

Newsletter

June & July 2017

Key issues:

- (i) The MOLISA collected comments on the draft Decree on Compulsory Social Insurance Applicable to Foreign Employees Working in Vietnam in early June;
- (ii) Draft Decree on Voluntary Insurance of Occupational Accidents Applicable to Employees not Working under Labor Contracts
- (iii) Proposed 6.5% increase of regional minimum wage in 2018

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I. The MOLISA Collected Comments on the Draft Decree on Compulsory Social Insurance Applicable to Foreign Employees Working in Vietnam

Baker McKenzie attended another Workshop on the draft Decree on Compulsory Social Insurance for Foreign Employees Working in Vietnam, organized by the MOLISA in Hanoi on 8 June 2017.

The attendees of this Workshop included representatives from the Government Office, the National Assembly (Committee for Social Affairs), the MOLISA, the Ministry of Justice, Vietnam Social Insurance, the embassies of Japan, Korea, and China, EuroCham, AusCham, and JBAV and companies which employ large numbers of foreign employees.

The attendees' discussion focused on the three following key points:

1. Whether the participation of foreign employees in Vietnam's social insurance is optional or compulsory

The JBAV, again, voiced their strong opinion that the language of Article 2.2 of the Law on Social Insurance implies a choice for foreign employees to participate in social insurance. They compared the language between Articles 2.1 and 2.2 of the Law on Social Insurance, concluding that foreign employees should be given a choice to opt out and the draft Decree should be accordingly revised. However, the MOLISA's representative once again confirmed that participation of foreign employees in Vietnam's social insurance is compulsory.

2. Subjects of application

The most recent draft (No. 4) excludes *intra-corporate transferees* from the application of social insurance. The JBAV asked the MOLISA to revise the language of the article and make it clear that "intra-corporate transferees" in this regard also cover those who enter into labor contracts with local Vietnamese employers in addition to contracts with offshore employers. However, the MOLISA did not confirm this possibility.

3. Social insurance regimes applicable to foreign employees

- The most recent draft (No. 4) provides that all five social insurance regimes would be applicable.
- Below are two different opinions of attendees from the private sector:
 - **Opinion 1:** Only three short-term regimes (i.e., sickness, maternity and labor accidents) should be applicable; the two long-term regimes (i.e., retirement and survivorship allowance) should not be applicable.



- **Opinion 2:** 3 short-term regimes (i.e., sickness, maternity and labor accidents) would be applicable first; the two long-term regimes (i.e., retirement and survivorship allowance) would be applicable subject to any future bilateral agreements to be reached between Vietnam and relevant foreign countries.
- The MOLISA seemed to lean towards the second opinion.

II. Draft Decree on Voluntary Insurance of Occupational Accidents Applicable to Employees Not Working Under Labor Contracts

In late July, the MOLISA released a draft Decree on voluntary insurance of occupational accidents applicable to employees not working under labor contracts, which is now pending internal comments from the MOLISA's relevant departments until 24 September 2017.

The subjects of application, according to Article 2 of the draft Decree, are employees who are not legally required to enter into labor contracts. Those employees are categorized into two groups, namely:

- (i) employees having lawful employment without labor contracts in an organization, such as individual business households, cooperative groups, cooperatives, cooperative unions, households participating in economic activities or a group of workers; or
- (ii) self-employed employees who do not work for any employer or employee group.

The draft Decree provides for seven regimes to which employees participating in voluntary insurance of occupational accidents are entitled, given that the employees satisfy certain conditions. Compared to those of compulsory social insurance, among these seven regimes are:

- Four similar regimes:
 - Assessment of the decline in working capacity (Article 5);
 - Lump-sum, monthly and service allowances (Article 6,7, 8 and 9);
 - Support of living facilities and orthopedic devices (Article 10); and
 - Support of job change (Article 11)
- Two modified regimes:
 - Health and rehabilitation (Article 13); and
 - Support of information on occupational accidents prevention (Article 14)
- One new regime: Medical expenses support (Article 12)



III. Proposed 6.5% Increase of Regional Minimum Wage in 2018

The National Wage Council has agreed to propose an average Regional Minimum Wage (RMW) increase of 6.5 percent for 2018 to the Government for consideration. Accordingly, if approved, the new RMW in 2018 will be as follows:

Region	RMW in 2017		RMW in 2018		Percent increased
	VND (million)	USD	VND (million)	USD	
Region I	3,75	165	3,98	175	6.1%
Region II	3,32	146	3,53	155	6.3%
Region III	2,9	127	3,09	136	6.5%
Region IV	2,58	113	2,76	121	7%

By law, the RMW is the minimum wage level applicable to employees who perform the simplest occupations in normal working conditions with normal working hours and meet labor productivity norms or agreed work duties under employment contracts. Vietnamese geographical areas are categorized into four regions with different applicable RMWs (i.e. urban areas such as Hanoi and HCMC are classified under Region I). The RMW is also used to determine a cap premium in calculating unemployment insurance contributions for employees. Therefore, labor costs will be increased accordingly (i.e., increase of RMW applicable to employees and unemployment insurance contribution premiums).

The Government will legalize the increase once it agrees to the National Wage Council's proposal, which would precipitate the need for a new Decree on the new RMW applicable in 2018.

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