with one or more employers provided that he ensures full performance of the contracts entered into.

4. The tasks stipulated in the labour contract must be carried out by the person who has entered into such contract, and the transfer of such tasks to another person without the approval of the employer is prohibited.

### **Article 31**

In cases where an enterprise merges, consolidates, divides, separates, or transfers ownership of, right to manage, or right to use the assets of the enterprise, the succeeding employer shall be responsible to continue performance of the labour contract of the employee. In the case where all available employees are unable to be utilized, there must be a plan for labour usage in accordance with law.

An employee whose labour contract is terminated pursuant to the provisions of this article shall be entitled to an allowance for loss of work in accordance with clause 1 of article 17 of this Code.

### **Article 32**

The employer and the employee shall agree on a trial period, the duration of the trial, and the rights and obligations of the parties. The wage of the employee during

a trial period must be at least seventy (70) per cent of the wage for the relevant rank of the job. The trial period shall not exceed sixty (60) days in respect of works which require specialized or highly technical skills, or thirty (30) days in respect of other works.

During a trial period, each party shall be entitled to terminate the trial job agreement without giving advance notice and shall not be obliged to pay compensation if the work performed does not satisfy the agreed requirements. If and when the work performed satisfies the agreed requirements, the employer must officially employ the employee as previously agreed.

### **Article 33**

1. A labour contract shall become effective from the date of signing or a date agreed by the two parties or the date on which the employee commences to work.
2. During the performance of a labour contract, a party requesting the amendment of the contents of the contract must give at least three days notice to the other party. Any amendment of the contents of a labour contract may take place by way of amending or adding to the signed labour contract or by entering into a new labour contract. Where the two parties fail to agree on the amendment or addition, or on entering into a new labour contract, the signed labour contract shall continue to be performed or shall be terminated in accordance with clause 3 of article 36 of this Code.

### **Article 34**

1. In cases of unexpected difficulties or due to business production demand, an employer may temporarily assign an employee to another job which is not the occupation of the employee provided that the period of assignment does not exceed sixty (60) days in one year.
2. In cases of a temporary assignment to a different job which is not the occupation of the employee, an employer must give at least three days notice to the employee, inform the employee of the duration of the temporary assignment, and assign a job which is suitable to the health and gender of the employee.
3. Where an employee is temporarily assigned to another job as stipulated in clause 1 of this article, the employee shall be paid a wage at a rate appropriate to the new job. Where the wage rate of the new job is less than that of the previous job, the

employee shall be entitled to receive the previous wage for a period of thirty (30) days. The new wage shall be equal to at least seventy (70) per cent of the previous wage, but not less than the minimum wage stipulated by the State.

### **Article 35**

1. The performance of a labour contract may be suspended in any of the following circumstances:

- (a) The employee is required for military service or other civic obligations as determined by the law;
- (b) The employee is detained or is held temporarily in prison;
- (c) In other circumstances agreed by both parties.

2. Where a labour contract is suspended in the cases stipulated in sub-clauses (a) and (c) of clause 1 of this article, the employer must re-employ the employee at the end of the period of suspension.

3. Where a labour contract is suspended due to the employee being detained or held temporarily in prison, the re-employment of the employee shall be determined by the Government.

### **Article 36**

A labour contract shall be terminated in the following circumstances:

- 1. The expiry of the contract;
- 2. The tasks stated in the contract have been completed;
- 3. Both parties agree to terminate the contract;
- 4. The employee is sentenced to serve a jail term or is prevented from performing his former job in accordance with a decision of a court;
- 5. The employee dies or is declared missing by a court.

### **Article 37**

1. An employee working under a definite term labour contract with a duration of twelve (12) months to thirty six (36) months or a labour contract for a seasonal or specific job with a duration of under twelve (12) months shall have the right to terminate unilaterally the contract prior to expiry of such duration in the following circumstances:

- (a) The employee is not assigned to the correct job or work place or ensured the work conditions as agreed in the contract;

- (b) The employee is not paid in full or in time the wages due as agreed in the contract;
- (c) The employee is maltreated or is subject to forced labour;
- (d) Due to real personal or family difficulties, the employee is unable to continue performing the contract;
- (dd) The employee is elected to full-time duties in a public office or is appointed to a position in a State body;
- (e) A female employee is pregnant and must cease working on the advice of a doctor;
- (g) Where an employee suffers illness or injury and remains unable to work after having received treatment for a period of three consecutive months in the case of a definite term labour contract with a duration of twelve (12) months to thirty six (36) months, or for a quarter of the duration of the contract in the case of a labour contract for a specific or seasonal job with a duration of less than twelve (12) months.

2. When unilaterally terminating a labour contract pursuant to the provisions of clause 1 of this article, the employee must give the employer:

- (a) In the circumstances stipulated in sub-clauses (a), (b), (c) and (g): at least three days notice;
- (b) In the circumstances stipulated in sub-clauses (d) and (dd): at least thirty (30) days in the case of a definite term labour contract with a duration of twelve (12) months to thirty six (36) months; at least three days in the case of a labour contract for a seasonal or specific job with a duration of less than twelve (12) months;
- (c) In the circumstances stipulated in sub-clause (e): notice in accordance with the period stipulated in article 112 of this Code.

3. An employee who is a party to an indefinite term labour contract has the right to terminate unilaterally the contract provided that he gives the employer at least forty five (45) days notice; an employee who suffers illness or injury and has received treatment for a period of six consecutive months shall give at least three days notice.

### **Article 38**

1. An employer shall have the right to terminate unilaterally a labour contract in the following circumstances:

(a) The employee repeatedly fails to perform the work in accordance with the terms of the contract;

(b) An employee is disciplined in the form of dismissal in accordance with the provisions of article 85 of this Code;

(c) Where an employee suffers illness and remains unable to work after having received treatment for a period of twelve (12) consecutive months in the case of an indefinite term labour contract, or six consecutive months in the case of a definite term contract with a duration of twelve (12) months to thirty six (36) months, or more than half the duration of the contract in the case of a contract for a specific or seasonal job. Upon the recovery of the employee, the employer shall consider the continuation of the labour contract;

(d) The employer is forced to reduce production and employment after trying all measures to recover from a natural disaster, a fire, or another event of force majeure as stipulated by the Government;

(dd) The enterprise, body, or organization ceases operation.

2. Prior to the unilateral termination of a labour contract pursuant to subclauses (a), (b) and (c) of clause 1 of this article, the employer must discuss and reach an agreement with the executive committee of the trade union of the enterprise. Where there is a disagreement, the two parties must submit a report to the competent body or organization. After a period of thirty (30) days from the date of notification of the local body in charge of State administration of labour, the employer shall have the right to make a decision and shall be responsible for such decision. Where disagreeing with the decision of the employer, the executive committee of the trade union of the enterprise and the employee shall have the right to request the resolution of a labour dispute in accordance with the procedure stipulated by the law.

3. When unilaterally terminating a labour contract, except in the circumstances stipulated in sub-clause (b) of clause 1 of this article, the employer must give 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 duration of twelve (12) months to thirty six (36) months;

(c) at least three days in the case of a contract for a specific or seasonal job with a duration of less than twelve (12) months.

### **Article 39**

An employer shall not be permitted to terminate unilaterally a labour contract in any of the following circumstances:

1. The employee is suffering from illness or injury caused by a work-related accident or occupational disease and is being treated or nursed on the advice of a doctor, except in the cases stipulated in sub-clauses (c) and (d) of clause 1 of article 38 of this Code;
2. The employee is on annual leave, personal leave of absence, or any other type of leave permitted by the employer;
3. The employee is a female referred to in the cases stipulated in clause 3 of article 111 of this Code.

### **Article 40**

Each party may withdraw its unilateral termination of a labour contract at any time prior to expiry of the notice period for termination. Upon expiry of the notice period, each party shall have the right to terminate the labour contract.

### **Article 41**

1. Where an employer unlawfully unilaterally terminates a labour contract, he must re-employ the employee for the position stipulated in the signed contract and must pay compensation equal to the amount of wages and wage allowances (if any) for the period the employee was not allowed to work, plus at least two months' wages and wage allowances (if any).

Where the employee does not wish to return to work, the employee shall be paid the allowance stipulated in article 42 of this Code in addition to compensation as provided for in the first paragraph of this clause 1.

Where the employer does not wish to re-employ the employee and the employee so agrees, in addition to the compensation provided for in the first paragraph of this clause and the allowance stipulated in article 42 of this Code, the two parties shall

agree on an additional amount of compensation for the employee for the purpose of termination of the labour contract.

2. Where an employee unlawfully unilaterally terminates the labour contract, he shall not be entitled to any severance allowance and must pay the employer compensation equal to half of one month's wages and wage allowances (if any).

3. Where an employee unilaterally terminates the labour contract, he shall be liable for payment of compensation for costs of training (if any) in accordance with the provisions of the Government.

4. Where a labour contract is unilaterally terminated in breach of the provisions on giving advance notice, the party in breach shall pay compensation to the other party in a sum equal to the wages which would otherwise have been paid to the employee for those days not notified.

#### **Article 42**

1. Where the labour contract of an employee who has been regularly employed in an enterprise or organization or with a body for twelve (12) months or more is terminated, the employer must pay such employee a severance allowance equal to the aggregate amount of half of one month's wages for each year of employment plus wage allowances (if any).

2. Where a labour contract is terminated in accordance with the provisions of sub-clauses (a) and (b) of clause 1 of article 85 of this Code, the employee shall not be entitled to a severance allowance.

#### **Article 43**

Within seven days from the date of termination of a labour contract, each party shall be responsible for full payment of all sums outstanding to the other party.

In special cases, this period may be extended, but shall not exceed thirty (30) days.

Where the enterprise is declared bankrupt, money relating to the rights of the employees shall be dealt with in accordance with the provisions of the *Law on Business Bankruptcy*.

The employer shall state in writing the reasons for the termination of the labour contract in the labour book and shall be responsible for returning the labour book to the employee. Apart from the provisions in the labour book, the employer is

prohibited from providing any additional remark which might prevent the employee from finding new employment.

## CHAPTER V

### Collective Labour Agreement

#### **Article 44**

1. A collective labour agreement (hereinafter referred to as *collective agreement*) is a written agreement between a labour collective and the employer in respect of working conditions and utilization of labour, and the rights and obligations of both parties in respect of labour relations.

A collective agreement shall be negotiated and signed by the representative of the labour collective and the employer based on the principles of voluntary commitment and fairness, and shall be made public.

2. The terms and conditions of the collective agreement must not be inconsistent with the provisions of the laws on labour and other provisions of the law.

The State encourages the parties to sign a collective agreement which provides employees with more favourable conditions than those stipulated in labour laws.

#### **Article 45**

1. The negotiating representatives of the two parties to the collective agreement shall be:

(a) The representative of the labour collective shall be the executive committee of the trade union of the enterprise or a temporary trade union organization;

(b) The representative of the employer shall be the director of the enterprise, or a person authorized in accordance with the charter of the enterprise or authorized in writing by the director of the enterprise.

The number of representatives of the parties in the negotiation of a collective agreement shall be agreed by both parties.

2. The representative who signs the collective agreement for the labour collective shall be the chairman of the executive committee of the trade union of the enterprise, or a person authorized in writing by the executive committee. The representative who signs for the employer shall be the director of the enterprise, or a person authorized in writing by him.

3. A collective agreement shall only be signed if the negotiated content of such agreement is approved by more than fifty (50) per cent of the members of the labour collective in the enterprise.

#### **Article 46**

1. Each party shall have the right to request the signing of a collective agreement and to propose its terms and conditions. Upon receiving the request, the receiving party must accept to negotiate and must agree on a commencement date for the negotiation no later than twenty (20) days after receiving the request.

2. The principal provisions of the collective agreement shall include undertakings of the parties in respect of employment and guarantee of employment; working hours and rest breaks; salaries, bonuses, and allowances; work limits; occupational safety and hygiene; and social insurance for the employees.

#### **Article 47**

1. The signed collective agreement must be made in four copies, of which:

(a) One shall be retained by the employer;

(b) One shall be retained by the executive committee of the trade union of the enterprise;

(c) One shall be submitted to the higher trade union body by the executive committee of the trade union of the enterprise;

(d) One shall be submitted by the employer to the body in charge of State administration of labour of the province or city under central authority where the head office of the enterprise is located for the purpose of registration no later than ten (10) days after the date of signing.

2. The collective agreement shall become effective as from the date agreed by both parties and recorded in the agreement; in the absence of such agreement, the collective agreement shall become effective from the date of signing.

#### **Article 48**

1. The collective agreement shall be deemed partially invalid if one or a number of provisions in the agreement are contrary to provisions of the law.

2. The collective agreement shall be deemed wholly invalid in any of the following circumstances:

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

(b) The person signing the agreement was not fully authorized;

(c) The signing procedure was not strictly followed.

3. The body in charge of State administration of labour of the province or city under central authority shall have the power to declare a collective agreement to be partially or wholly invalid in accordance with clauses 1 and 2 of this article. In the case of collective agreements in the circumstances stipulated in sub-clauses (b) and (c) of clause 2 of this article, where the signed terms of the agreement are beneficial to the employees, the body in charge of State administration of labour of the province or city under central authority shall instruct the parties to re-draft the agreement in accordance with the provisions of the law within ten (10) days from the date of receipt of such instructions, or declare the agreement void if the parties fail to re-draft it. The rights, obligations and interests of the parties recorded in any agreement which is declared invalid shall be dealt with in accordance with law.

#### **Article 49**

1. After the collective agreement becomes effective, the employer must notify all employees of the enterprise thereof. All employees, including new employees who are employed after the signing of the agreement, shall be responsible for full implementation of the collective agreement.

2. Where the rights stipulated in a signed labour contract of an employee are less favourable than those provided for in the collective agreement, the respective terms of the collective agreement must be complied with. All labour regulations within the enterprise must be amended so that they are consistent with the provisions of the collective agreement.

3. Where a party considers that the other party fails to perform fully the provisions of the collective agreement or breaches the provisions of the collective agreement, the first party has the right to request full compliance with the agreement. Both parties must consider and resolve; failing which, each party shall have the right to request resolution of the collective labour dispute in accordance with the procedure stipulated by law.

#### **Article 50**

A collective agreement shall be signed for a duration of one to three years. When an enterprise signs a collective agreement for the first time, the duration of the collective agreement may be less than one year.

Each party shall have the right to request the amendment of or addition to the collective agreement only after three months of implementation from the effective date in respect of a collective agreement with a duration of less than one year, or six months in respect of an agreement with a duration of one to three years. The procedure for the amendment of or addition to a collective agreement shall be in accordance with the signing procedure.

#### **Article 51**

Prior to expiry of a collective agreement, both parties may negotiate the extension of the duration of the existing collective agreement or enter into a new agreement. Where the collective agreement expires during the negotiation process, it shall continue to be effective and binding. If the negotiations between the parties are still inconclusive three months after the expiry of the agreement, the collective agreement shall automatically become invalid.

#### **Article 52**

1. In cases where an enterprise merges, consolidates, divides, separates, or transfers ownership of, right to manage, or right to use the assets of the enterprise, the employer and the executive committee of the trade union of the enterprise shall, based on the labour usage plan, consider the continuance of performance of, amendment of or addition to the collective agreement, or entering into a new one.

2. In cases where the validity of a collective agreement is terminated because an enterprise ceases its operation, the interests of the employees shall be dealt with in accordance with article 66 of this Code.

#### **Article 53**

The employer shall be responsible for all expenses of the negotiation, signing, registration, amendment of, addition to, and announcement of the collective agreement.

The representatives of the labour collective shall be entitled to payment of wages during the time of negotiation and signing of the collective agreement provided that those representatives are employees paid by the enterprise.

**Article 54**

The provisions of this Chapter shall govern the negotiation and signing of a collective agreement for an entire industry.

**CHAPTER VI****Wages****Article 55**

The wage of an employee shall be agreed by the two parties in the labour contract and shall be paid in consideration of rate of production, and the quality and result of the work performed. The wage of an employee must not be lower than the minimum wage stipulated by the State.

**Article 56**

The minimum wage is set on the basis of the cost of living of an employee who is employed in the most basic job with normal working conditions, and includes remuneration for the work performed and an additional amount for contribution towards savings. The minimum wage shall be used as a basis for calculation of the wages or other types of jobs.

Subject to consultation with the Vietnam General Confederation of Labour and representatives of employers, the Government shall determine and promulgate from time to time a general minimum wage, a minimum wage for each region, and a minimum wage for each industry.

When the price index increases, resulting in the reduction of the real wages of employees, the Government shall adjust the minimum wage to ensure the real wages.

**Article 57**

Subject to consultation with the Vietnam General Confederation of Labour and representatives of employers, the Government shall stipulate the principles for formulation of wage scales, wage tables and labour rates for the employer to formulate and apply same in accordance with the production and business conditions of the enterprise; and shall stipulate a wage scale and a wage table for State owned enterprises.

Upon formulation of a wage scale, wage table and labour rates, the employer must consult the executive committee of the trade union of the enterprise; the wage scale and wage table must be registered with the body in charge of State administration of labour of the province or city under central authority where the head office of the enterprise is located and must be publicized within the enterprise.

#### **Article 58**

1. An employer shall have the right to select the method of payment of wages: calculated by reference to time (hours, days, weeks, or months), or on the basis of a product produced or a completed piece of work, provided that the selected method is applied for a fixed period of time and the employee is notified of the method.
2. An employee whose wage is calculated by reference to hours, days, or weeks shall be paid at the end of the hour, day, or week, or such period as agreed by the parties, provided that at least one payment of wage is made every fifteen (15) days.
3. An employee whose wage is calculated by reference to months shall be paid monthly or half-monthly.
4. An employee whose wage is calculated on the basis of a product produced or a completed piece of work shall be paid in accordance with the agreement reached between the two parties: where the work to be performed is carried out over many months, the employee shall be entitled to monthly payments in advance calculated on the amount of work performed within the month.

#### **Article 59**

1. An employee shall be entitled to receive his wage directly, in full, in a timely manner, and at the place of work.

In special cases of late payment of wages, the employer must settle the outstanding wage within one month and pay to the employee compensation equal to at least the interest earned on the amount due calculated by reference to the interest rate of saving deposits published by the State Bank at the time when the wage is paid.

2. Payment of wages shall be made by way of cash. Both parties may agree on payment in part by cheque or State currency note provided that the employee does not suffer any loss or inconvenience.

#### **Article 60**

1. An employee shall have the right to be aware of the reasons for any deductions made from his wages. Prior to making any deduction, the employer must discuss with the executive committee of the trade union of the enterprise. Where there are deductions, the aggregate amount deducted must not exceed thirty (30) per cent of the monthly wage.

2. An employer is prohibited from imposing fines and penalties by way of deductions from wages of employees.

### **Article 61**

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

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

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

(c) On holidays and paid leave days, at a rate of at least three hundred (300) per cent.

When working overtime at night, he shall also be paid an additional amount in accordance with the provisions of clause 2 of this article.

Where an employee is allowed time off for the additional hours worked, the employer shall only be required to pay the difference between the overtime rate and the wage as calculated according to the wage unit price or wage of the current work of normal working days.

2. An employee who works at night as referred to in article 70 of this Code shall be paid an additional amount of at least thirty (30) per cent of the wage calculated according to the wage unit price or day shift wage of the current work.

### **Article 62**

In cases where the employee has to cease working, he shall be paid as follows:

1. If due to the fault of the employer, the employee shall be entitled to payment of the full wage;

2. If due to the fault of the employee, that employee shall not be entitled to payment of wage; other employees in the same unit who have to also cease work shall be paid wages agreed on by the two parties provided that those wages are not less than the minimum wage;

3. If there is a breakdown in electricity or water through no fault of the employer, or due to reasons of force majeure, the level of wages shall be agreed on by the two parties but shall not be less than the minimum wage.

#### **Article 63**

Allowances, bonuses, movements up on the wage scale, and other incentives may be agreed in the labour contract, collective agreement, or the regulations of the enterprise.

#### **Article 64**

Based on the annual production and business results of an enterprise and the performance of employees, the employer shall pay bonuses to employees working for the enterprise.

The regulations on bonuses shall be decided by the employer after consulting the executive committee of the trade union of the enterprise.

#### **Article 65**

1. Where a contractor's foreman or equivalent intermediary is used, the employer who is the principal owner must have a list of the names and addresses of such persons accompanied by a list of their employees, and must ensure that their activities comply with the provisions of the law on payment for labour, and occupational safety and hygiene.

2. In cases where a contractor's foreman or an equivalent intermediary fails to pay, or pay in full, the wages, or to ensure other interests of employees, the employer who is the principal owner must be responsible for the full payment of wages to, and for ensuring such interests of, the employees.

In this case, the employer who is the principal owner shall have the right to request compensation from the contractor's foreman or equivalent intermediary, or request a competent State body to resolve the dispute in accordance with the provisions of the law.

#### **Article 66**

In cases where an enterprise merges, consolidates, divides, separates, or transfers ownership of, right to manage, or right to use the assets of the enterprise, the succeeding employer shall be responsible for payment of wages and other benefits to the employees transferred from the previous enterprise(s). Where an enterprise

becomes bankrupt, wages, retrenchment allowances, social insurance and other benefits of employees under the signed labour contracts and collective agreement shall be the first liability in the order of priority for payment.

#### **Article 67**

1. Where an employee or his family faces difficulties, the employee shall be entitled to an advance in wages in accordance with the conditions agreed by both parties.
2. The employer shall advance wages to an employee who is temporarily absent from work due to citizen's obligations.
3. Payments of wages in advance to employees who are detained or held temporarily in prison shall be determined by the Government.

### **CHAPTER VII**

#### **Working Hours and Holidays**

##### **SECTION I**

#### **Working Hours**

##### **Article 68**

1. Working hours shall not exceed eight hours per day or forty eight (48) hours per week. An employer shall have the right to determine the working hours on a daily or a weekly basis provided that the employees are notified in advance.
2. The daily working hours shall be reduced by one or two hours for workers who perform extremely heavy, dangerous, or toxic works as stipulated in a list issued by the Ministry of Labour, War Invalids and Social Affairs and the Ministry of Health.

##### **Article 69**

An employer and an employee may agree on additional working hours provided that the number of additional hours worked is no more than four hours a day or two hundred (200) hours annually, except in a number of special cases where the number of additional hours worked is no more than three hundred (300) hours annually as stipulated by the Government after consulting the Vietnam General Confederation of Labour and representatives of employers.

##### **Article 70**

Nightshift hours are from 10.00 pm to 6.00 am or from 9.00 pm to 5.00 am depending on geographical climatic regions as determined by the Government.

## **SECTION II**

### **Rest Breaks and Holidays**

#### **Article 71**

1. An employee who works for eight hours consecutively shall be entitled to a break of at least half an hour which shall be included in the number of hours worked.
2. An employee who works nightshift shall be entitled to a break of at least forty five (45) minutes which shall be included in the number of hours worked.
3. An employee who works in shifts shall be entitled to a break of at least twelve hours between each shift.

#### **Article 72**

1. In every week, each employee shall be entitled to a break of at least one day (twenty four consecutive hours).
2. An employer may arrange for the weekly day off to fall on a Sunday or another specified day of the week.
3. Where, due to the nature of the work, it is impossible for the employees to have a weekly day off, the employer must ensure that the employees on average have at least four days off in a month.

#### **Article 73**

An employee shall be entitled to have fully paid days off on the following public holidays:

- Calendar New Year Holiday: one day (the first day of January of each calendar year);
- Lunar New Year Holidays: four days (the final day of the old year and the first three days of the new Lunar year);
- Victory Day: one day (the thirtieth day of April of each calendar year);
- International Labour Day: one day (the first day of May of each calendar year);
- National Day: one day (the second day of September of each calendar year).

Where the public holidays referred to above coincide with a weekly day off, the employee shall be entitled to take the following day off also.

#### **Article 74**

1. An employee who has been employed in an enterprise or by an employer for twelve (12) months shall be entitled to fully paid annual leave as follows:

(a) Twelve (12) working days shall apply to employees working in normal working conditions;

(b) Fourteen (14) working days shall apply to persons working in heavy, dangerous, or toxic jobs, or in places with harsh living conditions, and to persons under the age of eighteen (18) years;

(c) Sixteen (16) working days shall apply to persons working in extremely heavy, dangerous, or toxic jobs, or in heavy, dangerous, or toxic jobs in places with harsh living conditions.

2. Travelling time not included in the annual leave shall be determined by the Government.

#### **Article 75**

The number of days of annual leave shall be increased according to the period of employment in an enterprise or with an employer by one additional day for every five years of employment.

#### **Article 76**

1. Subject to consultation with the executive committee of the trade union of an enterprise, an employer shall have the right to determine a timetable for the annual leave of employees provided that everyone in the enterprise is notified in advance.

2. An employee may reach an agreement with the employer on taking annual leave in instalments. Persons who work in distant and remote regions may, if they so request, combine two annual leaves together, or where three annual leaves are desired to be taken at one time, the approval of the employer must be obtained.

3. An employee of an enterprise who, due to employment termination or for some other reason, fails to take his annual leave or has not used up all his annual leave shall be paid wages for those days not taken.

#### **Article 77**

1. When taking annual leave, an employee may be paid in advance an amount equal to at least the wages for the leave days. Travel expenses and wages paid during travel shall be agreed by the parties.
2. An employee whose period of employment is less than twelve (12) months shall be entitled to annual leave of a duration calculated in proportion to the period of employment and may receive payment in lieu.

### SECTION III

#### **Personal Leave of Absence and Leave Without Pay**

##### **Article 78**

An employee may take fully paid leave of absence for personal reasons in the following circumstances:

1. Marriage: for three days;
2. Marriage of his children: for one day;
3. Death of a parent (including a parent of his spouse), spouse, or child: for three days.

##### **Article 79**

An employee may agree with the employer on leave of absence without pay.

### SECTION IV

#### **Working Hours and Rest Breaks for Workers in Jobs of a Special Nature**

##### **Article 80**

The working hours and rest breaks for workers working offshore, in mines, or in other jobs with special characteristics shall be determined by the Government.

##### **Article 81**

The working hours and rest breaks for workers working on a casual basis (incomplete days or weeks) and on basis of completed piece of work shall be determined by an agreement between the worker and the employer.

### CHAPTER VIII

## **Labour Rules and Responsibility for Damage**

### **Article 82**

1. Labour rules are regulations governing compliance with time, technology, and business and production management in the form of internal labour regulations. Internal labour regulations must not be contrary to the laws on labour and other laws. Enterprises which employ ten (10) or more employees must have internal labour regulations in writing.
2. Prior to proclaiming the internal labour regulations, the employer must consult the executive committee of the trade union of the enterprise.
3. An employer must register the internal labour regulations document with the body in charge of State administration of labour of the province or city under central authority. The internal labour regulations shall be effective as from the date of registration. No later than ten (10) days after the receipt of the internal labour regulations, the body in charge of State administration of labour of the province or city under central authority must issue a notice of registration. If the body in charge of State administration of labour of the province or city under central authority fails to issue such notice after the expiry of the period referred to above, the internal labour regulations shall automatically become effective.

### **Article 83**

1. The internal labour regulations must include the following main contents:
  - (a) Working hours and rest breaks;
  - (b) Rules and order in the enterprise;
  - (c) Occupational safety and hygiene in the work place;
  - (d) Protection of assets and confidentiality of technology and business secrets of the enterprise;
  - (dd) Conduct which is in breach of labour rules and penalties imposed for those breaches, and responsibility for damage.
2. The internal labour regulations must be notified to each employee and the main rules must be posted at necessary locations within the enterprise.

### **Article 84**

1. A person who breaches labour rules shall, depending on the seriousness of the breach, be dealt with in one of the following manners:

- (a) Reprimand;
  - (b) Extension of the period for wage increase to no more than six months or transfer to another position with a lower wage for a maximum period of six months, or removal from office;
  - (c) Dismissal.
2. Dealing with one breach of labour rules by multiple forms of penalty is prohibited.

### **Article 85**

1. Dismissal shall only be applied as a means of penalty in the following circumstances:
- (a) Where an employee commits an act of theft, embezzlement, disclosure of business or technology secrets, or other conduct which is seriously detrimental to the assets or well-being of the enterprise;
  - (b) Where an employee who is disciplined by extension of the period for wage increase or transfer to another position re-commits an offence during the period when he is on trial or re-commits an offence after he is disciplined in the form of removal from office;
  - (c) Where an employee takes an aggregate of five (5) days off in one month or an aggregate of twenty (20) days off in one year on his own will without proper reasons.
2. After dismissing an employee, the employer must notify the body in charge of State administration of labour of the province or city under central authority.

### **Article 86**

The limitation period for dealing with a breach of labour rules shall not exceed three months from the date the breach occurred, and shall not exceed six months in special cases.

### **Article 87**

1. When dealing with breaches of labour rules, the employer must be able to prove the employee's fault.
2. An employee shall have the right to represent himself or employ the service of a lawyer, a public defence counsellor, or a representative.

3. When examining and dealing with a breach of labour rules, the concerned party and a representative of the executive committee of the trade union of the enterprise must be present for participation.

4. Minutes must be prepared of hearings which examine and deal with breaches of labour rules.

#### **Article 88**

1. An employee who is reprimanded and an employee who has been disciplined by extension of the period for wage increase or transfer to another position shall, after three and six months respectively from the date the breach is dealt with, be automatically cleared of all charges if no further offence is committed.

2. An employee who was disciplined by extension of the period for wage increase or transfer to another position and who has observed half of the term of the discipline shall be considered by the employer for a reduction of such term provided that he shows improvement.

#### **Article 89**

An employee who damages tools and equipment or whose conduct causes damage to the assets of the enterprise shall be liable for payment of compensation in accordance with the provisions of the law for the damage caused. Where the damage is not serious and is due to carelessness, the maximum amount of compensation shall be limited to three months' wages and shall be deducted gradually from wages in accordance with the provisions of article 60 of this Code.

#### **Article 90**

An employee who loses tools, equipment, or other assets assigned to him by the enterprise, or uses materials at an excessive rate must, depending on the nature of each case, compensate the enterprise with an amount for the whole or a part of the asset at the market price. In cases where a contract of responsibility has been signed by the parties, the amount of compensation must be in accordance with the contract of responsibility. In cases of force majeure, no compensation shall be required.

#### **Article 91**

The order and procedure for dealing with compensation for damage referred to in articles 89 and 90 shall be governed by the provisions of articles 86 and 87 of this Code.

### **Article 92**

1. Provided that the executive committee of the trade union of the enterprise is consulted, an employer shall have the right to suspend temporarily an employee from working if the employer considers that the breach committed is complex in nature and that any further work carried out by the employee may jeopardize the investigation.

2. The period of temporary suspension shall not exceed fifteen (15) days, or three months in special circumstances. During that period, the employee shall be advanced fifty (50) per cent of the wage earned prior to the temporary suspension.

Upon the expiry of the period of temporary suspension, the employee must be allowed to resume his former work.

3. Where the employee is found guilty of a breach of labour rules, he shall not be required to repay the amount of wage advanced to him.

4. Where the employee is found not guilty, the employer must pay the full wage and allowances for the period of temporary suspension.

### **Article 93**

Where a person who is being disciplined, temporarily suspended from work, or ordered to pay compensation in accordance with the regime on responsibility for damage is not satisfied with the decision, he shall have the right to appeal to the employer against the decision, or to appeal to an authorized body, or to request resolution of a labour dispute in accordance with the procedure stipulated by law.

### **Article 94**

Where a competent body concludes that a decision made by an employer is incorrect, the employer must withdraw such decision, apologize publicly, and restore the honour and all material rights of the employee.

## CHAPTER IX

## **Occupational Safety and Hygiene**

### **Article 95**

1. An employer shall be responsible for the provision of sufficient protective equipment and ensuring occupational safety and hygiene, and for the improvement of work conditions in the work place. The employee must comply with all occupational safety and hygiene regulations and the internal labour rules of the enterprise. Any organization or individual engaging in labour activities or production must comply with the laws on occupational safety and hygiene and environment protection.

2. The Government shall establish national programmes on labour protection and occupational safety and hygiene in its socio-economic development plans and State Budget; it shall invest in scientific research and shall provide assistance for establishments which manufacture tools and equipment for occupational safety, hygiene, and personal protection; and it shall promulgate provisions on the regime of standards and procedures for occupational safety and hygiene.

3. The Vietnam General Confederation of Labour shall participate with the Government in preparing national programmes on labour protection and occupational safety and hygiene, in the preparation of scientific research programmes, and in the preparation of laws on labour protection and occupational safety and hygiene.

### **Article 96**

1. Where an enterprise wishes to construct a new establishment, or expand or renovate an existing establishment, for the purposes of production or utilization, preservation, storage, or receipt of machinery, equipment, materials, or items which have strict requirements for occupational safety and hygiene, it must prepare a feasibility study outlining measures to be taken to ensure occupational safety and hygiene in the work place of employees and the surrounding environment in accordance with the provisions of the law.

A list of machinery, equipment, materials, or items which have strict requirements for occupational safety and hygiene shall be issued by the Ministry of Labour, War Invalids and Social Affairs and the Ministry of Health.

2. The production, usage, storage, or transportation of machinery, equipment, materials, energy, electricity, chemicals, plant protection substances, and the change of technology or importation of new technology must be carried out in accordance with occupational safety and hygiene standards.

Machinery, equipment, materials, and items which have strict requirements for occupational safety and hygiene must be registered and verified in accordance with regulations of the Government.

#### **Article 97**

An employer must ensure that the work place satisfies the requirements of space, ventilation, lighting, and hygiene standards, such as dust, steam, toxic gas, radioactivity, electromagnetic field, heat, humidity, noise, vibration, and other detrimental factors. Such factors must be inspected and measured on a regular basis.

#### **Article 98**

1. The employer must, on a regular basis, inspect, maintain, and repair machinery, equipment, plants and buildings, and storage facilities in accordance with occupational safety and hygiene standards.

2. The employer must have adequate protection for parts which may easily cause dangers and sections of machinery and equipment within the enterprise. In work places and in places where there is machinery and equipment, or dangerous or toxic factors, the employer must install preventive measures for cases of breakdown, and instructions on occupational safety and hygiene in locations where they can be easily noticed and read.

#### **Article 99**

1. In the event that a work place, machinery or equipment poses a danger of causing a work-related accident or occupational disease, the employer must immediately implement preventive measures or issue an order to cease the operations in that work place or the operation of that machinery or equipment until the danger is under control.

2. An employee shall have the right to refuse to work or to leave the work place where there is an obvious and serious danger to his life or health, and must immediately report the danger to his direct superior. An employer must not force an

employee to continue working or to return to the work place if the danger is not yet overcome.

#### **Article 100**

In a work place which contains dangerous or toxic elements and has a high risk of work-related accident, an employer must equip such place with suitable technical and medical facilities and protective equipment to ensure a timely response to any breakdown or occupational accident which may occur.

#### **Article 101**

Employees who work in dangerous or toxic jobs must be provided with sufficient personal protective facilities.

The employer must ensure that all personal protective facilities meet the quality standards and criteria stipulated by law.

#### **Article 102**

When recruiting and organizing employees, an employer must take into account the stipulated health criteria in respect of each job, and must organize the training, instructing, and notification of employees of occupational safety and hygiene regulations, preventive measures, and possible accidents which might occur for each particular job of each employee.

An employee must have his health examined during recruitment and, on a regular basis, during employment in accordance with the stipulated regime. The expenses of the health examination of the employee shall be borne by the employer.

#### **Article 103**

Enterprises shall be responsible for organizing health care for employees and for implementation of first aid and emergency actions when required.

#### **Article 104**

Persons working in dangerous or toxic environments shall be compensated in kind and be entitled to the regime of preferential treatment in respect of working hours and rest breaks in accordance with the provisions of the law.

An employer must provide employees working in poisonous or contaminated environments with personal decontamination or disinfectant facilities for use after work.

#### **Article 105**

Work-related accidents are accidents which injure any bodily parts or functions of an employee, or cause the death of the employee during the process of working and closely relating to performing the work or labour activity.

An employee who is injured in a work-related accident must be treated immediately and be fully attended to. The employer must take full responsibility for the occurrence of the work-related accident in accordance with the provisions of the law.

#### **Article 106**

Occupational disease is a disease contracted by the employee from working in a harmful environment. After consultation with the Vietnam General Confederation of Labour and representatives of employers, the Ministry of Health and the Ministry of Labour, War Invalids and Social Affairs shall issue a list of types of occupational diseases.

A person suffering from an occupational disease must be fully treated and have his health examined on a regular basis with separate medical records.

#### **Article 107**

1. A person who has become disabled as a result of a work-related accident or occupational disease shall be medically assessed for classification of his disability, or to determine the reduction in his ability to work, and shall be rehabilitated. Where the employee continues to work, he shall be employed in a job which is appropriate to his health as determined by the report of the labour medical assessment council.

2. The employer must bear all medical expenses incurred from the time of the first aid or emergency treatment to the completion of the medical treatment in respect of an employee who was injured in a work-related accident or contracted an occupational disease. The employee shall be entitled to the regime on social insurance for work-related accidents and occupational diseases. If an enterprise has not participated in compulsory social insurance, the employer shall be obliged to pay the employee an amount of compensation equal to the amount stipulated in the *Regulations on Social Insurance*.

3. An employer shall be responsible for payment of compensation equal to at least thirty (30) months' wages and wage allowance (if any) for an employee whose

ability to work has been reduced by eighty one (81) per cent or more, or for the relatives of an employee who has died as a result of a work-related accident or occupational disease which is not caused by the fault of the employee. Where an employee is at fault, the entitlement to payment of compensation shall be at least equal to twelve (12) months' wages and wage allowance (if any).

The Government shall provide for the responsibility of employers and the rate of compensation for work-related accidents or occupational diseases for employees whose ability to work has been reduced by from five to less than eighty one (81) percent.

#### **Article 108**

All work-related accidents and cases of occupational disease must be declared, investigated, recorded, statistically noted, and reported on a regular basis in accordance with the provisions of the law.

All conduct which intends to conceal or to declare or report falsely a work-related accident or occupational disease is strictly prohibited.

### **CHAPTER X**

#### **Separate Provisions on Female Employees**

##### **Article 109**

1. The State shall ensure that the right to work of women is equal in all aspects to that of men. It shall establish policies to encourage employers to create conditions for women to work on a regular basis and apply widely the regime of flexible working time, part-time and casual employment and working from home.

2. The State shall progressively establish policies and implement measures to expand employment opportunities, improve working conditions, increase professional level, improve health, and strengthen the material and spiritual welfare of female workers for the purposes of assisting female workers to achieve their professional potential effectively and to combine harmoniously work and family life.

##### **Article 110**

1. State bodies shall be responsible for the expansion of various forms of training which are favourable to female workers in order to enable women to gain an

additional skill or trade and to facilitate the employment of female workers suitable to their biological and physiological characteristics as well as their role as a mother.

2. The State shall establish policies on preferential treatment and reduction of taxes for enterprises which employ a high number of female employees.

### **Article 111**

1. Employers are strictly prohibited from conduct which is discriminatory towards a female employee or conduct which degrades the dignity and honour of a female employee.

An employer must implement the principle of equality of males and females in respect of recruitment, utilization, wage increases, and wages.

2. An employer must give preference to a female who satisfies all recruitment criteria for a vacant position which is suitable to both males and females in an enterprise.

3. An employer is prohibited from dismissing a female employee or unilaterally terminating the labour contract of a female employee for reason of marriage, pregnancy, taking maternity leave, or raising a child under twelve (12) months old, except where the enterprise ceases its operation.

During pregnancy, maternity leave, or raising a child under twelve (12) months old, a female employee shall be entitled to postponement of unilateral termination of her labour contract or to extension of the period of consideration for labour discipline, except where the enterprise ceases its operation.

### **Article 112**

Where there is a doctor's certificate which states that continued employment would adversely affect her foetus, a pregnant female employee may unilaterally terminate the labour contract and shall not be liable for payment of compensation stipulated in article 41 of this Code. In such cases, the period in which the female employee must give notice to the employer shall depend on the period determined by the doctor.

### **Article 113**

1. An employer must not assign a female employee to heavy or dangerous work, or work requiring contact with toxic substances, which has adverse effects on her

ability to bear and raise a child, in accordance with the list issued by the Ministry of Labour, War Invalids and Social Affairs and the Ministry of Health.

Enterprises which currently employ female employees for the above work must formulate plans to train and gradually transfer those female employees to other suitable work. These enterprises must also carry out measures to protect the health of female workers, improve working conditions, or reduce the number of working hours.

2. Irrespective of her age, an employer must not employ a female to work regularly in mines or in deep water.

#### **Article 114**

1. A female employee shall be entitled to maternity leave prior to and after the birth of her child for a total period of four to six months as determined by the Government on the basis of the working conditions and nature of the work, whether the work is heavy, harmful, or in remote locations.

Where a female gives birth to more than one child at one time, she shall be entitled to an additional thirty (30) days leave for every additional child calculated from the second child onwards. The rights and benefits of a female employee during her maternity leave shall be as stipulated in articles 141 and 144 of this Code.

2. Where required and with the agreement of the employer, a female employee may take additional leave without pay at the end of the maternity leave stipulated in clause 1 of this article. Provided that the employer is given notice, a female employee may return to work prior to the expiry of her maternity leave if she has at least two months rest after birth and a doctor's certificate confirming that early resumption of work does not affect her health. In such case, the female employee shall still be entitled to the maternity leave allowance as well as the normal wages for the days worked.

#### **Article 115**

1. An employer must not allow a female employee who is seven months or more pregnant or currently raising a child under twelve (12) months old to work overtime or at night or to go on business trips to distant locations.

2. A female employee who is employed in heavy work and is in her seventh month of pregnancy shall be either transferred to lighter duties or entitled to work one hour less every day and still receive the same wage.

3. During her menstruation, a female employee shall be entitled to a break of thirty (30) minutes every day, and during the period of raising a child under twelve (12) months old, a female employee shall be entitled to a break of sixty (60) minutes every day, and still receive the same wage.

#### **Article 116**

1. Enterprises which employ female employees must have female changing rooms, shower facilities and toilets.

2. Enterprises which employ a high number of female employees shall be responsible for assisting the organization of child care centres and kindergartens or for assisting with a portion of the costs of female employees with children of nursing or kindergarten age.

#### **Article 117**

1. When taking leave of absence to attend pregnancy examinations; to carry out family planning programmes or to have medical treatment for miscarriage; to attend to a sick child under seven years of age; or to adopt a newborn baby, a female employee shall be entitled to social insurance benefits or to be paid by the employer a sum equal to the amount of social insurance benefits. The duration of the leave of absence and the allowance entitlement provided for in this clause shall be determined by the Government. Where another person looks after the sick child instead of the mother, the mother shall still be entitled to social insurance benefits.

2. At the end of normal maternity leave, or maternity leave with additional unpaid days off, a female employee shall be guaranteed employment upon her return to work.

#### **Article 118**

1. In enterprises where a high number of female employees are employed, a member of management of the enterprise must be assigned the duty of monitoring all issues relating to female employees. Where a decision is made which affects the

rights and benefits of females or children, the representative of the female employees must be consulted.

2. Within the labour inspection team, an appropriate proportion must be female inspectors.

## CHAPTER XI

### **Separate Provisions on Junior Workers and a Number of Other Labour Activities**

#### SECTION I

##### **Junior Workers**

###### **Article 119**

1. Junior workers are workers under the age of eighteen (18) years. Enterprises which employ junior workers must establish separate records containing the full names, dates of birth, current employment positions, and regular health reports of the junior workers, and must produce these records upon request by a labour inspector.

2. Any abuse of junior workers is strictly prohibited.

###### **Article 120**

Employment of persons under the age of fifteen (15) years is prohibited, except in a number of trades and occupations stipulated by the Ministry of Labour, Invalids and Social Affairs. In trades and occupations where the employment of persons under the age of fifteen (15) years for work, training, or apprenticeship is permitted, there must be approval of and monitoring by the parents or guardian.

###### **Article 121**

An employer shall only be permitted to employ a junior worker in jobs which are suitable to the health of the junior worker to ensure the development and growth of the worker's body, mind, and personality. An employer shall have the responsibility of looking after the interests of the junior worker in respect of labour, wages, health, and training during the working process.

It is prohibited to employ junior workers in heavy or dangerous work, or work requiring contact with toxic substances, or work or workplaces which have adverse

effects on their personality as stipulated in a list issued by the Ministry of Labour, Invalids and Social Affairs and the Ministry of Health.

#### **Article 122**

1. The normal working hours of a junior worker shall not exceed seven (7) hours per day or forty two (42) hours per week.
2. An employer shall only be permitted to employ junior workers for overtime or nightshift work in a number of trades and occupations stipulated by the Ministry of Labour, War Invalids and Social Affairs.

### **SECTION II**

#### **Senior Employees**

##### **Article 123**

Senior employees are employees over the age of sixty (60) years in the case of males and fifty five (55) years in the case of females.

During the final year prior to retirement, a senior employee shall be entitled to reduce the number of working hours in a day or to request casual or part-time employment in accordance with the provisions of the Government.

##### **Article 124**

1. If required, an employer may reach an agreement with a senior employee on the extension of the labour contract or the signing of a new labour contract in accordance with the provisions of Chapter IV of this Code.
2. Where a retiree continues to work pursuant to a new labour contract, the senior employee shall, in addition to the benefits under the retirement regime, be entitled to the benefits agreed in the labour contract.
3. An employer shall be responsible for taking care of the health of a senior employee and is prohibited from assigning a senior employee to heavy or dangerous work, or work requiring contact with toxic substances which might have adverse effects on the health of the senior employee.

### **SECTION III**

#### **Disabled Employees**

##### **Article 125**

1. The State shall protect the right to work of the disabled and encourage the recruitment of and creation of jobs for the disabled. The State shall annually set aside funds in the budget in order to assist the disabled to recover from their disability or to regain their ability to work, or to train the disabled, and shall formulate policies to provide low interest loans to the disabled for them to create self-employment and stabilize their own lives.
2. Enterprises which recruit disabled persons for apprenticeship shall, for the purpose of facilitating the disabled in their apprenticeship, be considered for tax reduction or low interest loans, and other preferential treatment.
3. The Government shall determine the proportion of disabled employees which business enterprises must recruit in certain trades and occupations; where such enterprises do not employ disabled workers, they must pay a levy as stipulated by the Government into an employment fund in order to assist in the employment of disabled workers. An enterprise which recruits more disabled employees than the stipulated proportion shall be provided with State grants or low interest loans to enable the creation of suitable working conditions for disabled employees.
4. The number of working hours of the disabled must not exceed seven (7) hours in a day or forty two (42) hours in a week.

#### **Article 126**

Trade training centres and business production establishments which cater specifically for the disabled shall be provided with initial assistance in the form of buildings, schools, classes, furniture, equipment, and tax exemptions and low interest loans.

#### **Article 127**

1. An enterprise which trains or employs disabled workers must comply with provisions on suitable working conditions, special tools and equipment, and occupational safety and hygiene for the disabled, and must take regular care of the health of disabled employees.
2. It is prohibited to allow a disabled person whose ability to work has been reduced by fifty one (51) per cent or more to work overtime or at night.
3. An employer is prohibited from assigning disabled workers to heavy or dangerous work, or work requiring contact with toxic substances as stipulated in a

list issued by the Ministry of Labour, Invalids and Social Affairs and the Ministry of Health.

#### **Article 128**

An employee who is a war invalid or injured soldier shall, in addition to the rights and benefits stipulated in the articles of this Section, be entitled to State preferential treatment reserved for war invalids and injured soldiers.

### **SECTION IV**

#### **Specialized and Highly Technical Workers**

##### **Article 129**

1. A worker who has specialized or highly technical skills shall have the right to do a number of jobs or hold a number of positions on the basis of entering into a number of labour contracts with a number of employers provided that he is able to ensure full performance of all labour contracts signed and notifies the employer(s).
2. An employee shall enjoy rights and have obligations with respect to any inventions, utility solutions, industrial designs or other objects of industrial property created or jointly created by him in the process of implementation of his labour contract in accordance with the laws on industrial property and the signed contract.
3. An employee who has specialized or highly technical skills shall have the right to take long leave of absence without wages or with a portion of the normal wages for the purposes of scientific research or study to improve his knowledge and still maintain his current employment position pursuant to an agreement reached with the employer.
4. An employee who has specialized or highly technical skills shall be given priority in the application of the provisions of clauses 1 and 2 of article 124 of this Code.
5. Where an employee who has specialized or highly technical skills discloses technological or business secrets of his employer, in addition to being disciplined in accordance with the provisions of article 85 of this Code, the employee shall also be liable for payment of compensation for damage in accordance with the provisions of articles 89 and 90 of this Code.

### **Article 130**

1. An employer shall be permitted to enter into a labour contract with any person with specialized or highly technical skills, including State employees, provided that the work is not prohibited by regulations on employment.
2. Employees with specialized or highly technical skills shall enjoy preferential treatment by the State and employers and shall enjoy favourable conditions for the continuous development of their talents which will benefit both the enterprise and the country. The preferential treatment reserved for employees with specialized or highly technical skills shall not be deemed as discriminatory conduct in employment.
3. The State encourages workers who have specialized or highly technical skills to work in mountainous regions, border regions, on offshore islands, and in regions which have harsh living conditions, and shall promulgate policies which provide such workers with preferential treatment.

## SECTION V

### **Labour for Foreign Organizations or Individuals in Vietnam, Foreign Employees Working in Vietnam**

#### **Article 131**

Vietnamese citizens working in enterprises established in accordance with the *Law on Foreign Investment in Vietnam*, enterprises in export processing zones, foreign or international bodies and organizations operating in Vietnam, or working for foreign individuals in Vietnam, and foreigners working in Vietnam shall be subject to and protected by the labour laws of Vietnam.

#### **Article 132**

1. Foreign invested enterprises may directly recruit Vietnamese employees or may do so through an employment service agency, and must notify the list of recruited employees to the local body in charge of State administration of labour.

Where a Vietnamese is unable to satisfy the requirements for work which requires highly technical or management skills, an enterprise shall be permitted to employ a percentage of foreign employees for a certain period provided that training plans

and programmes are established in order to enable Vietnamese workers to do such works within a short period of time and to replace foreign employees as stipulated by the Government.

2. International or foreign bodies and organizations and foreign individuals in Vietnam may recruit Vietnamese and foreign employees in accordance with regulations of the Government.

3. The minimum wage which applies to a Vietnamese employee in cases stipulated in article 131 of this Code shall be determined and declared by the Government after consultation with the Vietnam General Confederation of Labour and the representative of the employer.

4. Working hours, rest breaks, occupational safety and hygiene measures, social insurance, and resolution of labour disputes in the case of an enterprise or organization and other cases stipulated in article 131 shall be in accordance with the provisions of this Code and other relevant legal instruments.

### **Article 133**

1. A foreigner who works for an enterprise, organization, or individual in Vietnam for three months or more must obtain a working permit issued by the body in charge of State administration of labour of the province or city under central authority; the duration of the labour permit shall be in accordance with the term of the labour contract but shall not exceed thirty six (36) months and may be extended at the request of the employer.

2. A foreigner who works in Vietnam shall be entitled to all rights and benefits, and be subject to all obligations, stipulated by the law of Vietnam, except in cases where the provisions of an international treaty to which the Socialist Republic of Vietnam is a signatory or participant provides otherwise.

## **SECTION Va**

### **Vietnamese Working Abroad**

#### **Article 134**

1. The State encourages enterprises, bodies, organizations and individuals to search and expand the labour market in order to create employment in foreign countries for Vietnamese employees in accordance with the law of Vietnam, the law of the

foreign country, and international treaties to which Vietnam is a signatory or participant.

2. Vietnamese citizens who are aged eighteen (18) years or over, who have the ability to work, who are voluntary and satisfy all other standards and conditions in accordance with Vietnamese laws and the laws and requirements of the foreign party may work in a foreign country.

#### **Article 134a**

The forms of sending Vietnamese employees to work abroad shall include:

1. Supplying labour in accordance with contracts signed with foreign parties;
2. Sending employees to work under contracts for tender or specific projects abroad;
3. Sending employees to work under investment projects abroad;
4. Other forms as stipulated by law.

#### **Article 135**

1. An enterprise operating in labour export must have a permit from the competent body in charge of State administration of labour.
2. An enterprise operating in labour export shall have the following rights and obligations:
  - (a) To register labour export contracts with the competent body in charge of State administration of labour;
  - (b) To exploit the market and enter into contracts with foreign parties;
  - (c) To publicize the criteria and conditions for recruitment and the interests and obligations of workers;
  - (d) To recruit workers directly and not to collect recruitment fees from workers;
  - (dd) To organize training and orientation education for workers prior to departure for work abroad in accordance with law;
  - (e) To enter into contracts with workers for working abroad; to organize for workers to go abroad and return to Vietnam in accordance with the signed contracts and the provisions of the law;
  - (g) To collect fees for labour export directly and to make payment to the labour export assistance fund as stipulated by the Government;

(h) To manage and protect the interests of workers during the period of working abroad under their contracts in accordance with the laws of Vietnam and the law of the foreign country;

(i) To pay compensation for damage to workers caused by the breach of the contract by the enterprise;

(k) To initiate action to claim compensation for damage caused by the breach of the contract by the worker;

(l) To complain to the authorized State body against breaches of the laws in the field of labour export.

3. An enterprise sending Vietnamese workers to work abroad for implementation of tender contracts, contracts for specific works or investment projects abroad must register the contracts with the competent State body and must implement the provisions in sub-clauses (c), (d), (dd), (e), (h), (i), (k) and (l) of clause 2 of this article.

4. The Government shall make detailed provisions on workers working abroad pursuant to a contract and not through an enterprise.

### **Article 135a**

1. A worker working abroad shall have the following rights and obligations:

(a) To be provided with information relating to labour policies and laws, conditions for recruitment, rights and obligations of workers working abroad;

(b) To be provided with training and orientation education prior to departure for work abroad;

(c) To enter into and perform the contract correctly;

(d) To be ensured the interests under the signed contract in accordance with the laws of Vietnam and the law of the foreign country;

(dd) To comply with the laws of Vietnam and the law of the foreign country, and to respect the customs and traditions of the foreign country;

(e) To enjoy consular and judicial protection;

(g) To pay fees for labour export;

(h) To complain, denounce or initiate an action to the authorized body of the State of Vietnam or of the foreign country against breaches of the labour export enterprise and the foreign employer;

(i) To pay compensation for damage caused by a breach of the contract;  
(k) To receive compensation for damage caused by a breach of the contract by the enterprise.

2. Workers working abroad in the cases stipulated in clause 3 of article 135 shall have the rights and obligations stipulated in sub-clauses (a), (b), (c), (d), (dd), (e), (h), (i), and (k) of clause 1 of this article.

#### **Article 135b**

The Government shall make detailed provisions on training of export labour, on organization and management of workers abroad, and on establishment, management and use of the labour export assistance fund.

#### **Article 135c**

1. Illegal recruitment and sending of workers to work abroad is strictly prohibited.
2. Enterprises, organizations or individuals abusing labour export to recruit, train and organize sending worker to work abroad illegally shall be dealt with in accordance with the provisions of the law and shall pay compensation to workers if they cause damage.
3. Workers abusing the opportunity to work abroad for other purposes shall be dealt with in accordance with the provisions of the law and shall pay compensation if they cause damage.

### **SECTION VI**

#### **Other Labour Activities**

#### **Article 136**

Persons who work in trades or special jobs within the artistic field shall be entitled to certain regimes with respect to training age, retirement age, signing of labour contracts, working hours, rest breaks, wages, wage allowances, bonuses, and occupational safety and hygiene in accordance with the provisions of the Government.

#### **Article 137**

1. An employee may enter into an agreement with an employer to work at home on a regular basis and still be entitled to the rights and benefits enjoyed by other employees working at the enterprise.

2. A worker who works at home in a cottage industry shall not be subject to the provisions of the Code.

#### **Article 138**

An employer which employs less than ten (10) employees must still provide its employees with the basic rights and benefits stipulated in this Code but shall be considered for a reduction of or exemption from a number of criteria and procedures stipulated by the Government.

#### **Article 139**

1. A person who has been employed for household chores may enter into an oral or written labour contract; where the duty is to safeguard assets, a written labour contract must be entered into.

2. An employer must respect the honour, dignity and welfare of a domestic servant and shall be responsible for the provision of care when the person falls ill or is injured in an accident.

3. Wages, working hours, rest breaks, and allowances shall be agreed by the parties when negotiating the labour contract. The employer must provide the domestic servant with travelling expenses to return home at the end of his employment, except in cases where the domestic servant voluntarily resigns prior to expiry of the labour contract.

## **CHAPTER XII**

### **Social Insurance**

#### **Article 140**

1. The State shall stipulate policies on social insurance in order to expand and improve gradually the material security of an employee, to take care of and recover the health and stabilize the life of an employee and his family when the employee falls ill, becomes pregnant, reaches retirement age, dies, becomes injured in a work-related accident, contracts an occupational disease, becomes unemployed, suffers from misfortunes, or suffers from other problems.

The Government shall make detailed provisions on the re-training of unemployed workers, the rates of unemployment insurance premiums and the conditions for and

amounts of unemployment allowances; and the establishment, management and use of an unemployment insurance fund.

2. Forms of compulsory or voluntary social insurance shall apply to entities and businesses on a case by case basis in order to ensure employees receive benefits from an appropriate social insurance.

#### **Article 141**

1. Compulsory forms of social insurance shall apply to enterprises, bodies and organizations which employ employees under definite term labour contracts with a duration of three months or more and under indefinite term labour contracts. In such enterprises, bodies and organizations, the employer and the employee must make contributions to social insurance funds in accordance with the provisions of article 149 of this Code and the employee shall be entitled to social insurance benefits and allowances in the event of illness, work-related accidents and occupational disease, pregnancy, retirement, and death.

2. In respect of an employee who works under a definite term labour contract with a duration of less than three months, in seasonal jobs, social insurance contributions shall be included in the wage paid by the employer in accordance with regulations of the Government in order to enable the employee to participate in social insurance on a voluntary or self-funding basis. Where the employee continues to work or enters into a new labour contract upon expiry of the duration of a labour contract, compulsory social insurance shall apply in accordance with the provisions of clause 1 of this article.

#### **Article 142**

1. When an employee becomes ill, he shall be examined and treated at medical centres in accordance with the health insurance regime.

2. Where he has a doctor's certificate to prove that he requires leave from work for medical treatment at home or at a hospital, an employee who is ill shall be entitled to sick benefits paid from the social insurance fund.

The amount of sick benefits paid shall depend on the working conditions and the rate and period of social insurance contribution as determined by the Government.

#### **Article 143**

1. During the period in which an employee is absent from work for medical treatment in respect of a work-related accident or occupational disease, the employer must pay the full wage and expenses to the employee in accordance with the provisions of clause 2 of article 107 of this Code.

After the treatment, the employee shall, depending on the reduction in his ability to work due to a work-related accident or disease, be examined and classified into a category of injury in order to be entitled to a social insurance benefit paid as a lump sum or in monthly instalments from the social insurance fund.

2. Where an employee dies from a work-related accident or occupational disease during the term of his employment, the next -of-kin of the employee shall be entitled to receive compensation for his death pursuant to the provisions of article 146 of this Code, and an additional lump sum of benefit from the social insurance fund equivalent to twenty four (24) months' minimum wage in accordance with the provisions of the Government.

#### **Article 144**

1. During maternity leave stipulated in article 114 of this Code, a female employee who has paid social insurance contributions shall be entitled to a social insurance allowance equal to one hundred (100) per cent of her wage and an additional allowance of one month's wages.

2. Other regimes which apply to female employees shall be governed by the provisions of article 117 of this Code.

#### **Article 145**

1. An employee who satisfies the following criteria with respect to age and period of participation in social insurance shall be entitled to pension benefits as follows:

(a) Sixty (60) years of age in the case of a male and fifty five (55) years of age in the case of a female. The retirement age of an employee who has worked in heavy or toxic jobs, or in mountainous regions, in border regions, or on offshore islands, and in a number of other special cases shall be determined by the Government;

(b) An employee who has paid social insurance contributions for a period of twenty (20) years or more.

1a. Female employees who are fifty five (55) years of age and who have paid social insurance contributions for a full twenty five (25) years, and male employees who

are sixty (60) years of age and who have paid social insurance contributions for a full thirty (30) years, shall be entitled to the same maximum rate of monthly pension as stipulated by the Government.

2. In cases where an employee fails to satisfy the requirements stipulated in clause 1 of this article, but satisfies one of the following conditions, he shall be entitled to monthly payment of a pension at a lower rate:

(a) An employee who satisfies the age requirement stipulated in subclause (a) of clause 1 of this article but has only paid social insurance contributions for a period of at least fifteen (15) years to under twenty (20) years;

(b) A male employee who is at least fifty (50) years of age or a female employee who is at least forty five (45) years of age with an accumulated social insurance contribution of at least twenty (20) years, and is reduced in his or her capacity to work by sixty one (61) per cent or more;

(c) An employee who has worked in an extremely heavy or harmful job as stipulated by the Government, has paid social insurance for twenty (20) years or more, and is reduced in his or her capacity to work by sixty one (61) per cent or more.

3. An employee who does not satisfy the requirements stipulated in clauses 1 and 2 of this article for monthly payment of a pension shall be entitled to a lump sum allowance.

4. The level of monthly payments of a pension and the lump sum allowance stipulated in clauses 1, 1a, 2 and 3 of this article shall, depending on the rate and period of social insurance contributions, be determined by the Government.

#### **Article 146**

1. Where an employee who is currently working, in retirement, or receiving monthly benefits for an injury suffered as a result of loss of work capacity, a work-related accident or occupational disease dies, upon the death of the employee, the person in charge of the funeral and burial shall be entitled to a benefit paid for burial and funeral expenses stipulated by the Government.

2. Any children under the age of fifteen (15) years, the spouse, or a retired parent of an employee who has died from a work-related accident or occupational disease, who has died after paying social insurance contributions for fifteen (15) years or

more, who has died while receiving monthly payments of a pension, or who has died while receiving monthly payments of benefits for a work-related accident or occupational disease shall be entitled to monthly payments of survivors benefits provided that he or she is a direct dependant of the deceased employee. In cases where the deceased employee has no relatives who satisfy all conditions for monthly survivors benefits or has not paid social insurance contributions for fifteen (15) years or more, the family of the deceased shall be entitled to a lump sum benefit of not more than the twelve (12) months' wages or benefits currently received.

3. A person who is currently receiving a pension, benefits for loss of work capacity, or benefits for a class 1 or 2 work-related accident or a class 1 or 2 occupational disease prior to the promulgation of this Code shall be subject to the benefits of the provisions of this article with respect to benefits for the deceased.

#### **Article 147**

1. Provided that no retrenchment allowance or lump sum payment has been paid to the employee from a social insurance fund, the period of employment of an employee in State enterprises prior to this Code becoming effective shall be deemed as a period of contribution to social insurance.

2. The insurance rights and benefits of a person currently receiving a pension benefit, or a monthly benefit for loss of work capacity, a work-related accident or occupational disease, or survivors benefits prior to this Code becoming effective shall continue to be guaranteed by the State Budget and shall be adjusted in accordance with the social insurance policy currently in force.

#### **Article 148**

Enterprises in agricultural, forestry, fishing, and salt-making industries shall have the responsibility to participate in the forms of social insurance which are appropriate to the production characteristics and labour usage of their industry in accordance with regulations of the Government.

#### **Article 149**

1. Social insurance funds shall be established from the following sources:

(a) The employer shall contribute a sum equivalent to fifteen (15) percent of the total balance of the wages fund;

- (b) Each employee shall contribute five per cent of his wage;
- (c) The State shall contribute and assist with additional funds to ensure the implementation of social insurance regimes for employees;
- (d) Profits generated from the funds;
- (dd) Other sources.

2. Social insurance funds shall be uniformly, democratically and publicly managed in accordance with State financial regimes and on the basis of independent accounting, and shall be protected by the State. Social insurance funds shall be entitled to carry out measures for value retention and growth in accordance with the provisions of the Government.

#### **Article 150**

The Government shall, with the involvement of the Vietnam General Confederation of Labour, promulgate regulations on social insurance and establish an organizational system of social insurance and issue regulations on the organization and operation of social insurance funds.

#### **Article 151**

1. An employee who participates in social insurance shall be entitled to receive social insurance benefits fully, conveniently, and in a timely manner.

2. Disputes on social insurance:

(a) A dispute between an employee and an employer shall be resolved in accordance with the provisions of Chapter XIV of this Code.

(b) A dispute between an employee who has ceased working in accordance with stipulated regimes and an employer or a social insurance body, or between an employer and a social insurance body, shall be resolved between the two parties; failing such resolution, it shall be resolved by a people's court.

#### **Article 152**

The State encourages employees, trade unions, employers, and other social organizations to establish other social support funds.

### **CHAPTER XIII**

#### **Trade Unions**

#### **Article 153**

1. In the case of enterprises which are currently operating without a trade union organization, no later than six months from the date of effectiveness of the *Law on Amendment of and Addition to a Number of Articles of the Labour Code*, and in the case of newly-established enterprises, after six months from the date of commencement of operation, the local trade union and industry trade union shall be responsible for establishing trade union organizations at such enterprises to represent and protect the lawful rights and interests of the employees and the labour collective.

The employer shall be responsible for facilitating the early establishment of trade union organizations. Pending establishment, the local trade union or industry trade union shall appoint a provisional executive committee of the trade union to represent and protect the lawful rights and interests of the employees and the labour collective.

Any act which obstructs the establishment and activities of the trade union at an enterprise is strictly prohibited.

2. The Government shall provide guidelines for the implementation of clause 1 of this article after agreement with the Vietnam General Confederation of Labour.

#### **Article 154**

1. When a trade union organization is established in accordance with the *Law on Trade Unions* and the charter of the trade union, the employer must acknowledge such organization.

2. The employer must co-operate closely with trade unions and create favourable conditions for trade union activities in accordance with the provisions of the *Labour Code* and the *Law on Trade Unions*.

3. The employer must not prejudice an employee because he has formed, joined, or participated in the activities of a trade union organization. The employer must not apply economic pressures or other measures to interfere with the organization and activities of trade unions.

#### **Article 155**

1. The employer shall be responsible for provision of the necessary working conditions and facilities to enable the trade union to carry out its activities.

2. An employee who carries out trade union activities on a part-time basis shall be given certain free time during working hours to carry out such activities, and still be entitled to his full wage. The amount of time allowed shall depend on the size of the enterprise and the agreement reached between the employer and the executive committee of the trade union of the enterprise, but shall not be less than three working days in one month.

3. A person who carries out trade union activities on a full-time basis and receives a wage from trade union funds shall be entitled to the rights, benefits, and collective welfare enjoyed by other employees of the enterprise in accordance with the regulations of the enterprise or the collective agreement.

4. When an employer decides to retrench or to terminate unilaterally the labour contract of an employee who is a member of the executive committee of the trade union of the enterprise, the approval of the executive committee of the trade union of the enterprise must be obtained. Where the employee is the chairman of the executive committee of the trade union of the enterprise, the approval of the immediately superior trade union organization must be obtained.

### **Article 156**

The Vietnam General Confederation of Labour and trade unions at all levels shall participate with State bodies and representatives of employers in discussing and resolving issues relating to labour relations; shall have the right to establish employment service agencies, trade training centres, aid funds, legal consultancy centres, and other establishments for the mutual welfare of employees, and other rights in accordance with the provisions of the *Law on Trade Unions* and this Code.

## CHAPTER XIV

### **Resolution of Labour Disputes**

#### **Article 157**

1. A labour dispute is a dispute about rights and benefits relating to employment, wages, incomes, and other labour conditions; about performance of the labour contract and the collective agreement; and about issues which arise during a training or apprenticeship period.

2. Labour disputes include an individual labour dispute between an employee and an employer, and a collective labour dispute between a labour collective and an employer.

### **Article 158**

A labour dispute shall be resolved on the basis of the following principles:

1. Direct negotiation and conciliation between the disputing parties at the place where the dispute arises.
2. Conciliation and arbitration on the basis of mutual respect of rights and benefits, respect of general social benefits, and compliance with the law.
3. A labour dispute must be resolved publicly, objectively, in a timely manner, quickly, and in compliance with the law.
4. The trade union organization of the enterprise and the representative of the employer must participate in the resolution process of the labour dispute.

### **Article 159**

A labour dispute shall be resolved by a labour dispute resolution body or organization if either party refuses to negotiate; if both parties fail to resolve the dispute by way of negotiation; or if one or both of the parties lodge a request for resolution of the labour dispute.

### **Article 160**

1. During the resolution process of a labour dispute, the disputing parties shall have the right to:
  - (a) Participate in the resolution process directly or through a representative;
  - (b) Withdraw the application for resolution or amend the nature of the dispute;
  - (c) Request that the person directly resolving the dispute be replaced if it can be justified that such person is unable to be objective or fair in carrying out his duty.
2. During the resolution process of a labour dispute, the disputing parties shall have the obligation to:
  - (a) Provide all relevant documents and evidence upon the request of the body or organization resolving the labour dispute;
  - (b) Comply strictly with the agreement reached, the settlement agreement, the decision of the body or organization resolving the dispute which has taken effect, or the judgment or decision of the people's court which has taken effect.

### **Article 161**

Labour dispute resolution bodies or organizations shall, depending on their respective duties and power, have the right to request the disputing parties and relevant bodies, organizations, and individuals to provide documents or evidence. They shall have the right to request the opinion of an expert, and to summon witnesses and other parties concerned during the process of labour dispute resolution.

## **SECTION I**

### **Resolution Authority and Procedure for Individual Labour Dispute**

#### **Article 162**

The following bodies and organizations shall have authority to resolve an individual labour dispute:

1. The labour conciliatory council of an enterprise, or a labour conciliator of the body in charge of State administration of labour of the district, town, and provincial city (hereinafter referred to as *district level*) in cases where there is no labour conciliatory council;
2. The people's court.

#### **Article 163**

1. A labour conciliatory council of an enterprise shall be established in enterprises which have a trade union or a provisional executive committee of trade union and shall consist of an equal number of representatives of the employees and the employer. The number of members in the council shall be agreed by the two parties.
2. The term of office of the labour conciliatory council of an enterprise shall be two years. The representatives of each party shall alternate between the positions of chairman and secretary of the council. The labour conciliatory council in an enterprise shall carry out its duty on the basis of the principles of agreement and unanimous approval.
3. The employer shall ensure the necessary conditions for the labour conciliatory council of an enterprise to carry out its activities.

### **Article 164**

The resolution procedure of an individual labour dispute shall be as follows:

1. Within seven days from the date of receipt of the request, the labour conciliatory council of the enterprise shall commence the resolution process of a labour dispute. Both parties or their authorized representatives must be present at the conciliation meeting.
2. The labour conciliatory council of the enterprise shall put forward a resolution proposal to the parties. If both parties accept the resolution proposal, a settlement agreement shall be prepared and signed by the disputing parties, and the chairman and the secretary of the labour conciliatory council of the enterprise. Both parties shall have the obligation to comply with the agreements recorded in the settlement agreement.
3. In the event that the conciliation fails, or a disputing party is not present for the second time without proper reason when a proper summons has been sent, a non-settlement statement shall be prepared by the labour conciliatory council of the enterprise. Copies of the statement must be forwarded to the two disputing parties within a period of three days from the date on which the conciliation is unsuccessful. Each party to the dispute has the right to request the people's court to hear the dispute. The file submitted to the people's court must be accompanied by the nonsettlement statement.

### **Article 165**

1. A labour conciliator shall, in accordance with the procedure stipulated in article 164 of this Code, resolve an individual labour dispute at an enterprise where no labour conciliatory council of the enterprise has been established, and a dispute relating to the performance of an apprenticeship contract or training fees.
2. A labour conciliator must commence the resolution process within seven days from the date of receipt of the request for conciliation.

### **Article 166**

1. The people's court shall resolve an individual labour dispute which fails to be resolved by the labour conciliatory council of an enterprise or a labour conciliator, or which fails to be resolved by the labour conciliatory council of an enterprise or a labour conciliator within the stipulated time limit.

2. The following individual labour disputes may be resolved directly by a people's court without requiring to be referred first to a conciliation body at an enterprise:

- (a) Disputes relating to dismissal in respect of a breach of labour rules or disputes which arise from the unilateral termination of a labour contract;
- (b) Disputes relating to payment of compensation or allowances upon termination of a labour contract;
- (c) Disputes between a domestic servant and the employer;
- (d) Disputes relating to social insurance as stipulated in sub-clause (b) of clause 2 of article 151 of this Code;
- (dd) Disputes relating to payment of compensation between an employee and a labour export enterprise.

3. An employee shall be exempted from payment of court fees in all litigation matters involving claims for wages, loss of work allowance, retrenchment allowance, social insurance, compensation for a work-related accident or occupational disease, compensation for damage for wrongful dismissal or unlawful termination of a labour contract.

4. Where, upon hearing, the people's court finds that a labour contract is contrary to a collective agreement or the laws on labour; or that a collective agreement is contrary to the laws on labour, it shall declare the labour contract or collective agreement to be partially or wholly invalid.

The rights, obligations and interests of the parties recorded in a labour contract or a collective agreement which is declared invalid shall be dealt with in accordance with law.

5. The Government shall make detailed provisions for dealing with the consequences of the cases where a labour contract or a collective agreement is declared invalid as stipulated in clause 3 of article 29, clause 3 of article 48 and clause 4 of this article.

### **Article 167**

1. The limitation periods for requesting resolution of an individual labour dispute, calculated from the date on which each disputing party claims that its rights and benefits have been violated, shall be stipulated as follows:

- (a) One year in respect of labour disputes stipulated in sub-clauses (a), (b) and (c) of clause 2 of article 166;
  - (b) One year in respect of disputes stipulated in sub-clause (d) of clause 2 of article 166;
  - (c) Three years in respect of disputes stipulated in sub-clause (dd) of clause 2 of article 166;
  - (d) Six months in respect of other labour disputes.
2. The limitation period for resolution of collective labour disputes shall be one year calculated from the date on which each party claims that its rights and benefits have been violated.

## SECTION II

### **Resolution Authority and Procedure for Collective Labour Dispute**

#### **Article 168**

The following bodies and organizations shall have authority to resolve a collective labour dispute:

1. The labour conciliatory council of an enterprise, or the labour conciliator of the district level labour body in cases where there is no labour conciliatory council;
2. The provincial labour arbitration council;
3. The people's court.

#### **Article 169**

1. The labour conciliatory council of an enterprise stipulated in article 163 of this Code shall have authority to resolve collective labour disputes.
2. The provincial labour arbitration council shall consist of full-time and part-time members being representatives of the body in charge of State administration of labour of the province or city under central authority, the trade union, the employer, and a number of respected lawyers, administrators, and social workers of the locality. The number of members in the provincial labour arbitration council shall be an odd number, but shall not exceed nine, and shall be chaired by the representative of the body in charge of State administration of labour of the province or city under central authority.

The term of office of the labour arbitration council shall be three years. The labour arbitration council shall make decisions by majority and sealed votes.

The body in charge of State administration of labour of the province or city under central authority shall provide the necessary conditions for the labour arbitration council to carry out its activities.

#### **Article 170**

The resolution procedure for a collective labour dispute shall be as follows:

1. The labour conciliatory council of an enterprise or the labour conciliator shall commence the resolution process within seven days from the date of receipt of the request for resolution. Both parties to the dispute or their authorized representatives must be present at the conciliation meeting.

2. The labour conciliatory council of the enterprise or the labour conciliator shall put forward a resolution proposal to the parties for consideration. If both parties accept the resolution proposal, a settlement agreement shall be prepared and signed by the parties, and the chairman and secretary of the labour conciliatory council of the enterprise or the labour conciliator.

Both parties shall have the obligation to comply with the agreements recorded in the settlement agreement.

3. In the event that the conciliation fails, a non-settlement statement outlining the views of the parties and the council or the labour conciliator shall be prepared by the labour conciliatory council or labour conciliator, and shall be signed by the parties, and the chairman and secretary of the council or the labour conciliator. Each or both of the parties to the dispute shall have the right to request the provincial labour arbitration council to resolve the dispute.

#### **Article 171**

1. The labour arbitration council shall commence the conciliation and resolution process of the collective labour dispute within ten (10) days from the date of receipt of a request.

The authorized representatives of both disputing parties must be present at the resolution meeting for the collective labour dispute. Where necessary, the labour arbitration council shall invite a representative of a higher trade union body and representatives of relevant State bodies to attend the meeting.

2. The labour arbitration council shall put forward a resolution proposal to the parties for consideration. If both parties accept the proposal, a settlement agreement shall be prepared and signed by the disputing parties, and the chairman of the labour arbitration council. Both parties shall have an obligation to comply with the agreements recorded in the settlement agreement.

3. In cases where the conciliation fails, the labour arbitration council shall resolve the dispute and immediately notify the disputing parties of its decision. If both parties have no comment, the decision shall automatically become effective.

#### **Article 172**

1. Where the labour collective is not satisfied with the decision of the labour arbitration council, it shall have the right to request the people's court to resolve the matter, or to strike.

2. Where the employer is not satisfied with the decision of the labour arbitration council, the employer shall have the right to request the people's court to review the decision of the arbitration council. The decision of the employer to request the people's court to review the decision of the arbitration council does not affect the right to strike of the labour collective.

#### **Article 173**

1. While the labour conciliatory council or the labour arbitration council is in the process of resolving the labour dispute, neither party shall have the right to act unilaterally against the other party.

2. The decision to strike shall be made by the executive committee of the trade union of the enterprise after obtaining the approval, by sealed votes or signatures, of more than half of the number of employees in the labour collective.

The executive committee of the trade union of the enterprise must nominate a maximum of three representatives to present the request of the labour collective to the employer and, at the same time, to notify the body in charge of State administration of labour of the province or city under central authority and the provincial trade union confederation in writing.

The request and notice must clearly outline the matters in dispute, the matters proposed to be resolved, the agreement to strike of the employees (by votes or by signatures), and the commencement time of the strike.

3. Any act of violence which damages machinery, equipment, and assets of the enterprise and any act which violates public order and safety during a strike are strictly prohibited.

#### **Article 174**

Strikes are prohibited at enterprises which serve the public, and enterprises which are essential to the national economy or national security and defence as stipulated in the list issued by the Government.

State administrative bodies must regularly organize hearings of comments with representatives of the labour collective and the employer at these enterprises in order to assist and resolve any reasonable request of the labour collective. In cases where there is a collective labour dispute, it shall be resolved by the provincial labour arbitration council. If either party is not satisfied with the decision of the labour arbitration council, that party shall have the right to request the people's court for resolution of the dispute.

#### **Article 175**

Where a strike is considered to be detrimental to the national economy or public safety, the Prime Minister of the Government shall have the power to issue a decision to suspend or end the strike.

#### **Article 176**

1. The following forms of strike shall be unlawful:

- (a) Strikes which do not arise from a collective labour dispute; strikes which fall outside the area of labour relations;
- (b) Strikes which fall outside the scope of an enterprise;
- (c) Strikes which breach the provisions of clauses 1 and 2 of articles 173 and 174 of this Code.

2. The people's court shall be the body with authority to decide whether a strike is lawful or unlawful.

#### **Article 177**

The people's court shall have the authority to make the final decision in relation to strikes and collective labour disputes.

#### **Article 178**

1. Any act of victimization of or revenge on a person participating in or organizing a strike is strictly prohibited.
2. A person who interferes with the right to strike, or forces another person to strike; a person who commits any unlawful act during a strike; and a person who fails to comply with the decision of the Prime Minister of the Government or the people's court shall, depending on the seriousness of the offence, be liable for payment of compensation for damage, be subject to administrative penalty, or be prosecuted for criminal liability.

#### **Article 179**

The Standing Committee of the National Assembly shall provide for the resolution of strikes and other labour matters.

### **CHAPTER XV**

#### **State Administration of Labour**

#### **Article 180**

State administration of labour shall encompass the following:

1. Being informed of supply and demand and changes in labour supply and demand, and on that basis, making decisions on national policies, planning, or schemes on labour sources, distribution, and utilization of labour in the whole society;
2. Promulgating and providing guidelines for implementation of legal instruments on labour;
3. Establishing and organizing the implementation of national programmes relating to employment, migration for establishment of new economic zones, and sending Vietnamese workers abroad;
4. Making decisions on policies on wages, social insurance, occupational safety and hygiene, and other policies on labour and society; policies on the development of labour relations within enterprises;
5. Organizing and conducting scientific research on labour, and collecting statistics and information on labour and the labour market and on the living standards and income levels of workers;

6. Inspecting and controlling the implementation of labour laws, dealing with breaches of labour laws, and resolving labour disputes in accordance with the provisions of this Code;
7. Expanding international co-operation relations with foreign countries and international organizations in the area of labour.

#### **Article 181**

1. The Government shall uniformly carry out State administration of labour within the country.

The Ministry of Labour, War Invalids and Social Affairs shall be responsible before the Government to carry out State administration of labour.

Ministries and ministerial equivalent bodies shall be responsible for coordinating with the Ministry of Labour, Invalids and Social Affairs for uniform implementation of State administration of labour.

2. People's committees at all levels shall carry out State administration of labour within their respective localities. The local body in charge of State administration of labour shall assist the people's committee of the same level to carry out State administration of labour in accordance with the delegated authority of the Ministry of Labour, Invalids and Social Affairs.

3. The Vietnam General Confederation of Labour and trade unions at all levels shall participate in the supervision of State administration of labour in accordance with the provisions of the law.

4. Representatives of employers and employees shall put forward their views to State bodies in respect of policies, laws and other issues relating to labour relations as stipulated by the Government.

#### **Article 182**

Within thirty (30) days from the date on which an enterprise commences its operation, the employer must declare the labour usage and, during the period of operation, submit to the local body in charge of State administration of labour reports on any changes relating to labour in accordance with the provisions of the Ministry of Labour, War Invalids and Social Affairs. Within thirty (30) day from the date on which the enterprise ceases its operation, the employer must submit a report to the local body in charge of State administration of labour on the

termination of labour usage. The employer must establish labour books, wage books and social insurance books.

**Article 183**

An employee shall be issued with a labour book and a social insurance book in accordance with the provisions of the law.

**Article 184**

1. The Ministry of Labour, War Invalids and Social Affairs shall uniformly carry out State administration of labour export.
2. People's committees of provinces and cities under central authority shall carry out State administration of labour export within their respective localities.
3. The body in charge of State administration of labour of a province or city under central authority shall issue working permits to foreigners who enter Vietnam as stipulated in clause 1 of article 133 of this Code.

CHAPTER XVI

**State Inspection of Labour  
and Dealing with Breaches of Labour Laws**

SECTION I

**State Inspection of Labour**

**Article 185**

State labour inspectors shall have the function of inspection of labour policies, occupational safety, and labour hygiene.

The Ministry of Labour, War Invalids and Social Affairs and the local bodies in charge of State administration of labour shall carry out State inspection of labour.

**Article 186**

State labour inspectors shall have the following main duties:

1. To inspect compliance with provisions on labour, occupational safety, and labour hygiene;

2. To investigate work-related accidents and other violations of labour hygiene standards;
3. To participate in the establishment and guidance for application of the systems of standards, procedures and measures for occupational safety and labour hygiene;
4. To resolve any complaints or claims relating to labour in accordance with the provisions of the law;
5. To deal with breaches of labour laws in accordance with their delegated authority or make recommendations to other competent bodies to deal with.

#### **Article 187**

When conducting an inspection, a labour inspector shall have the power to:

1. Inspect and investigate any enterprise within his area and scope of responsibility at any time without having to give advance notice;
2. Request the employer and other persons concerned to provide information and relevant documents which relate to the inspection or investigation;
3. Receive and resolve all complaints or claims relating to breaches of labour laws in accordance with the provisions of the law;
4. Make decisions on temporary suspension of the usage of machinery, equipment, or work places where there is an occupational safety danger or a serious case of labour environmental pollution. The labour inspector shall be responsible for his decision and shall report immediately to a competent State body.

#### **Article 188**

A labour inspector must be a person who does not have direct or indirect personal interests relating to the entity which is the subject of the inspection. Even after his employment, a labour inspector must not disclose any secrets obtained while carrying out his duty, and must maintain strict confidentiality of all sources of report of breaches.

#### **Article 189**

When carrying out an inspection, a labour inspector must co-operate closely with the executive committee of the trade union. Where the matter is related to scientific, technical, specialized, or professional fields, the labour inspector may invite experts and experienced technicians in the relevant field to participate in the inspection or investigation as consultants. When inspecting machinery, equipment

and storage facilities, the employer and the person directly in charge of the machinery, equipment, or storage facility must be present.

#### **Article 190**

A labour inspector shall hand the decision directly to the party concerned. The decision must specify clearly the date from which the decision becomes effective and the date for completion. Where necessary, the date of a second inspection may also be stated.

The decision of the labour inspector shall be binding and must be implemented. The person who receives the decision shall have the right to complain to a competent State body, but must still comply strictly with the decision of the labour inspector.

#### **Article 191**

1. The Government shall make provisions on the organization and activities of State labour inspectors.
2. The Ministry of Labour, War Invalids and Social Affairs shall be responsible for the establishment of an organizational system for State labour inspection; for formulation of criteria for recruitment, appointment, transfer, discharge, and dismissal of labour inspectors, for issuance of inspector identity cards; and for promulgation of provisions on regular and irregular reports, and other necessary procedures or formalities.
3. The inspection of occupational safety and hygiene with respect to radioactive materials, exploration and exploitation of oil and gas, means of transportation by rail, sea, road, or air, and units of the armed forces shall be carried out by the managing body of the relevant branch with the co-operation of State labour inspection bodies.

## **SECTION II**

### **Dealing with Breaches of Labour Laws**

#### **Article 192**

Breaches of the provisions of this Code shall, depending on the seriousness of the breach, be dealt with in the following ways: warning, fine, suspension or withdrawal of licences, compulsory payment of compensation, or compulsory

cessation of business operations, or criminal prosecution in accordance with the provisions of the law.

#### **Article 193**

A person who obstructs, bribes, or takes revenge on an authorized officer who is carrying out his duty as stipulated in this Code shall, depending on the seriousness of the offence, be disciplined, dealt with administratively, or prosecuted for criminal liability in accordance with the provisions of the law.

#### **Article 194**

Owners of business enterprises shall bear civil liability for any decision made by an authorized State body to penalize a director, manager, or legal representative of an enterprise in respect of any breach of labour laws committed whilst managing labour in accordance with the provisions of the law. These persons shall be responsible for payment of compensation to the enterprise in accordance with the internal regulations and charter of the enterprise, the contract of responsibility entered into between the parties, or the provisions of the law.

#### **Article 195**

The Government shall make provisions on administrative penalties in respect of breaches of labour laws.

### **CHAPTER XVII**

#### **Implementation Provisions**

#### **Article 196**

The provisions of this Code shall apply to all labour contracts, collective agreements, and other lawful agreements signed prior to the date of effectiveness of this Code. Any agreement which provides workers with more favourable provisions than those provided for in this Code shall continue to be performed.

Any agreement which is inconsistent with the provisions of this Code must be amended or added to accordingly.

#### **Article 197**

This Code shall be of full force and effect as of 1 January 1995.

All previous provisions which are inconsistent with this Code are repealed.

#### **Article 198**

The Standing Committee of the National Assembly and the Government shall provide guidelines and detailed provisions on the implementation of this Code.

The Chairman of the National Assembly  
NONG DUC MANH

*The Labour Code was passed by Legislature IX of the National Assembly at its 5th Session on 23 June 1994, and amended by Law 35-2002-QH10 on Amendment of and Addition to a Number of Articles of the Labour Code passed by Legislature X of the National Assembly at its 11th Session on 2 April 2002, effective as of 1 January 2003.*