

Collective Bargaining and Collective Agreements in Vietnam: From Legislation to Practice

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Collective bargaining and collective agreement are very important parts of industrial relations, recognized in the core conventions of the International Labour Organization including Convention C087 concerning Freedom of Association and Protection of the Right to Organise (1948), Convention C098 concerning the Application of the Principles of the Right to Organise and to Bargain (1949), and Convention C154 concerning the Promotion of Collective Bargaining (1981). In Vietnam, collective bargaining and collective agreement have been prescribed since the Labour Code 1994 and now exist in Labour Code 2012. Labour Code 2012 significantly expanded collective bargaining, marking a milestone in the regulation of industrial relations. After five years of implementation of Labour Code 2012, the quality and quantity of collective bargaining and collective agreements in Vietnam have improved. However, many major obstacles remain.

I. The legislation and practice of collective labor bargaining in Vietnam

Collective bargaining is a process through which the collective employees and employers discuss and negotiate their relations and interactions at the workplace, such as pay and other terms and conditions of work. This process of bargaining aims to reach mutually harmonious and stable industrial relations, improve working conditions and efficiency, and create a fair and expeditious process for enforcing the rights and obligations of each party.² Labour Code 2012 not only defines collective bargaining, but also fully describes the bargaining agents, the scope of bargaining, and procedural requirements for conducting collective bargaining.

First, regarding the bargaining agents

The bargaining agents are the trade union and the employer.

On the employee side, in Vietnam, trade unions are the only bodies permitted to represent employees' interests and to bargain on their behalf. Vietnam has a single system of employee representatives — trade unions which are led by Vietnam General Confederation of Labour (VGCL). Under Labour Code 2012, no other employee group is entitled to be a party to collective bargaining other than VGCL and its members. VGCL is the only recognized national representative organization of employees in Vietnam; all local unions are created by the higher-level VGCL union and are registered under the confederation.³

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2 Labour code 2012. Article 66. Purpose of the collective negotiation.

The collective negotiation is that the labor collective makes discussion and negotiation with the employer for the following purposes:

- 1) Building harmonious, stable and progressive labor relations;
- 2) Establishing new working conditions as a basis for signing the collective labor agreements;
- 3) Settling the problems and difficulties in implementing the rights and obligations of each party in the labor relations.

The bargaining agent representing the employees will be either an occupation-based union or an umbrella union, respectively depending on whether collective bargaining is conducted at the enterprise level or sectoral level. The singular system of employee representation in Vietnam does not comply with the core international labor standard on freedom of association, because the Labour Code forbids employees from forming new trade unions outside the VGCL.

On the employer side, the bargaining agent usually is the employer itself or the employer's representative if the bargaining is conducted at the enterprise level, or a representative organization of the employers if bargaining is conducted at the sectoral level. At the national level, there are three representative organizations of employers: the Vietnam Chamber of Commerce and Industry (VCCI), the Vietnam Cooperative Alliance (VCA), and Vietnam Association of Small and Medium Enterprises (VASME). All these organizations do not legally and practically represent all employers in Vietnam.

Second, regarding the scope of collective bargaining

The scope of collective bargaining encompasses five general topics: (i) salary, bonus, allowance and salary increase; (ii) working hours, overtime, and break time; (iii) employment protection for the employee;⁴ (iv) occupational safety and hygiene, the implementation of internal labor regulations; and (v) other subjects of concern to both parties.⁵ This section of Labour Code 2012 is designed to encourage the collective agents to negotiate freely concerning internal working conditions and their expectations. If the collective bargaining negotiations conclude successfully, these five general topics will likely provide the framework of the collective bargaining resulting in collective bargaining agreement.

Third, regarding the principles of collective bargaining

Collective bargaining theoretically is predicated on the principles of goodwill, equality, cooperation, openness, and transparency.⁶ However, in both theory and practice, it is often difficult to define and differentiate the principle of cooperation and principle of openness.

Forth, regarding the procedural requirements of collective bargaining

The procedure of collective bargaining includes three stages: (i) request collective labor bargaining, (ii) prepare for collective labor bargaining, and (iii) conduct collective labor bargaining. These procedures were promulgated for the first time in Labour Code 2012, and they dignify the important status of collective bargaining as well as the enhanced role of industrial relations in Vietnam.⁷

(i) In the stage of requesting collective bargaining: each side of the collective bargaining, the collective labor union or the employer, has the right to request a bargaining and to propose the scope of negotiations. Once an actor calls for a collective bargaining, the other actor must accept and conduct the collective bargaining. The principle of goodwill was legislated to ensure the process of bargaining. Usually, the process of collective bargaining is initiated by the labor.

(ii) In the stage of preparing for a collective bargaining: the Labour Code prescribes the time limits for the actors to prepare for negotiations.⁸ For example, the Labour Code provides that the party initiating collective bargaining must provide written notice of the proposed contents of bargaining to the other side at least five working days before bargaining initiator begins.

(iii) In the stage of conducting the collective bargaining: the employer is responsible for costs related to the bargaining process. The time and venue of bargaining is mutually agreed by both sides. The conclusion of such negotiation is formally recorded in a minutes with entire scope of negotiations, comments and signatures of each side. The collective agreement can be signed if both agents negotiate successfully. If

3 Article 3.3, Labour Code 2012.

4 Such as building the recruitment procedure, conditions for employee transfer, severance payment.

5 Article 70, Labour Code 2012.

6 Article 67, Labour Code 2012.

7 Labour Code 1994 did not regulate on the process of collective bargaining, and individual employment relation and its relevant contents were the main points of this code.

they could not reach an agreement, there might be a labor collective disputation.

II. The legislation and practice of collective agreement in Vietnam

1. Laws on collective agreement

A collective agreement is a written agreement made between an employer and a trade union of employees describing working conditions agreed to through the collective bargaining process.⁹ The collective agreement is the outcome of negotiations between the parties, and reflects the expectations and concerns of each party. In Vietnam, there are three types of collective agreements, including collective agreement at the enterprise level, sectoral level, and other type of collective agreements.

The parties to collective agreement are the same as the actors in collective bargaining: the employer (or its representative) and the labor union representing the workers.

The contents of the collective agreement mirror the scope of collective bargaining described in section I above.¹⁰ The specific terms of the collective agreement are valid so long as they (1) fall within the five scope-of-bargaining points described above, (2) meet minimum legal labor standards and do not otherwise violate the law, and (3) provide terms and conditions of employment for workers that are at least as good as the floor set by the labor laws. If the collective bargaining is the process, the collective agreement is the result which two parties achieve.

Regarding the conditions to conclude a collective agreement: after the process of bargaining, the bargaining agreement becomes binding on the parties once both parties have agreed to the terms of the agreement and the agreement is approved by more than 50% of (i) the enterprise labor union (if it is an enterprise-level collective agreement), or (ii) the executive committee of the sectoral labor unions (if it is an sectoral collective labor agreement). The conclusion of other types of collective agreements, such as multi-employer collective agreements, or regional collective agreements, is not yet regulated.

8 Article 71. Process of collective negotiation

1) The process for preparation of the collective negotiation is regulated as follows:

a) Before the collective negotiation meeting at least 10 days, the employer must provide information on the situation of production and business upon the requirement from the labor collective except for business secrets and technology secrets of the employer.

b) Gathering opinions of the labor collective

The negotiation representative of the labor collective party shall directly gather opinions of the labor collective or indirectly through the delegate conference of the employee concerning the requirements of the employee for the employer and the requirements of the employer with the labor collective;

c) Notification of the content of collective negotiation.

Within 05 working days before the start of the collective negotiation meeting, the party requiring the collective negotiation must notify in writing the other party of the estimated contents for the conduct of collective negotiation.

2) Procedures for the collective negotiation are regulated as follows:

a) Organizing the meeting of collective negotiation

The employer shall organize the meeting of collective negotiation with time and place agreed upon by both parties.

The collective negotiation must be recorded in writing, in which there must be the contents agreed upon by the two parties.

The estimated time for the signing of the agreed content; the contents with different opinions;

b) The minutes of the meeting of collective negotiation must have the signature of the representative of labor collective, of the employer and the person recording the minutes.

3) Within 15 days from the day of termination of the meeting of collective negotiation, the negotiation representatives of the labor collective party must diffuse widely and publicly the minutes of the meeting of collective negotiation to the labor collective and collect suggestion by voting from the labor collective on the contents agreed upon.

4) Where the negotiation fails either party may request to continue the negotiation or conduct the procedures for the settlement of the labor disputes in accordance with this Code.

9 Article 73, Labour Code 2012.

10 (i) salary, bonus, allowance and salary increase; (ii) working hours, overtime, break time; (iii) employment protection for the employee; (iv) occupational safety and hygiene, internal labor regulations implementation; protection; (v) other contents concerning both parties.

After concluding the collective agreement, the employer must within ten days deliver a copy to the Department of Labor, Invalids and Social Affairs (for enterprise collective agreements) or to the Ministry of Labor, Invalids and Social Affairs (for sectoral collective agreements). Simultaneously, the employer must announce the collective agreement to every employee in the company. The collective agreement will be in effect for one to three years after the date written on the agreement or the date the agreement is signed. The duration of first enterprise collective agreement may be less than one year. If the parties subsequently agree to amend the collective agreement, they may do so after three months (for agreements with a duration of less than one year) or six months (for agreements with a duration of one to three years). Vietnam and many countries in the world share a common commitment to and method of regulating collective bargaining and collective agreements. However, also like many countries in the world, often labor law as written does not translate into strong workplace protections in practice and enforcement.

2. The practice of concluding collective agreement in Vietnam

As collective agreements have been negotiated in Vietnam since 1994, so many enterprises are experienced on this issue. However, most collective agreements have heretofore been negotiated at the enterprise level; only a few sectoral or multi-enterprise collective agreements have been negotiated since 2012.

Enterprise collective agreement

Enterprise collective agreements are the most common type in Vietnam. The majority of these agreements have been concluded in state-owned enterprises or enterprises equitizing from state-owned companies.¹¹ This is because, when Vietnam first recognized collective agreements in Labour Code 1994, most companies were state-owned. Until now, some collective agreements in large corporations and some foreign-invested companies have been conducting. For those small and medium companies, there is almost no collective agreement signed. Besides that, the collective agreement only appears in the enterprise having labor union. According to Vietnam General Confederation of Labour (VGCL), by the end of 2015, Vietnam had 25,396 enterprise collective agreements; these enterprises accounted for 75.72% of all enterprises with labor unions. Only six enterprises without labor unions have successfully signed collective agreements.¹² These statistics also indicate that about 25% of enterprises have a labor union but have not signed a collective agreement. The ineffectiveness of enterprise's labor union might explain such statistics. Because workers are not entitled to form their own labor union independently and they find the labor union sometimes untrustworthy, they do not need a collective agreement in paper only.

Sectoral collective agreement

Sectoral collective agreements have existed in Vietnam only since 2012. The Labour Code 1994 defined the sectoral collective agreement, but provided no guidance to execute one. Additionally, it is very difficult to form a sectoral collective agreement in Vietnam because working conditions of enterprises vary considerably from region to region. By the end of 2015, according to VGCL, there were only a few sectoral collective agreements, including the agreement covering the rubber industry, the agreement of Vietnam's Postal Corporation, the agreement of Vietnam National Textile and Garment Group, and the agreement of textile companies in Binh Duong province.

Other type of collective agreement

Multi-employer collective agreements by definition cover employers in the same province and/or those that share a common business line. The bargaining and concluding collective agreements are carried out in five regions¹³ under the technical and financial supervision of ILO Vietnam. By the end of 2015, only

11 This means private companies that were rooted in state-owned companies, but the state sell their shares to private.

12 Report on the program "Enhance the quality of bargaining, concluding and executing collective agreement" of Vietnam General Confederation of Labour, December 2015.

13 Hai Phong city, Da Nang city, Ho Chi Minh city, Binh Duong province, Dong Nai province.

three collective agreements had been signed, including the collective agreement of four travel companies in Da Nang city; the collective agreement of four textile companies in District 12, Ho Chi Minh city; and the collective agreement of five electronics companies in Hai Phong city. The multi-employer collective agreement has the potential to develop significantly in Vietnam because its contents are flexible but it also fulfills the requirements of employees and the working conditions of the companies.

The scope of enterprise-level collective bargaining has expanded significantly. Previously, the collective agreement typically covered only salaries and working hours, but now it also sets out welfare regimes such as holiday arrangements; allowances for sickness, birthdays, and marriages; commercial health insurance; etc. The scope of sectoral collective agreements and the multi-employers collective bargaining mostly focuses on wages and working hours. For instance, the collective agreement of textile companies in Binh Duong Province required that the minimum wage be at least 3% higher than the regional minimum wage, and required that the gap between two salary grades in the same pay scale be at least 6%.¹⁴

III. Evaluation and recommendation

1. Evaluation

In general, Vietnam has a fairly comprehensive legal framework for collective bargaining and collective agreements. It governs the identity of the parties, the scope and the process of collective bargaining, and the final collective agreement. The role of collective bargaining has improved in the latest Labour Code 2012 by carefully guiding the process of collective bargaining.

Vietnam also has made progress in offering different varieties of collective agreements, respecting the right of each party to negotiate. For example, as in the Labour Code 1994, there are only two types of collective agreements¹⁵ whereas the Labour Code 2012 offers three types of collective agreements as mentioned in section II-1 above. Besides that, according to Labour Code 2012, the employer only needs to inform the proper governmental authority about the collective agreement. The collective agreement is effective since the signing date or the date written in such agreement, whereas according to Labour Code 1994, the collective agreement only be enforced since the authority approved its contents.

Labour Code 2012 also broadened the scope of collective bargaining and collective agreements, covering not only the basics such as wages, hours, and working conditions, but also anything that the parties mutually agree to bargain on, so long as those topics are not otherwise proscribed by law.

The negotiation and conclusion of collective labor agreement has produced positive results. However, significant limitations remain.

First, Labour Code 2012 restricts both employees and employers in their respective abilities to choose their bargaining representatives. Only labor unions under VGCL may represent employees. This limitation does not satisfy the core international labor standards on the right to freedom of association, which in turn obstructs Vietnam in concluding contemporary free-trade agreements. In addition, because there is a unitary labor union consolidated under VGCL, there is no competition among labor unions, and unions are not as effective at representing workers as they would be if they had to compete with each other for the right to represent workers. On the employer side, VCCI, VCA and VASME are the exclusive employer representatives, but these organizations do not cover every employer in Vietnam. Moreover, the three organizations do not correspond with the VGCL, creating mismatches in employer and employee representation.

Second, the labor management authorities seriously interfere the industrial relations, especially in regulating the boundaries and the scope and the process of negotiating and concluding the collective

14 Report on the program “Enhance the quality of bargaining, concluding and executing collective agreement” of Vietnam General Confederation of Labour, December 2015.

15 Enterprise collective agreement and sectoral collective agreement.

agreement.

Third, sectoral and multi-employer unions are underdeveloped. Likewise, the employer representatives for sectoral and multi-employer bargaining have not yet recognized.

Forth, employees often do not understand their rights under the labor laws. This significantly impedes the ability of unions to effectively negotiate collective agreements, particularly in small- and medium-sized enterprises.

2. Recommendations

First, the laws governing who may represent employers and employees should be amended to allow both employers and employees more freedom to choose their bargaining representatives.

On the employee side: repeal the requirement that all labor unions be integrated under VGCL, and allow employees to choose from among competing labor representatives or to establish their own independent representative. The employee representative should have the right to act independently or in conjunction with other employees' organizations. The employee representative should have the freedom to join the VGCL or not.

On the employer side: allow employers to choose whether to bargain individually or as a multi-employer bargaining unit. The employer's representative should function independently, and employers should have the right to form their own separate and independent associations.

Second, the law should be amended to provide comprehensive guidance on the other type of collective agreements. Current legislation provides such guidance only at the enterprise and sectoral levels. The law should be expanded to provide guidance on other type of collective agreements such as multi-enterprise collective agreements.

Third, regarding the implementation, employees must be educated about their rights to collectively bargain and to conclude collective agreements. This would improve the quality and quantity of both bargaining and of the final collective agreements. The result would be mutually beneficial to employees and employers: employees would receive better wages, hours, and working conditions, and employers could bargain for increased efficiencies and productivity.

Finally, labor unions should be independent, and free from interference from either the employer or VGCL. Only when labor unions are free and independent can objective negotiations with employers occur to their mutual benefit and to the benefit of the social structure generally.