



Human Resources Development

I. Introduction

According to the MOLISA, more than 65% of Vietnam's workforce is still unskilled and 78% of the 20 – 24 years olds are either unskilled or skill-strapped. At the same time, around 60% of all employment in Vietnam still is in the informal sector, with payment below minimum wages and no social- and health security provided. Within ASEAN, Vietnam ranks in the lower half of the human resources development. Therefore, improving and upgrading its workforce is one of Vietnam's key tasks to meet the needs of rapidly changing labor markets at home and abroad. At the same time, moving people from the informal to the formal sector should be high on the agenda.

EuroCham's member companies are already spending large amounts to send Vietnamese staff to their overseas headquarters to train them appropriately at modern facilities and equipment. The costs of these trainings often easily reach double or triple the employee's actual salary over the training period. Our European member companies are taking the financial risk that the employee will not return or leave the company shortly after receiving the valuable training. EuroCham acknowledges that Vietnam has realized the urgency of improving its labour force. However we note that despite ongoing reform efforts, many Vietnamese - that are able to afford it - keep on seeking for better education outside Vietnam. To avoid such "brain drain", Vietnam needs to continue its educational reforms in particular in the field of higher education and vocational training, and in close co-operation with the private sector.

II. Improving Skills, Education and Vocational Training

To gain international competitiveness, Vietnamese educational institutions have to quickly catch up with international levels. Upgrading teaching staff and educational managers will be essential to improve not only quantity but also quality of education and training. In particular, the capacity and quality of vocational education needs to be improved. Two of the major gaps that employers are currently facing with the high workforce entering the market each year are: First, the skills gaps between practical experience and theory: European businesses often find it hard to hire skilled people on almost every level. Vocational education and training often does not take into account the needs of the companies operating in Vietnam. Second, readiness of first time employees to understand the work environment and behaviors needed in a professional working environment.

Recommendations:

- EuroCham recommends undertaking a comprehensive skills analysis that incorporates key industries, government bodies, employers and educational institutions to understand the particular skills that Vietnam's industries will require over the next 5 – 10 years. By identifying the skills needed, Vietnam can specifically target the current skills shortage in different industries and improve its vocational colleges to target specifically the weaknesses identified.



- For vocational training/colleges in particular, EuroCham recommends that restrictions for foreign ownership in vocational schools should be lifted, in particular with regards to the services industries: With the proportion of services-related industries in GDP rising, Vietnam requires a higher level of international vocational training available in Vietnam. This is particularly true for high-end services such as IT- and engineering services but also for more traditional educational and hospitality / tourism services.
- European companies are spending large amounts to send Vietnamese staff to their overseas headquarters to be able to train them appropriately. In order to avoid that foreign investors take the sole financial risk for expensive further training activities, the Vietnamese government should consider accepting more easily business-friendly depreciation of training costs and/or full and unconditional deductibility of training costs.
- EuroCham recommends Vietnam to consider additional forms of employment outside the traditional (seasonal) labour contracts under the labour code: First, limited apprenticeships-contracts for vocational training should be encouraged. Secondly, short-term work placements more flexible than the current “seasonal labour contracts” should be allowed to fill shortages in industrial peaks.
- Additional soft skills training should be given in terms of how to behave at works and ethics within the workplace. Many of those entering the labour market at present have never worked and hence lack basic skills to succeed in the workplace. Many students do not make informed decision in terms of careers, due to the lack of career guidance and advice provided in Vietnam’s current educational system.

III. Health-, Social- and Unemployment Insurance

1. Compulsory health insurance

With regards to compulsory health insurance for foreign employees, the vast majority of foreign employees are already covered by an existing health plan that is mostly paid for already by the foreign company. It is therefore unlikely that any foreigner is willing to cancel their existing international health insurance in favour of a compulsory (and only domestic) Vietnamese health insurance scheme that will in most cases not cover as broad as their existing international policies. Accordingly, the compulsory health insurance scheme implemented by the Vietnamese government is mostly only an additional cost of doing business for most of the foreign companies in Vietnam. It is unfortunate that this scheme has already been implemented by the Vietnamese government.

Recommendation: EuroCham strongly recommends that the compulsory health insurance for foreign employees at least offer clear opt-out provisions for employees that are sufficiently covered by other health insurance schemes. Such opt-out should be granted upon evidencing of an existing health plan.



2. Social insurance obligations

With regards to social insurance (SI) alone (excluding health (HI) and unemployment (UI) insurance), the burden will rise from 22% to 26% in 2014. The total burden of social insurance (i.e. social-, health- and unemployment insurance) will rise to 32.5% in 2014, thereby making Vietnam much less labour competitive in the region. Moreover, this cost increase has not yet brought significant improvement of the benefits provided. On the contrary, the new scheme has already triggered several staff initiatives of our member companies to search for alternative salary structures. The following rules apply:

From 1 January 2010 until 31 December 2011:

	Employer	Employee
SI	16%	6%
HI	3%	1.5%
UI (if applicable)	1%	1%

From 1 January 2012 until 31 December 2013:

	Employer	Employee
SI	17%	7%
HI	3%	1.5%
UI (if applicable)	1%	1%

From 1 January 2014 onwards:

	Employer	Employee
SI	18%	8%
HI	3%	1.5%
UI (if applicable)	1%	1%

EuroCham believes that the above increase in social insurance obligations will increase the cost of doing business for both our members but also for domestic enterprises. Implementing the above scheme will make Vietnam less labour competitive within the ASEAN region. At the same time, it will discourage the socially desired shift of Vietnamese workers and employees from the informal into the formal sector.

In this context we note that annually adjusting minimum wages in two-digit numbers and beyond the anticipated inflation levels adds to the rising overall cost of employing workforce in Vietnam. At the same time, minimum wages are likely to keep more young people unemployed, therefore hurting exactly the people who need to be integrated into the labour market the most.



Recommendations:

- EuroCham recommends cancelling or at least prolonging the above increase in social security-, health- and unemployment burdens by 2014. Moreover, and for the same reasons valid for the compulsory health insurance scheme (in particular: alternative coverage provided in foreign country), we also recommend not extending the social insurance scheme to foreign employees in particular.
- We note that over one million young people are entering the employment market every year and this sector of the population (18 – 24 years old) is contributing to the highest number in the unemployment figures in Vietnam. We therefore recommend that employers should have exceptions / reductions if they are offering limited apprenticeships contracts that are lifting these young people out of unemployment, thereby assisting in the further development and competitiveness of the Vietnam workforce.
- If minimum wages are annually adjusted at all, the anticipated inflation rate should serve as a cap rather than a minimum adjustment. Exceptions to minimum wages should be granted to people entering the labour market for the first time, thereby encouraging the desired wish from the informal to the formal sector.

IV. Work Permits

We would further like to point out increasing difficulties of our foreign companies to obtain work permits for their staff: In particular, the formal requirement of having a degree/diploma (and evidence of alternative experience in case no degree/diploma can be provided) often results in timely and costly efforts of our members: As the formal requirements of evidencing alternative experience are not precisely specified this often results in time delays. In some cases, foreign employees find themselves in a situation of legal uncertainty where documents have been submitted but the work permit not yet been issued.

Recommendation:

- Issuing an official receipt that allows foreign employees to commence work immediately upon submission of copied documents, and provide the full sets of legalized/consularised documents within three months from commencing work. This way, waiting times for legalization/ consularisation procedures in the foreign country can be avoided (waiting times in some foreign countries are up to 6-8 weeks).
- We would also like to encourage the Vietnamese government to issue “conditional” work permits for foreign high-income employees/experts who earn a monthly gross salary of VND 80 million or more upon evidencing a labour contract. These “conditional” work permits would allow the high-income employee/expert to commence work immediately



upon submission of original work contract and simple copy of passport, whilst full documentation may be submitted within three months from commencing work.

- We recommend clearer definitions on requirements for vocational based training certificate / diplomas as general not recognised by DOLISA. With the changes in regards to general directors etc. and work permits over the last few years, we recommend that the “Certificate of Work Experience” shall incorporate experience in Vietnam, as many have held these positions for several years and may be unable to fulfil the strict criteria for work permits under the current regulations.

V. New Labour Code

A new draft Labour Code Draft was issued in August 2009 and is due to be valid from 1st January 2012. EuroCham has examined five key areas of this “New Labour Law”:

1. Duration of Probation Period

In the article 34 of the New Labour Law, the probation period: Shall not exceed one (1) month for contracts of less than one year, shall not exceed two (2) months for contracts of more than one year and less than three years, and shall not exceed three (3) months for contracts of more than three years or indefinite contract. EuroCham believes that this article does not define the length of probation period for contracts of exactly one year or three years: The maximum duration of the probation period has been increased to 3 months, but it’s still insufficient for certain jobs requiring specific skills and some industries. Normally, enterprises in these industries need about six (6) month probation to be sure about the competence of employees.

Recommendations: EuroCham believes that that the length of the probation period should not be linked to the duration of the contract as the probation period is aimed to provide a framework for identifying and sorting out any early difficulties which may occur in the performance of the job, whatever the length of the contract is. Rather, EuroCham recommends having the probation period based on the nature, the seniority or the technical nature of the job, similar to some major countries in Europe. The standard duration of probation period should be from one (1) to three (3) months, as defined in advance in the Internal Labour Regulations and Collective Agreement of the Enterprise, in which there should also be an option to have up to six (6) months probation period for specific and management jobs.

2. Registration of Labour Contracts

In the article 34 of the New Labour Law, the probation period is seen as an integral part of the working time of the employee in respect of benefits etc. This article recommends a Labour Contract to be signed from the date of the start of the employment inclusive of the Probation Period. This helps to protect the employees from the current common practice of working with only an ‘offer letter’ during the probation period and without any written Labour Contract. However, signing a Labour Contract from the start of employment imposes a very large administrative



burden on the companies, particularly small- and medium sized ones due to the current Labour Contracts registration and declaration deadlines with the labour authorities and statutory insurances.

Recommendation: To protect the lawful rights and interests of employees, it should be provided that the probationer is entitled to all legal rights and interests of employees during the probation period. We suggest an extended or flexible registration period of new Labour Contracts to three (3) calendar months (the probation period) from the start of employment, as to allow more time for the Enterprises to gather documentation and declare only the employees that pass the probation period. During this period the employee continues paying their contribution to governmental statutory insurances and the employers does so once probation period is achieved.

3. Working Time

Article 120 of the New Labour Law restricts the working time to 8 hours per day. This is different to current Article 68 Labour Code, which restricts working to *either* 8 hours per day *or* 48 hours per week. EuroCham believes that this '8 or 48' gives far greater flexibility especially to those companies that require shift work. Accordingly, removing the 'or 48' hours per week will cause many issues in multiple industries especially where shift work is required.

Recommendation: We suggest that the existing 8 hours per day **or** 48 per week be retained under the New Labour Law.

4. Overtime Hours

Article 122 of the New Labour Law increases the total overtime hours from 200 (as provided by the current Labour Law) to 300 per year subject to a maximum 20 hours per week. EuroCham notes that many employees tend to seek companies that allow overtime as the more overtime they do the more money they can earn. In principle, overtime hours are not compulsory for employees, but employees who are unable to do the volume of overtime they want with one company often chose to take up a second job with another company. Such a situation is not good for the employee or the two companies involved as far as commitment is concerned. Also in certain industries such moonlighting can cause issues with Intellectual Property and confidentiality issues. On the other hand, many companies need employees to work overtime due to operational requirements mostly driven by customer demand such as a rush order in a manufacturing Enterprise or seasonal fluctuations in hospitality and retail or in emergency situations such as hospitals and firemen. Under the current legal framework, companies are often required to overstaff in order to cater for these fluctuations and remain within the 300 hour limit.

With regards to regional competitiveness, other countries in the ASEAN area and other regions have significantly higher overtime limits (see chart where bold colour is the legal limit), with Vietnam having the lowest (annual) legal limits in the region.



Country	Legal Permissible Maximum (Hours per Week)			
	Normal	Overtime		
		Week	Month	Year
US	40	None	None	None
China	40	36	156	1,872
Thailand	48	36	156	1,872
Malaysia	48	24	104	1,248
Singapore	40-45	17	72	864
Germany	48	12	48	624
France	39	9	36	468
Vietnam	48	20	25	300

Recommendation: Flexibility over overtime hours is a necessity for companies in Vietnam to retain their competitiveness. We would therefore suggest that companies and employees be given the flexibility to exceed the 300 hours proposed under mutual agreement. Employees should be allowed to work longer than the hours stated in their Labour contract if they agree to work overtime. Any agreement to work overtime should be in writing (and signed) between both the employee and the employer in which the employee shall not claim for any further overtime hours, if any. These overtime limits should be defined clearly in the 'Internal Labour Rules / Regulations' as well as the 'Collective Agreement' of the Enterprise.

5. Resting time between shifts

Article 125 of the New Labour Law states that employees working in shifts must have a rest period of at least 12 hours before commencing the next shift. This is the same rest period as under the current Labour Law. EuroCham suggests that the rest period is modified and made more flexible for various reasons:

- Many enterprises have a need to operate multiple shifts for sound business reasons such as manufacturing lines that need to operate 24/7 or to cater for seasonal demand.



- Many industries need to operate 24/7 such as: hospitals, emergency services; public utilities; oil drilling operations; refineries and Hotels. Adhering to a strict 12 hour gap places operational strain as well as additional costs for the above industries.
- Flexibility over resting time between shifts is a necessity for companies in Vietnam to retain their competitiveness as well as for Vietnam's emergency and public services to enable their responsiveness

Recommendations: We suggest that Enterprises have greater flexibility with rest periods for shift work and shift changes. In particular, we recommend: Resting time between should be no less than 8 hours with a 'recommended rest' of 12 hours when working 8 hours/day; and the number of times an employee can have less than a 12 hour rest period between shifts is limited to a maximum 8 times per month and 2 times per week. Further, the resting time between shifts should be defined clearly in the 'Internal Labour Regulations' as well as the 'Collective Agreement' of the company provided that this resting time complies with labour provisions.