

VIET NAM

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CHAPTER I. GENERAL PROVISIONS

Section 1. This Labour Code shall regulate the employment relationship between the wage earning worker and the employer, and the social relationships directly connected to this employment relationship.

Section 2. This Code shall apply to all workers, and to all organizations or individuals employing workers under an employment contract in all economic sectors and all forms of ownership.

This Code shall also apply to trainees and apprentices, domestic workers, and other categories of workers specified under this Code.

Section 3. Vietnamese citizens who work in enterprises having foreign invested capital in Viet Nam, in foreign or international bodies and organizations established in the territory of Viet Nam, foreign nationals who work in Vietnamese enterprises or organizations, or for Vietnamese individuals, operating in the territory of Viet Nam, shall equally be subject to the scope of application of this Code and other provisions of the law of Viet Nam except where an international treaty concluded or acceded to by the Socialist Republic of Viet Nam provides otherwise.

Section 4. The employment conditions of civil servants and public employees, of elected, appointed or assigned officials, members of units of the people's armed forces and the police, members of people's organizations and other political and social organizations, and members of cooperatives shall be governed by other relevant legal texts but a number of the provisions of this Code shall apply to the above-mentioned categories, according to each particular case.

Section 5. (1) All persons shall have the right to work, the right to freely choose an employment and occupation, to learn a trade, and to improve professional skills without any discrimination in respect of sex, race, social class, creed or religion.

(2) Maltreatment of workers and the use of forced labour in any form shall be prohibited.

(3) Every activity that generates employment, constitutes self-employment, and teaches or involves the learning of a trade for employment, and every production or business activity that absorbs abundant labour shall receive encouragement, favourable treatment and assistance from the State.

Section 6. A worker is a person of at least 15 years of age who is able to work and has entered into an employment contract.

An employer is an enterprise, body or organization, or an individual who is at least 18 years of age, that is hiring, employing and remunerating labour.

Section 7. (1) Workers shall be entitled to a wage based on the agreement reached with the employer, but not less than a minimum wage prescribed by the State, and consistent with the productivity, quality and efficiency of the work performed; to labour protection, to safe and healthy conditions of work; to statutory rest periods, annual leave with pay, and social security in accordance with the provisions of the law. The State shall prescribe the conditions of employment and social policy aimed at protecting female workers and other special categories of workers.

(2) Workers shall have the right to establish and join trade unions and to engage in trade union activities in accordance with the Trade Union Act in order to protect their lawful rights and interests; the right to collective welfare and to participation in the management of enterprises in accordance

with the works rules and the provisions of the law.

(3) Workers must implement the terms of the employment contract and collective labour agreement, observe labour discipline and works rules and abide by lawful directives of the employer.

(4) Workers shall have the right to strike in accordance with the provisions of the law.

Section 8. (1) Employers shall have the right to recruit, organize and direct labour to accommodate the requirements of production and business; the right to commend and reward and to sanction breaches of labour discipline in accordance with the provisions of labour legislation.

(2) Employers shall have the right to appoint representatives to bargain and sign collective labour agreements within the enterprise or for a branch of activity, and shall have the responsibility to cooperate with trade unions in discussing issues relating to labour relations and the betterment of the workers' material and spiritual lives.

(3) Employers must implement employment contracts, collective labour agreements, and other agreements reached with the workers to respect their honour and dignity, and to treat them correctly.

Section 9. The employment relationship between workers and employers shall be established and developed through negotiations and agreement based on the principles of voluntariness, equality, cooperation, respect for each other's lawful rights and interests, and full observance of commitments.

The State shall encourage agreements providing for conditions of employment that are more favourable than those stipulated under labour legislation.

Employers and workers shall have the right to request the competent bodies and organizations to settle labour disputes. The State shall encourage the settlement of labour disputes by means of conciliation and arbitration.

Section 10. (1) The State shall carry out the unified management of human resources, and administration of labour through legislation, and shall formulate policies to develop and allocate human resources, and to develop various forms of labour utilization and employment services.

(2) The State shall provide guidance for workers and employers to establish harmonious and stable labour relations and mutual cooperation for the development of enterprises.

Section 11. In order to achieve a high level of efficiency in the management of labour and production within enterprises, the State shall encourage the practice of democratic, fair and civilized labour management, and all measures, including bonuses paid out of the profits of enterprises, which would increase the interest of workers in the results of the activities of the enterprise.

The State shall adopt policies which enable workers to purchase shares and invest capital for the development of enterprises.

Section 12. Trade unions shall jointly with State bodies and economic and social organizations take part in looking after and protecting the rights and interests of workers; and in the control and supervision of the implementation of the provisions of labour legislation.

CHAPTER II. EMPLOYMENT

Section 13. Every labour activity generating a source of income and not prohibited by law shall be deemed to be employment.

It shall be the responsibility of the State, of enterprises, and of society as a whole to provide jobs and to ensure employment opportunities to everyone who has the capacity to work.

Section 14. (1) The State shall determine a target for job creation in both its annual and five-year socio-economic development plans. The State shall create the necessary conditions, provide financial assistance and loans, reduce or exempt from payment of tax and apply other incentive measures in

order that those who are able to work may provide for their employment, and that organizations, entities and individuals in all economic sectors may develop new occupations for the purpose of creating employment for many workers.

(2) The State shall adopt policies which provide preferential treatment in employment procurement in order to attract and employ workers who are members of ethnic minorities.

(3) The State shall adopt policies to encourage and create favourable conditions for investment by organizations and individuals within and outside the country (including Vietnamese residing abroad) in the development of production and business to provide employment for workers.

Section 15. (1) The Government shall establish national employment programmes, and investment projects for economic and social growth and for migration to develop new economic zones in close relation to job providing programmes. The State shall set up a National Employment Fund financed by the State budget and other sources, and shall develop a system of employment service agencies. Each year the Government shall submit the national employment programme and Fund to the National Assembly for decision.

(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, people's organizations and other social organizations shall, depending on their respective duties and powers, be responsible for the implementation of employment programmes and funds.

Section 16. (1) Workers shall have the right to be employed by any employer in any location not prohibited by law. Persons in search of employment shall have the right to apply to the employer directly or to register with an employment service agency in order to find a job to suit their aspiration, ability, qualifications and health.

(2) The employer shall have the right to recruit workers directly or through employment service agencies, and to increase or reduce its labour force to suit production and business requirements and in compliance with the provisions of the law.

Section 17. (1) Where, as a result of structural or technological changes, workers who have been regularly employed in the enterprise for one year or more become redundant, the employer shall have the responsibility to retrain them for continued employment in new jobs; if no new jobs are available and employment must be terminated, the employer must pay a loss of employment allowance at the rate of one month's salary for each year of employment but no less than the equivalent of two months' wage.

(2) In cases where the retrenchment referred to in subsection (1) above must be applied to a number of workers, the employer must publish a list of the workers concerned, and on the basis of business requirements, length of service, qualifications, family circumstances, and other factors concerning each worker, the employer shall proceed to retrench workers in successive order, after consultation and agreement with the Executive Committee of the trade union of the enterprise, in accordance with the procedure stipulated under subsection 38(2) of this Code. The employer shall only be permitted to retrench workers after notifying the local labour office.

(3) Enterprises must establish a reserve fund for loss of employment allowance as prescribed by the Government in order to ensure the timely payment of allowances to the workers concerned.

(4) In order to create favourable conditions for workers to find work or be self-employed, the Government shall adopt policies and measures to provide for their training and retraining, to provide production and business guidance, and low interest loans from the National Employment Fund; it shall also provide financial assistance to localities or branches which have high underemployment or unemployment rates due to structural or technological changes.

Section 18. (1) Employment service agencies established in accordance with the law shall have the duty to provide advisory services, to introduce, supply and assist in recruiting labour and to collect

and supply information on the labour market. The dispatch of Vietnamese workers to work abroad may be carried out only after obtaining a permit issued by the competent authority.

(2) Employment service agencies shall be entitled to charge fees, may be considered for tax reduction or exemption, and shall be allowed to set up training facilities in accordance with the provisions of Chapter III of this Code.

(3) The Ministry of Labour, War Invalids and Social Affairs shall carry out the unified administration by the State of the activities of employment service agencies throughout the country.

Section 19. All acts of enactment, false promises and advertisements to mislead workers or to use employment services for unlawful purposes shall be prohibited.

CHAPTER III. VOCATIONAL TRAINING

Section 20. (1) Everyone shall have the right to freely choose an occupation and place in which to be trained according to their employment requirements.

(2) Enterprises, organizations or individuals meeting the conditions prescribed by law shall be permitted to establish training facilities.

The Government shall issue regulations governing the establishment of training facilities.

Section 21. (1) Training establishments shall be required to register and to operate in accordance with regulations governing vocational training. They shall be permitted to charge fees and shall be required to pay tax in accordance with the law.

(2) Training establishments which cater for war disabled, injured military personnel, the disabled and ethnic minorities or are located in areas with high rates of underemployment or employment, and training in traditional trades through teaching in factories or at home shall be considered for tax reduction and exemption.

Section 22. Trainees in training establishments must be at least 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. Trainees must be in good health so as to meet the requirements of the trade concerned.

Section 23. (1) Enterprises shall be responsible for carrying out programmes to improve the occupational skills of workers and for re-training workers before transferring them to other jobs within the enterprise.

(2) Enterprises which recruit trainees or apprentices for subsequent employment in the enterprise for a period specified in the training or apprenticeship contract shall not be required to register but shall not be entitled to collect fees for such training. The training or apprenticeship period shall be counted as a period of service within the enterprise. Where trainees or apprentices directly engage or participate in production during the training or apprenticeship period, they shall be paid at a rate agreed between the two parties.

Section 24. (1) All vocational training requires a training contract, concluded either in writing or orally, between the trainee and the trainer or the person representing the training establishment. Where the contract is in writing, it must be made in duplicate, one for each party.

(2) A training contract shall include among its main provisions the objectives and place of training, the amount of fees, the period of training and the amount of compensation to be paid in the event of breach of contract.

(3) In enterprises which recruit trainees for subsequent employment, the training contract must include a commitment on the term of subsequent employment and must guarantee the signing of a labour contract upon completion of training. If, after the completion of training, the trainees refuse to work for the enterprise as stipulated in the contract, they must pay compensation for the training expenses.

(4) Where the training contract is terminated before the expiration date as a result of force majeure, neither party shall be liable for payment of compensation.

Section 25. All enterprises, organizations and individuals shall be strictly prohibited from making use of apprenticeship and training for profit and for the exploitation of labour, or from enticing or compelling trainees and apprentices to engage in unlawful activities.

CHAPTER IV. EMPLOYMENT CONTRACTS

Section 26. An employment contract is an agreement between the worker and the employer concerning remunerated employment, conditions of work and the rights and obligations of each party in the employment relationship.

Section 27. (1) An employment contract shall be concluded in any one of the following forms:

- (a) a contract with an indefinite term;
- (b) a contract with a definite term of one to three years;
- (c) a contract for seasonal work or a specific task of less than one year's duration.

(2) Parties shall be prohibited from signing employment contracts for seasonal work or a specific task of less than one year's duration to carry out work of a regular nature for more than one year, except in cases of temporary replacement of workers who are called up for military service, are on maternity leave or on other temporary leave.

Section 28. An employment contract shall be made in writing and must be in duplicate, with each contracting party obtaining one copy. An oral agreement may be concluded in respect of certain types of work of a temporary nature and of less than three months' duration, and in respect of domestic workers. Under any oral agreement, the parties must abide by the provisions of labour laws.

Section 29. (1) Employment contracts must include the following main provisions: work to be performed, time of work, time of rest, amount of pay, place of work, duration of contract and conditions regarding occupational safety and health and social security for the workers.

(2) When an employment contract provides in whole or in part for conditions less favourable to the workers than those stipulated under labour legislation, collective agreements or existing works rules of the enterprise concerned, or restricts other rights of workers, the entire contract or the relevant part thereof must be amended or supplemented accordingly.

(3) When a contract containing terms such as those referred to under subsection (2) above comes to light, the Labour Inspectorate shall provide guidance for the parties to amend or supplement the contract. Where the parties refuse to amend or supplement the contract, the Labour Inspector shall have the right to compel the deletion of such terms in the employment contract.

Section 30. (1) The employment contract shall be concluded directly between the worker and the employer.

(2) An employment contract may be concluded between the employer and a person duly authorized to represent a group of workers. In such a case, the contract shall have effect as if it were concluded with each worker individually.

(3) A worker may conclude one or several employment contracts with one or several employers on condition that the worker must ensure the full implementation of all contracts concluded.

(4) The work stipulated in the employment contract must be carried out directly by the contracting worker who may not assign such work to another person without the consent of the employer.

Section 31. In the event of a merger or division of the enterprise, of transfer of ownership of the right to management, or the use of property of the enterprise, the new employer shall be responsible for the continued implementation of the contract concluded with the worker until both parties agree on the amendment or termination of the contract, or conclude a new employment contract.

Section 32. The employer and the employee may agree on a trial period of work, the duration of such a period, and the rights and obligations of the parties. The wages of the workers during such a trial period must be at least 70 per cent of the normal wage for the work in question. The trial period may not exceed 60 days in respect of highly specialized technical work, or 30 days in respect of other work.

During the trial period, each party shall have the right to cancel the trial work agreement without having to give notice and to pay compensation if the work performed does not meet the agreed requirements. If the work performed meets the agreed requirements, the employer must accept the worker for regular employment as previously agreed.

Section 33. The employment contract shall take effect upon the date of its conclusion or the date agreed upon by the contracting parties.

In the course of an employment contract, any party who wishes to modify the contents thereof shall give notice of its intention to the other party at least three days in advance. The modification of the employment contract may be effected by way of amendments to the existing employment contract or by the conclusion of a new employment contract.

Section 34. (1) In order to meet unforeseen difficulties or the requirements of production and business, the employer shall have the right to temporarily transfer workers to other work that differs from their occupation for a period not exceeding 60 days in one year.

(2) When temporarily transferring workers to work that is different from that of their occupation, the employer must give workers at least three days' notice and indicate the duration of the temporary transfer, and must assign temporary work that is suitable to the health and gender of the worker.

(3) While temporarily transferred to other work as stipulated under subsection (1) above, workers shall receive the wage corresponding to the new work, if the wage for the new work is less than the former wage, the worker shall be entitled to keep the previous wage for a period of 30 working days. The new wage shall be equal to at least 70 per cent of the previous wage but not less than the minimum wage prescribed by the State.

Section 35. (1) The employment contract shall be suspended temporarily in the following cases:

- (a) The worker is called up for military service or for other civic obligations as stipulated by law;
- (b) the worker is under temporary arrest or detainment;
- (c) other cases as agreed upon by both parties.

(2) Where an employment contract is suspended temporarily in the cases referred to under paragraphs (a) and (c) above, the employer must reinstate the worker at the end of the period of suspension.

(3) In the event that an employment contract is suspended because a worker has been temporarily arrested or detained, the re-instatement of the worker at the end of the period of suspension shall be determined by the Government.

Section 36. The employment contract shall be terminated in the following cases:

- (1) the contract expires;
- (2) the work under the contract has been completed;
- (3) both parties agree to terminate the contract;
- (4) the worker is sentenced to imprisonment or is prohibited from resuming the former employment by decision of the Court;
- (5) the worker dies or is declared missing by the Court.

Section 37. (1) A worker employed under an employment contract with a definite term of one to three years or a contract for seasonal work or a specific task of less than one year shall be entitled to unilaterally terminate the contract before its term, in the following cases:

- (a) the worker is not assigned to the work or workplace, or the conditions of work are not

- ensured as agreed upon in the contract;
- (b) the worker is not paid the full amount and at the time specified under the contract;
- (c) the worker is subject to maltreatment or forced labour;
- (d) the worker can no longer carry out the contract because of stated personal or family difficulties;
- (e) the worker is elected to full-time duty in representative public office or is appointed to an office in a State body;
- (f) A female worker is pregnant and must stop working pursuant to the order of a doctor.

(2) When an employment contract is terminated unilaterally in accordance with the provisions of subsection (1) above, the worker must give the employer:

- (a) in cases referred to under paragraphs (a) (b) and (c), at least three days' notice;
- (b) in cases referred to under paragraphs (d) and (e), at least 30 days' notice in respect of a contract with a definite term of one to three years, and at least three days' notice in respect of a contract for seasonal work or a specific task of less than one year;
- (c) in the case referred to under paragraph (f), a period of notice as stipulated under section 112 of this Code.

(3) Workers employed under an employment contract with an indefinite term shall have the right to unilaterally terminate the contract at any time, but must give the employer at least 45 days' notice.

Section 38. (1) The employer shall have the right to unilaterally terminate the employment contract in the following cases:

- (a) the worker regularly fails to fulfil the tasks assigned under the contract;
- (b) the dismissal of the worker is a disciplinary measure under section 85 of this Code;
- (c) the worker is ill and no recovery of working ability is in sight after having received treatment for 12 consecutive months in respect of an employment contract with an indefinite term, or for six consecutive months in respect of a contract with a definite term, or for more than half the duration of the contract in respect of a contract with a term of less than one year. Upon the recovery of the worker, consideration shall be given to a resumption of the employment contract;
- (d) in the event of natural disasters, fire or other cases of force majeure, when the employer has made every effort to overcome difficulties but is nevertheless compelled to reduce production and its workforce;
- (e) the enterprise, body or organization ceases its activities.

(2) Prior to the unilateral termination of an employment contract under paragraphs (a), (b) and (c) of subsection 1 above, the employer must discuss and reach an agreement with the Executive Committee of the trade union of the enterprise. In the event of disagreement, both parties must submit a report to the competent body or organization, and only after a period of 30 days from the date of notification of the labour office, the employer shall have the right to make a decision and be responsible for such a decision. In the event of continued disagreement with the decision of the employer, both the Executive Committee of the trade union of the enterprise and the worker shall have the right to apply for settlement of a labour dispute under the procedure prescribed by law.

(3) When unilaterally terminating an employment contract under subsection (1) above, with the exception of cases provided for under paragraph (b), the employer must give the worker:

- (a) at least 45 days' notice in respect of a contract with an indefinite term;
- (b) at least 30 days' notice in respect of a contract with a definite term from one to three years;
- (c) at least three days' notice in respect of a contract for seasonal work or a specific task of less than one year.

Section 39. The employer shall not unilaterally terminate an employment contract in the following cases:

(1) The worker is under treatment or care as prescribed by doctors for sickness, industrial accident or occupational disease, except in the cases provided for under paragraphs (c) and (e) of subsection 38(1) of this Code;

(2) The worker is on annual leave, on leave for personal reasons, or any other type of leave permitted by the employer;

(3) The female worker in cases referred to under subsection 111(3) of this Code.

Section 40. Each party may renounce its intention to unilaterally terminate an employment contract prior to expiry of the notice period. Upon the expiration of the notice period, either party shall have the right to terminate the contract.

Section 41. (1) When an employer has unilaterally terminated an employment contract in contravention of the law, it must reinstate the worker and pay compensation equal to the amount of wage corresponding to the period during which the worker was not allowed to work. A worker who does not wish to return to work, shall receive, in addition to such compensation, a severance allowance in accordance with the provisions of subsection 42(1) of this Code.

(2) When workers unilaterally terminate an employment contract in contravention of the law, they shall not be entitled to any severance allowance.

(3) A worker who unilaterally terminates an employment contract shall be liable to pay compensation for training costs, if any, in accordance with Government regulations.

(4) Any party that unilaterally terminates an employment contract and does not observe provisions on giving notice must pay the other party compensation equal to the amount of wage corresponding to the days of notice not given.

Section 42. (1) When terminating the employment contract of a worker who has been regularly employed in an enterprise, office or organization for at least one year, the employer must pay such worker severance allowance at the rate of one half a month's salary plus other benefits, if any, for each year of service.

(2) When an employment contract is terminated as provided for under paragraphs 85(1)(a) and (b) of this Code, the worker shall not be entitled to any severance allowance.

Section 43. Within seven days from the date of termination of the employment contract, the two parties shall be responsible for settling all questions relating to the rights and interests of each party. In exceptional circumstances, this period may be extended but shall not exceed 30 days.

In the event of bankruptcy of the enterprise, questions relating to the rights and interests of the workers shall be settled in conformity with the provisions of the Business Bankruptcy Act.

The employer shall make an entry in the worker's work book stating the reasons for the termination of the employment contract and shall be responsible for returning the work book to the worker. Apart from what is stated in the work book, the employer may not make any additional remark detrimental to the worker in finding new employment.

CHAPTER V. COLLECTIVE LABOUR AGREEMENTS

Section 44. (1) A collective labour agreement (hereinafter referred to as a "collective agreement") is a written agreement concluded between the collective body of the workers (labour collective) and the employer concerning conditions of work and employment and the rights and interests of each party to the employment relationship.

A collective agreement shall be negotiated and concluded by the representative of the labour collective and the employer in accordance with the principles of voluntariness, equality and openness to the public.

(2) The contents of the collective agreement may not be contrary to the provisions of labour laws and other laws.

The State shall encourage the conclusion of collective agreements that establish provisions that are

more favourable to workers than those of labour legislation.

Section 45. (1) Representatives of parties to collective bargaining shall include:

- (a) the Executive Committee of the trade union of the enterprise or a provisional trade union organization, on behalf of the labour collective;
- (b) On behalf of the employer, the Director of the enterprise, or a person authorized by the works rules or by the Director of the enterprise in writing.

The number of representatives of each party to the collective bargaining shall be determined by mutual agreement but must be equal.

(2) The representative who signs the collective agreement on behalf of the labour collective shall be the President of the Executive Committee of the trade union of the enterprise or a person so authorized in writing by the Executive Committee. The representative signing on behalf of the employer shall be the Director of the enterprise or a person so authorized by him or her in writing.

(3) A collective agreement may only be concluded if the negotiated contents of such an agreement is approved by more than 50 per cent of the workers of the labour collective in the enterprise.

Section 46. (1) Each party shall have the right to make a request for a collective agreement and to propose its subject matter. No later than 20 days after receiving the request, the recipient party must agree to bargain and agree on a date for the commencement of bargaining.

(2) The main provisions of the collective agreement shall include commitments in respect of employment and guarantee of employment; hours of work and rest; wages, bonuses and allowances; the number of employees; work rules; occupational safety and health; and social security for the workers.

Section 47. (1) The signed collective agreement shall be made in four copies:

- (a) one for the employer;
- (b) one for the Executive Committee of the trade union of the enterprise;
- (c) one to be addressed to the higher level trade union body by the Executive Committee of the trade union of the enterprise;
- (d) one to be sent by the employer for registration to the provincial labour office within ten days from the date of signing.

In the case of an enterprise with establishments in several provinces and cities directly under the central administration, it must register the collective agreement with the labour office of the province or city in which its head office is located.

(2) The collective agreement shall take effect as of the date of its registration with the provincial labour office. No later than 15 days after receipt of the text of the collective agreement, the provincial labour office must provide notification of its registration. Upon expiry of that time limit, if no notification has been provided, the collective agreement shall be deemed to have taken effect.

Section 48. (1) The collective agreement shall be partially void if one or a number of provisions in the agreement are not approved for registration by the provincial labour office. The remaining registered provisions shall continue to be binding.

(2) The collective agreement shall be void in its when:

- (a) the contents of the agreement as a whole contravene the law;
- (b) the person who signed the agreement was not duly authorized to do so;
- (c) the proper procedure was not strictly observed;
- (d) the agreement was not registered with the provincial labour office.

(3) The provincial labour office shall be competent to declare null and void a collective agreement deemed to be invalid as provided for under subsection 2(a) above. In respect of collective agreements referred to under subsections 2(b), (c) and (d) above, and where the terms of the agreement are

beneficial to the workers, the provincial labour office shall instruct the parties to proceed once more in conformity with legal requirements or shall declare the agreement null and void if the parties fail to carry out such instructions.

Section 49. (1) On taking effect, the collective agreement must be brought by the employer to the notice of all workers in the enterprise. All personnel including persons engaged after the agreement was concluded shall be responsible for the full implementation of the agreement.

(2) Where any rights and interests of the workers provided for under employment contracts are less favourable to workers than those provided for under the collective agreement, the corresponding provisions of the collective agreement must be implemented. All works rules must be amended to be consistent with the provisions of the collective agreement.

(3) When a party considers that the other party has failed to fully implement or has breached the provisions of the collective agreement, it shall have the right to demand full compliance with the agreement and both parties must jointly examine and settle the matter. If no settlement is reached, each party shall have the right to apply for settlement of the collective labour dispute under the procedure prescribed by law.

Section 50. A collective agreement may be concluded for a period of one to three years. Where a collective agreement is concluded for the first time in an enterprise, it may be concluded for a period of less than one year.

Each party shall only be entitled to ask for amendments and additions to the collective agreement after three months of implementation as of the date of its taking effect, in respect of collective agreements concluded for a period of less than one year, and after six months of implementation in respect of an agreements concluded for a period of one to three years. The procedure for amendments and additions to the collective agreement shall be the same as for the conclusion of the agreement itself.

Section 51. Prior to expiration of the collective agreement, both parties may bargain for the extension of the duration of the agreement or for a new agreement. Where the collective agreement expires during the bargaining process, it shall nevertheless continue to be effective and binding. If the bargaining remains inconclusive three months after expiration of the agreement, it shall be deemed to have ceased to have effect.

Section 52. (1) In the event of division, transfer of ownership or of the right to management or use of assets of the enterprise, the new employer shall be responsible for continuing the implementation of the agreement until its expiry or the conclusion of a new agreement.

In the event of merger of enterprises, implementation of the collective agreements shall be determined by the Government.

(2) If the collective agreement becomes void, because the enterprise ceases its activities, the rights and interests of the workers shall be settled in accordance with section 66 of this Code.

Section 53. All expenses incurred in bargaining and in signing, registering, amending adding to, and publishing, collective agreements shall be borne by the employer.

The representatives of the labour collective who are employed by the enterprise shall be entitled to payment of wage during the time of their participation in negotiation and signing of the collective agreement.

Section 54. The provisions of this Chapter shall apply to the negotiation and signing of collective agreements at the branch level.

CHAPTER VI. WAGES

Section 55. The wage of a worker shall be agreed upon between the parties to the employment contract and paid according to the productivity, quality and efficiency of the work performed. The wage of a worker must not be lower than the minimum wage rate provided for by the State.

Section 56. The minimum wage shall be fixed on the basis of cost of living to ensure that workers performing the most elementary work in normal working conditions shall recuperate their basic work capacity and partly accumulate reserves for regenerating enhanced labour capacity. The minimum wage shall serve as a reference for the calculation of wage rates for other categories of work.

The Government shall establish and publish for each period general minimum wage rates, and minimum wage rates for different areas and for various branches of trades, after having sought the views of the Viet Nam General Confederation of Labour and of representatives of employers.

When the cost of living index increases, so that there is a reduction in the real wages of workers, the Government shall readjust the minimum wage rates accordingly to safeguard the workers' real wages.

Section 57. The Government shall publish wage scales and wage tables to serve as a reference for the calculation of social security benefits, medical insurance schemes, remuneration for overtime work, night work, work stoppages, annual leave and other leave of workers, after having sought the views of the Viet Nam General Confederation of Labour and of representatives of employers.

Section 58. (1) The employer shall have the right to select the method of payment: on a time basis (hourly, daily, weekly, or monthly) a piece-work basis, or for a particular job, provided that the method of payment adopted is regularly maintained over a given period and that the workers are notified.

(2) Workers paid by the hour, day, or week shall be paid upon completion of the hour, day, or week of work in question or shall be paid accumulated wages as agreed by the parties, but at least once every 15 days.

(3) Workers paid by the month shall be paid monthly or half-monthly.

(4) Workers paid on a piece-work basis or by the job shall be paid as agreed by the two parties; if the work extends over several months, the workers shall be paid each month advances on wages corresponding to the volume of work completed within the month.

Section 59. (1) Workers shall be paid their wages directly, in full, when due and at the workplace.

In special cases where payment of wages must be delayed, such delay must not exceed one month, and the employer must pay to the workers compensation at least equal to the interest accruing from the amount due by application of the interest rate for savings deposits published by the State Bank at the time when the wage was due.

(2) Wages shall be paid in cash. The employer and the worker may agree on payment of wages partly by cheque or money order issued by the State, provided that no losses or inconveniences are incurred by the worker.

Section 60. (1) The worker has the right to be informed of the reason for any deductions from their wage. Before making any deduction, the employer must consult with the Executive Committee of the trade union of the enterprise. The total of deductions shall not be permitted to exceed 30 per cent of the wages of the workers in any month.

(2) The employer shall not impose penalties through deductions from workers' wages.

Section 61. (1) Workers performing overtime work shall be paid wages as follows:

- (a) On normal work days, an amount at least equal to 150 per cent of the normal hourly wage;
- (b) On weekly rest days or holidays, an amount at least equal to 200 per cent of the normal hourly wage.

If overtime work is performed at night, the worker shall moreover be entitled to additional pay for such work in accordance with the provisions of subsection (2) below.

If the worker is granted compensatory rest for the additional hours worked, the employer shall only be required to pay the amount of additional wage beyond the normal wage.

(2) Workers performing night work as provided for under section 70 of this Code shall be paid additional wage at least equal to 30 per cent of the wage for day work.

Section 62. In the event of forced work stoppage, the worker shall be paid as follows:

- (1) If a stoppage is due to the fault of a worker, the latter shall receive no wage;
- (2) Other workers in the same unit who must stop work shall be paid at a rate agreed upon by the two parties but not less than the minimum wage rate.
- (3) In event of breakdowns in electricity or water supply not due to the fault of the employer, or in the event of force majeure, the wage shall be as agreed between the parties, but shall not be less than the minimum wage rate.

Section 63. Systems of allowances, bonuses, advancements in wage grades, wage increases and other systems of labour incentives may be agreed upon in employment contracts, collective agreements or established in the works rules.

Section 64. The employer shall be responsible for assigning a portion of annual profits for the purpose of giving bonuses to workers who have been employed for one year or more, in accordance with regulations issued by the Government and the specific conditions of each category of enterprises.

Section 65. (1) In the event of employment through a subcontractor or any similar intermediary, the principal employer must maintain a list of the names and addresses of such persons together with a list of workers employed by them, and must ensure that they comply with the provisions of the law on remuneration and occupational safety and health.

(2) In the event that the subcontractor or any similar intermediary does not pay in full or fails to pay the wages and to ensure other rights and interests of the workers, the principal employer must be responsible for the full payment of wages to the workers and for ensuring their other rights and interests. In such a case, the principal employer shall have the right to demand compensation from the subcontractor or similar intermediary, or to request the competent authorities to settle the dispute in accordance with the law.

Section 66. In the event that a merger or division of the enterprise, or of transfer of ownership or of the right to management or to use of property of the enterprise, the new employer shall be responsible for payment of wages and other benefits to the workers. In the event of bankruptcy of the enterprise, the wages, severance allowance, social security benefit and other rights and interest of the workers as stipulated in the collective agreement and employment contracts shall be treated as a privileged debt that must be settled as a first priority.

Section 67. (1) When workers or their families face financial difficulties, they shall be entitled to advances on wages under terms and conditions agreed upon by both parties.

(2) The employer shall grant advances on wages to workers who are temporarily absent from work to perform civic obligations.

(3) Wage advances to workers who are under temporary arrest or detainment shall be determined by the Government.

CHAPTER VII. HOURS OF WORK AND REST PERIODS

Division 1: Definitions

Section 68. (1) Normal working hours shall not exceed eight hours per day or 48 hours per week. The employers shall have the right to determine hours of work on a daily or a weekly basis provided that the workers are notified in advance.

(2) Daily hours of work shall be reduced by one to two hours for workers engaged in especially hard, harmful or dangerous work as indicated on a list issued by the Ministry of Labour, Invalids and Social Affairs and the Ministry of Health.

Section 69. Employers and workers may agree on additional hours to be worked, provided that the total may not exceed four additional hours in a day or 200 additional hours in a year.

Section 70. Hours of night work shall be calculated for periods from 10.00 p.m. to 6.00 a.m. or from 9.00 p.m. to 5.00 a.m., according to climatic conditions in each region as determined by the Government.

Division 2: Rest periods

Section 71 (1) Workers who work eight consecutive hours shall be entitled to a break of at least thirty minutes, to be included in the hours of work.

(2) Workers on night shift shall be entitled to a break of at least 45 minutes, which shall be included in the hours of work.

(3) Workers who work in shifts shall be entitled to at least 12 consecutive hours of rest in the interval between shifts.

Section 72. (1) Workers shall be entitled to at least one day (24 consecutive hours) of rest per week.

(2) The employer may fix the regular weekly rest day on Sunday or on any other fixed day of the week.

(3) In special cases where the periods of work do not allow a weekly rest to be taken, the employer shall ensure that the worker has on an average at least four days of rest each month.

Section 73. Workers shall be entitled to a holiday with full pay on the following public holidays:

- -New Year's day: one day (1 January);
- -Lunar New Year Festival: four days (the final and the first three days of the lunar year);
- -Victory Day: one day (30 April);
- -International Labour Day: one day (1 May);
- -National Day: one day (2 September).

When public holidays referred to above coincide with the fixed day of weekly rest, workers shall have the next day off in compensation thereof.

Section 74. (1) Workers shall be entitled to annual leave with full pay, after 12 months of employment in the enterprise or with the same employer, as follows:

- (a) 12 working days, for persons working in normal working conditions;
- (b) 14 working days, for persons engaged in hard, harmful or dangerous work, or persons working in areas with hard living conditions, and for persons under 18 years of age;
- (c) 16 working days for persons engaged in especially hard, harmful or dangerous work and persons engaged in hard, harmful or dangerous work in areas with hard living conditions.

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

Section 75. Annual leave shall increase according to length of service in the enterprise or with the same employer, at the rate of one additional day for every five years of service.

Section 76. (1) The employer shall have the right to determine periods of annual leave after consultation with the Executive Committee of the trade union of the enterprise, and must notify in advance all personnel in the enterprise.

(2) Workers may agree with the employer to take annual leave in several parts. Persons working in distant areas and remote places may, at their request, accumulate two years' leave to be taken at one time; if three years of leave are to be taken at one time, the approval of the employer must be obtained.

(3) A worker who because of termination of employment or for other reasons has not taken part or all

of the annual leave due, shall be paid his wage in lieu of those days of leave not taken.

Section 77. (1) When taking annual leave, workers shall be paid in advance an amount at least equal to the wage corresponding to the days of leave to be taken. Travel expenses and wages paid for days of travel shall be agreed upon by the parties.

(2) Workers with less than 12 months of employment shall be entitled to annual leave in proportion to length of service, and may be compensated with money.

Division 3. Leave for personal reasons and unpaid leave

Section 78. Workers shall be entitled to leave for personal reasons with full pay in the following cases:

- - wedding of the worker: three days;
- - wedding of son or daughter of the worker: one day;
 - -death of a parent (including the parents of the spouse); death of husband, wife, son or daughter: three days.

Section 79. The worker and the employer may agree upon unpaid leave.

Division 4. Hours of work and rest periods for persons engaged in special kinds of work

Section 80. The hours of work and rest of workers employed at sea, in mines and of persons engaged in other special kinds of work shall be determined by the Government.

Section 81. The hours of work and rest periods of persons working part-time and persons working under contract on the basis of volume of production or specific tasks shall be determined by agreement between the worker and the employer.

CHAPTER VIII. LABOUR DISCIPLINE AND RESPONSIBILITY FOR DAMAGE

Section 82. (1) Labour discipline consists of provisions governing compliance with requirements of time, technology and management in production and business, as set out in works rules.

Works rules shall not be contrary to labour legislation and other laws. Enterprises employing ten or more workers shall be required to adopt works rules in writing.

(2) Prior to the adoption of works rules, the employer must consult the Executive Committee of the trade union of the enterprise.

(3) The employer must register the works rules with the provincial labour office. Works rules shall take effect as of the date of their registration. No later than ten days after the receipt of the works rules text, the provincial labour office must notify the registration thereof. On expiry of that time limit, if no notification has been given, the works rules shall be deemed to take effect.

Section 83. (1) Works rules must include the following main provisions governing:

- (a) hours of work and rest periods;
- (b) order in the enterprise;
- (c) occupational safety and health at the workplace;
- (d) protection of property, and technological and business secrets of the enterprise;
- (e) acts and conduct in contravention of labour discipline, disciplinary measures and measures concerning material liability.

(2) Works rules shall be brought to the notice of each worker and the main rules shall be posted where required in the enterprise.

Section 84. (1) Persons contravening labour discipline, depending on the degree of the contravention, may be sanctioned by one of the following disciplinary measures:

- (a) blame;
 - (b) transfer to a lower paid job for a period not exceeding six months;
- (c) dismissal.

(2) Multiple disciplinary measures shall not be applied with regard to one contravention.

Section 85. (1) Dismissal shall be used as a disciplinary measure only to:

- (a) workers who commit acts of theft, embezzlement, disclosure of technological and business secrets, or other acts causing severe loss to the property and interests of the enterprise;
- (b) workers transferred to another job as a disciplinary measure who again commit the same breach of labour discipline when the disciplinary measure is still in effect.
- (c) workers who have been absent for a total of seven days per month or 20 days per year without legitimate reasons.

(2) After dismissing a worker, the employer shall be required to notify the provincial labour office.

Section 86. Disciplinary measures shall be applied within a period not exceeding three months of the date of the contravention. For special cases this period shall not exceed six months.

Section 87. (1) When proceeding to take disciplinary action, the employer must raise evidence establishing the fault of the worker.

(2) Workers shall have the right to present their own case or to ask for the assistance of a lawyer, a people's defence council, or other person for their defence.

(3) Examination of disciplinary action must be carried out in the presence of the person concerned and with the participation of a representative of the Executive Committee of the trade union of the enterprise.

(4) A record must be established of a proceeding concerning disciplinary action.

Section 88. (1) Three months after a worker has been blamed as a disciplinary measure and six months after a transfer to another job, if the same breach of labour discipline has not been repeated, the disciplinary measures in question shall be automatically withdrawn.

(2) Persons subject to transferral to another job as a disciplinary measure and who have completed one half of the period of transfer and have mended their ways and made progress, shall be considered by the employer for a reduction of the remaining period.

Section 89. Workers who cause damage to tools and equipment or otherwise damage the property of the enterprise shall be held liable to compensate for the damages incurred in accordance with the provisions of the law. If the damage is caused through negligence and is not of a serious nature, maximum compensation may not exceed three months of the workers' wages and shall be deducted gradually from wages as provided for under Article 60 of this Code.

Section 90. Workers who lose tools, equipment, or cause loss to other property entrusted to them by the enterprise, or utilize materials at an excessive rate shall be held liable, as the case may be, to compensate in part or in full for the losses at market prices. Where a liability contract has been signed by the parties, compensation shall be paid according to the terms of such contract. In the event of force majeure, no compensation shall be due.

Section 91. Procedures and formalities for compensation of damages referred to in sections 89 and 90 shall be governed by the provisions of sections 86 and 87 of this Code.

Section 92. (1) When misconduct involves great complexity and it is considered that the continued presence of the worker concerned may cause difficulties for the investigation and termination of the case, the employer shall have the right to temporarily suspend that worker, after consulting the Executive Committee of the trade union of the enterprise.

(2) The period of temporary suspension shall not exceed 15 days and even in special cases shall not

exceed three months. During that period, the worker concerned shall be entitled to an advance equal to 50 per cent of the wage before suspension.

(3) Upon expiration of the period of suspension, the workers concerned must be allowed to resume their work.

(4) If the workers concerned are found to be not guilty, the employer must pay in full wage and allowances for the period of temporary suspension.

Section 93. Persons subjected to disciplinary measures or suspension from work, or held liable for damage, who consider that the decision of the employer is not appropriate, shall have the right to submit a complaint to the employer or to appeal to the competent authorities, or to raise the issue for settlement under the procedure for settling labour disputes prescribed by law.

Section 94. When the competent authority finds that the decision made against an employee is wrong, the employer must withdraw the decision, apologize publicly, and restore the honour and material rights of the worker.

CHAPTER IX. OCCUPATIONAL SAFETY AND HEALTH

Section 95. (1) The employer shall be responsible for providing adequate means of protection to the workers, ensuring occupational safety and health, and improving the working conditions of the workers. The workers must observe regulations on occupational safety and health and comply with work rules within the enterprise. Every organization or individual concerned with labour and production must observe laws and regulations on occupational safety and health and on environmental protection.

(2) The Government shall establish national programmes on labour protection, and occupational safety and health for inclusion in socio-economic development plans and in the budget; it shall invest in scientific research and shall assist establishments engaged in the production of tools and equipment for occupational safety and health and devices for personal protection; and it shall promulgate systems of standards, norms and procedures for occupational safety and health.

(3) The Viet Nam General Confederation of Labour shall participate with the Government in the preparation of national programmes on labour protection, occupational safety and health, in the elaboration of scientific research programmes, and in the preparation of laws on labour protection and occupational safety and health.

Section 96. (1) In the event of new construction, expansion or transformation of the premises for the production, use, maintenance, storage and stockpiling of different kinds of machinery, equipment, materials and substances subject to strict occupational safety and health requirements, the persons concerned must prepare feasibility studies on measures to ensure occupational safety and health at the workplace and for the surrounding environment in accordance with the law.

The list of machinery, equipment, materials and substances subject to strict occupational safety and health requirements shall be determined by the Ministry of Labour, War Disabled and Social Affairs and the Ministry of Health.

(2) The production, use, maintenance, transportation of machinery, equipment, materials, energy, electricity, chemicals, insecticides and herbicides and technological change and importation of new technology must be carried out in conformity with occupational safety and health standards. Machinery, equipment, materials and substances subject to strict occupational safety and health requirements must be declared to be registered with and have been issued with a permit by relevant state inspection bodies dealing with occupational safety or occupational health.

Section 97. The employer shall ensure that the workplace meets the prescribed standards on space, ventilation, light, and the health standards permitted in respect of dust, steam, toxic gas, radioactivity, electromagnetic fields, heat, humidity, noise, vibration and other harmful elements. Such elements must be checked and measured periodically.

Section 98. (1) The employer must ensure that machinery, equipment, workshops and storehouses are checked and repaired periodically in accordance with occupational safety and health standards.

(2) The user must be provided with adequate guarding devices for all dangerous parts of machinery and equipment in the enterprise; the workplace, machine sites and equipment installations and places holding dangerous and harmful elements within the enterprise must have arrangements to prevent risks of accidents, and signboards setting out instructions on occupational safety and health, posted at places permitting easy visibility and reading.

Section 99. (1) In the event of risks of industrial accidents or occupational diseases arising at the workplace or from machinery and equipment, the employer must immediately take measures to overcome such risks or to order stoppage of activities at the workplace, and of the operation of machinery and equipment involved, until the risks are eliminated.

(2) Workers shall have the right to refuse to perform work or to leave a workplace that clearly presents an imminent and serious threat to life or health, and have the obligation to immediately report to persons directly in charge. The employer shall not require workers to resume work or return to the workplace in question if such danger is not eliminated.

Section 100. At workplaces that have dangerous and harmful elements likely to cause occupational accidents, the employer must provide appropriate technical and medical facilities and protective equipment to ensure prompt rescue in the event of emergencies or accidents.

Section 101. Workers engaged in dangerous and harmful work must be provided with protective clothing and personal protective equipment.

The employer must ensure that personal protective equipment and clothing meet the standards of quality and design prescribed by law.

Section 102. When recruiting or organizing the workforce, the employer shall rely on health standards prescribed for each category of work, and shall provide workers with training, guidance and information on regulations and measures respecting occupational safety and health, and on the prevention of hazards responding from the work of each worker.

Workers shall have a medical examination at the time of recruitment and subsequent periodic examinations as prescribed by the relevant regulations. Expenses for medical examination of workers shall be borne by the employer.

Section 103. Enterprises shall be responsible for providing health care to workers and for giving first aid and emergency aid to workers when required.

Section 104. Persons working under dangerous and harmful conditions shall receive allowances in kind, and shall enjoy preferential treatment with regard to hours of work and rest, in accordance with the law.

The employer must ensure that workers at places exposed to risks of intoxication and infection shall, after working hours, be provided with detoxification and disinfection measures, as well as other personal health measures.

Section 105. Occupational accidents mean accidents causing death or bodily injury in whatever form to the worker, that occur in the course of employment and in connection with the performance of the work or task assigned.

Victims of occupational accidents must receive prompt emergency first-aid and full treatment and care. Employers must be held responsible in accordance with the law for occupational accidents that occur because of their fault.

Section 106. Occupational diseases are diseases caused by the effect of harmful conditions of work on workers. The list of occupational diseases shall be established by the Ministry of Health and the Ministry of Labour, War Disabled and Social Affairs, after having sought the views of the Viet Nam General Confederation of Labour and of representatives of employers. Victims of occupational

diseases shall be given full treatment, undergo periodic medical examinations and shall have a special medical record.

Section 107. (1) Persons incapacitated by occupational accidents or diseases shall undergo medical assessment to determine their relevant class of disability and the degree of reduction in their ability to work, and shall receive treatment for occupational rehabilitation. In the event of continued employment, they shall be assigned work adapted to their health on the basis of findings of the Labour Medical Assessment Board.

(2) The employer shall bear all medical expenses incurred from the time that emergency first aid is given to the completion of medical treatment for victims of occupational accidents and diseases. Workers shall be entitled to social security benefits for occupational accidents and diseases. If an enterprise is not yet covered by the compulsory system of social insurance, the employer shall pay the worker an amount equal to the amount provided for in the Social Security Regulations.

(3) The employer shall pay compensation that is at least equivalent to 30 months' wages to workers whose ability to work has been reduced by 81 per cent or more, or to the relatives of workers who have died as a result of occupational accident or disease that is not due to the fault of the worker. Where the occupational accident or disease occurred because of their fault, workers or their relatives shall nevertheless be granted an allowance at least equal to 12 months' wages.

Section 108. All cases of occupational accidents and diseases must be declared, investigated, recorded, included in the relevant statistics and reported periodically as prescribed by law.

All action to cover up, falsely declare or report occupational accidents and diseases shall be strictly prohibited.

CHAPTER X. SPECIAL PROVISIONS CONCERNING FEMALE WORKERS

Section 109. (1) The State shall ensure the right to work of women on a basis of equality in every respect with men; it shall adopt policies to encourage employers to create conditions providing female workers with regular employment and in their respect to widely apply the system of employment with flexible hours, part-time work or work at home.

(2) The State shall adopt policies and measures to gradually expand employment opportunities, improve conditions of work, raise levels of skill and health care, and strengthen the material and spiritual welfare of female workers with the aim of assisting them to develop their occupational capacity and to combine their occupational life and family life harmoniously.

Section 110. (1) The public authorities shall be responsible for the development of various forms of training in favour of female workers in order to enable them to acquire additional skills beyond their current occupation, in order to facilitate their employment in conditions that are suited to their physical and physiological characteristics and their maternal functions.

(2) The State shall adopt policies on preferential treatment and shall consider tax reductions for enterprises which employ a high number of female workers.

Section 111. (1) All acts by employers to discriminate against female workers or offend their dignity and honour shall be strictly prohibited.

The employer must implement the principle of equality between men and women in respect of recruitment, employment, advancement in wage increments and remuneration.

(2) The employer shall give preference to women who meet the recruitment criteria for vacant positions that are suitable to both men and women and need to be filled in the enterprise.

(3) The employer shall not dismiss female workers or unilaterally terminate the employment contracts of female workers because of marriage, pregnancy, maternity leave or breast-feeding a child under 12 months of age, except in cases where the enterprise ceases its activities.

Section 112. Where a doctor's certificate states that continued employment would adversely affect the foetus, pregnant female workers shall have the right to unilaterally terminate the employment contract without liability for compensation under section 4 of this Code. In such cases, the period of notice that the female worker must give to the employer shall depend on the period determined by the doctor.

Section 113. (1) No employer shall employ female workers for hard or dangerous work, or work exposed to toxic substances that are harmful to their ability to bear and raise children, as specified in the lists established by the Ministry of Labour, War Disabled and Social Affairs and the Ministry of Health.

Enterprises employing female workers in work referred to above must prepare plans for training and gradually transferring such female workers to other suitable work. Enterprises must also intensify measures to protect the health of female workers, improve their working conditions, or reduce the number of hours of work.

(2) No employer shall employ female workers of any age in regular underground work in mines or for work immersed in water.

Section 114. (1) Female workers shall be entitled to prenatal and postnatal leave, totalling four to six months, as determined by the Government according to conditions of work and the hard, harmful nature of the work or its remote location. In the event of twin or multiple births, the worker shall be entitled to 30 additional days of leave for each child calculated from the second child onwards. The rights and benefits of female workers during their maternity leave shall be as provided for under sections 141 and 144 of this Code.

(2) Subsequent to the statutory maternity leave stipulated under subsection (1) above, if so requested, a female worker may take additional leave without pay under terms agreed upon with the employer. Female workers may return to work before the expiration of their statutory maternity leave provided that they have taken at least two months' postnatal leave and that a doctor's certificate confirms that early resumption of work does not affect their health and that the employer is given advance notice. In such a case, the female shall continue to be entitled to maternity benefits in addition to working wages.

Section 115. (1) No employer shall employ female workers as of their seventh month of pregnancy or those who are breast-feeding a child under 12 months of age to work overtime, at night or in distant locations.

(2) Female workers performing strenuous work, on reaching their seventh month of pregnancy, shall be transferred to lighter work, or shall have their daily hours of work reduced by one hour but shall still receive their full wage.

(3) Female workers during their menstruation period shall be entitled to 30 minutes' rest on every working day with full pay; female workers breast-feeding children under 12 months of age shall be entitled to 60 minutes rest on every working day with full pay.

Section 116. (1) Places where female workers are employed must have cloakrooms, bathrooms and toilets for women.

(2) Where a high number of female workers are employed, the employer shall have the responsibility to assist in making arrangements for nurseries and kindergartens, or covering part of the expenses incurred by female workers who have their children in nurseries or kindergartens.

Section 117. (1) When taking time off work for prenatal check-ups, for various family planning measures or for miscarriage; for attending to sick children under seven years of age or adopting newborn children, female workers shall be entitled to social security benefits or shall be paid an equivalent amount by the employer. The duration of time off work and entitlement to benefits provided for in this subsection shall be determined by the Government. Where another person attends to a sick child in place of the mother, the mother shall still be entitled to social security benefits.

(2) After their statutory maternity leave and, where applicable, also after their postnatal leave without

pay, on returning to work female workers shall be guaranteed employment.

Section 118. (1) In enterprises employing a high number of female workers, a member of the management staff shall be assigned to deal with female workers' questions; when taking a decision which affects the rights and interests of women or children, consultation with representatives of female workers shall be ensured.

(2) There shall be an appropriate proportion of female inspectors in the labour inspection staff.

CHAPTER XI. SPECIAL PROVISIONS CONCERNING YOUNGWORKERS AND OTHER CATEGORIES OF WORKERS

Division 1. Young workers

Section 119. (1) Young workers are workers under 18 years of age. At places where young workers are employed, separate records shall be kept mentioning in full the name, date of birth, work assigned, and results of periodic health checks, and shall be produced upon demand by labour inspectors.

(2) All exploitation of the labour capacity of young persons shall be strictly prohibited.

Section 120. The admission to work of children under 15 years of age shall be prohibited except in certain categories of occupations and work determined by the Ministry of Labour, War Disabled and Social Affairs.

In occupations and work with the admission of children under 15 years of age to work, vocational training or apprenticeship is permitted, the agreement and supervision of their parents or guardian shall be required.

Section 121. Employers may only employ young workers in work suitable to their health so as to ensure their physical, mental and personal development, and must concern themselves with the care of young workers as regards their work, wages, health and training in the course of their employment.

The employment of young workers shall be prohibited for hard, dangerous work and work exposed to harmful substances as determined in a list issued by the Ministry of Labour, War Disabled and Social Affairs and the Ministry of Health.

Section 122. (1) The hours of work of young workers shall not exceed seven hours per day or 42 hours per week.

(2) An employer may only employ young workers to work overtime or work at night in certain categories of occupations and work determined by the Ministry of Labour, War Disabled and Social Affairs.

Division 2: Older workers

Section 123. Older workers are male workers over 60 years of age and female workers over 55 years of age.

During the year prior to retirement, older workers shall be entitled to reduce daily hours of work or part-time work in accordance with regulations issued by the Government.

Section 124. (1) Where necessary, older workers may reach an agreement with the employer on the extension of the employment contract or the conclusion of a new employment contract in accordance with the provisions of Chapter IV of this Code.

(2) If after retirement older workers are employed under a new employment contract, they shall be entitled to the rights and benefits agreed upon in the employment contract, in addition to the rights and benefits under the retirement scheme.

(3) The employer must concern itself with the health care of older workers and shall be prohibited from employing them in hard, dangerous work and work exposed to harmful substances adversely

affecting their health.

Division 3: Employment of the disabled

Section 125. (1) The State shall protect the right to work of disabled persons and encourage their admission to work and the development of suitable employment for them. Each year the State shall set aside budgetary funds to assist the disabled in achieving early recovery

of their health and ability to work and have vocational training; it shall establish policies on the granting of low-interest loans to the disabled to enable them to achieve self-employment and a stable life of their own.

(2) Establishments which admit disabled persons for training or apprenticeship shall be entitled to consideration for tax deductions, low-interest loans and other preferential treatment for the purpose of creating training conditions and facilities for the disabled.

(3) The Government shall fix the proportion of disabled workers which must be accepted by enterprises for certain types of work and occupations. Enterprises that do not implement this rule shall be required to contribute a sum of money as determined by the Government to the employment funds with a view to providing employment for the disabled. Enterprises exceeding the prescribed proportion shall be entitled to state grants or low-interest loans to enable the creation of suitable conditions of work for the disabled.

(4) Hours of work of the disabled shall not exceed seven hours per day or 42 hours per week.

Section 126. Vocational training establishments and production or business establishments specially reserved for disabled persons shall receive assistance for their initial material installations in respect of workshops, schools, classrooms, equipment and furniture, and shall be entitled to tax exemptions and low-interest loans.

Section 127. (1) Establishments providing vocational training or employing persons in production or business shall observe relevant provisions regarding conditions of work, tools of work and equipment, and occupational safety and health, and shall take constant care of their health.

(2) The employment of disabled persons, overtime or at night, of persons who have been deprived of 51 per cent or more of their labour capacity shall be prohibited.

(3) The employer shall not be permitted to employ disabled persons for hard, dangerous work, or work exposed to harmful substances as determined in the list established by the Ministry of Labour, War Disabled and Social Affairs and the Ministry of Health.

Section 128. In addition to the rights and benefits provided for in this Division of the Code, workers who are war disabled or injured soldiers shall be entitled to preferential treatment reserved for them by the State.

Division 4: Workers with highly specialized skills and technical qualifications

Section 129. (1) Workers with highly specialized skills and technical qualifications shall have the right to hold several jobs or positions on the basis of several employment contracts concluded with several employers on condition that the workers must ensure full implementation of all contracts made and notify the employers thereof.

(2) Workers with highly specialized skills and technical qualifications shall enjoy authorship and copyright protection according to the law for any useful solutions, innovations or inventions. Where a research project is funded by the enterprise, workers shall be entitled to a share in the ensuing economic benefits in accordance with the contract established for such research.

(3) Workers with highly specialized skills or technical qualifications shall have the right to take long-term unpaid or partially paid leave for scientific research purposes or for higher studies while still maintaining their current job or position pursuant to an agreement reached with the employer.

(4) Workers with highly specialized skills or technical qualifications shall be given priority in the application of provisions of subsections (1) and (2) of section 124 of this Code.

(5) Workers with highly specialized skills or technical qualifications who expose industrial or business secrets pertaining to the workplace shall, in addition to being subject to disciplinary measures as stipulated under section 85 of this Code, be required to pay compensation for damages incurred in accordance with the provisions of sections 89 and 90 of this Code.

Section 130. (1) The employer shall have the right to conclude an employment contract with any person with highly specialized skills or technical qualifications, including civil servants or public employees for work that is not prohibited by the public service statute.

(2) Workers with highly specialized skills or technical qualifications shall enjoy preferential treatment by the State and by the employers, and shall enjoy favourable conditions for the continuous development of their talents to the benefit of both the enterprise and the country. The preferential treatment reserved for workers with highly specialized skills or technical qualifications shall not be deemed to be discrimination in employment.

(3) The State shall encourage workers with highly specialized skills or technical qualifications to work in mountainous areas, border regions, on islands, and in difficult regions and shall adopt policies to secure special preferential treatment for such workers.

Division 5: Work for foreign organizations and individuals in Viet Nam, foreigners working in Viet Nam, and vietnamese citizens working abroad

Section 131. Vietnamese citizens working in enterprises established in accordance with the Law on Foreign Investment in Viet Nam, and enterprises in export-processing zones, for foreign or international bodies or organizations operating in Viet Nam, for foreign individuals living in Viet Nam, and foreign nationals working in Viet Nam shall comply with the labour legislation of Viet Nam and shall equally enjoy the protection afforded by such legislation.

Section 132. (1) Enterprises, bodies, organizations, or individuals referred to in section 131 of this Code shall be required to recruit Vietnamese workers through the employment service agencies stipulated in section 18 of this Code. If the persons recruited or proposed by the employment service agencies do not meet the requirements of the enterprises, bodies, organizations or individuals concerned, the latter shall have the right to recruit workers directly, provided that the provincial labour office or other competent authority is notified. In respect of work requiring superior technical or managerial skills, which cannot yet be met by Vietnamese, the enterprises, bodies, organizations or individuals referred to above shall be permitted to recruit foreign nationals for a fixed period of employment, but training plans and programmes shall be established to enable Vietnamese workers to rapidly qualify for and replace foreign nationals in such work.

(2) The minimum wage which applies to Vietnamese workers employed in the cases referred to under section 131 of this Code shall be fixed and published by the Government after having sought the views of the Viet Nam General Confederation of Labour and of representatives of employers.

(3) The hours of work and rest, occupational safety and health, social security and settlement of labour disputes in enterprises and organizations and cases stipulated in Article 131 of this Code shall be implemented in accordance with provisions issued by the Government of Viet Nam.

Section 133. (1) Foreign nationals employed regularly by Vietnamese enterprises, organizations, or individuals, or employed in enterprises with foreign-invested capital operating in Viet Nam shall be required to have a work permit issued by the Ministry of Labour, War Disabled and Social Affairs of Viet Nam.

(2) Foreign nationals working in Viet Nam shall be entitled to rights and benefits, and must carry out obligations prescribed by the laws of Viet Nam, except where an international treaty concluded, or acceded to, by the Socialist Republic of Viet Nam provides otherwise.

Section 134. (1) Vietnamese citizens permitted to work abroad pursuant to employment contracts placing them under the management of a foreign organization or individual must comply with the

provisions of the labour laws of the foreign country concerned. If Vietnamese workers are sent abroad under a labour cooperation agreement entered into by the Government of Viet Nam and the government of a foreign country, the Vietnamese workers must comply with the provisions of the labour laws of that country and the provisions of that intergovernmental agreement.

(2) Vietnamese citizens who are permitted to work abroad under a subcontract or a contract for a project that is managed and remunerated by a Vietnamese enterprise shall be governed by the provisions of this Code, except where an international treaty concluded or acceded to by the Socialist Republic of Viet Nam provides otherwise.

Section 135. (1) Workers who are to work in foreign countries shall be entitled to be informed of their rights and obligations, and to enjoy the protection of the competent representative bodies of Viet Nam in foreign countries in respect of consular and judicial matters. They shall have the right to send their income in foreign currencies and their personal property back to Viet Nam, and shall be entitled to social security and other rights and benefits in accordance with the laws and regulations of Viet Nam and of the foreign country concerned.

(2) Vietnamese workers who work abroad must contribute a portion of their wage to social security funds.

Division 6: Other categories of workers

Section 136. Persons who work in specific work and occupations in the artistic field shall be entitled to appropriate conditions relating to the age for vocational training, retirement age, conclusion of employment contracts, time of work and rest, wages, allowances, bonuses and occupational safety and health in accordance with regulations issued by the Government.

Section 137. (1) Workers may agree with the employer to take work to perform at home on a regular basis, and shall still enjoy the full rights and benefits of similar workers at the enterprise.

(2) Workers who take goods for processing at home and returning them to the supplier, or selling at home are outside the scope of this Code.

Section 138. In enterprises employing less than 10 workers, the employer shall still be required to ensure workers their basic rights and interests in accordance with this Code, but shall be entitled to reduction of or exemption from compliance with certain provisions and procedures as determined by the Government.

Section 139. (1) Persons who are employed to assist in households may be hired under oral or written employment contracts. Persons hired to watch over property must in all cases have a written employment contract.

(2) Employers must respect the honour and dignity of domestic workers and assume responsibility for their care and treatment when they suffer from sickness or accidents.

(3) Remuneration, hours of work and rest and allowances of domestic workers shall be agreed to by contract. The employer shall pay travel fares and expenses for them to return home at the end of their service, except in cases where the domestic workers voluntarily leave their employment before the expiration of the employment contract.

CHAPTER XII. SOCIAL SECURITY

Section 140. (1) The State shall establish policies regarding social security with the aim to gradually expand and improve the material security of workers and to help them and their families to have a stable life in the event of sickness, maternity, termination of working age, death, occupational accidents and diseases, loss of work, mishaps and other difficulties.

(2) Social insurance in compulsory or voluntary forms shall apply to each of the categories of beneficiaries of enterprises in order to ensure that workers benefit from appropriate social security.

Section 141. (1) The compulsory system of social insurance shall apply to enterprises which employ 10 or more workers. In these enterprises, the employer and the workers shall pay contributions to social insurance funds in accordance with the provisions of section 149 of this Code, and the workers shall be entitled to social security benefits in the event of sickness, occupational accidents and diseases, maternity, retirement and death.

(2) In respect of workers in enterprises which employ fewer than ten workers and those engaged in tasks which have a duration of less than three months, in seasonal or other occasional jobs, social insurance expenses shall be included in the wage paid by the employer to enable workers to participate on a voluntary basis in social insurance or to make their own arrangements for insurance.

Section 142. (1) In the event of sickness, workers shall be entitled to medical examination and treatment at health establishments under the medical insurance scheme.

(2) In the event of sickness certified by a doctor as requiring sickness leave for treatment at home or hospitalization, workers on sickness leave shall be entitled to sickness benefit paid from social insurance funds.

The amount of sickness benefit shall depend on the conditions of employment and the level and period of social insurance contribution as determined by the Government.

Section 143. (1) During the period in which workers are on leave for medical treatment for injury due to an occupational accident, the employer shall pay them the full wage and bear all medical costs incurred as stipulated under subsection 107(2) of this Code.

After the treatment, and depending on the degree of reduction in capacity to work due to the occupational accident or disease, workers shall be examined by medical experts and their class of disability shall be determined for payment of a lump-sum or monthly benefit from social insurance funds.

(2) In the event of death due to occupational accident or disease, the workers' relatives shall be entitled, in addition to survivor's benefit and burial expenses as stipulated under section 146 of this Code, to a lump-sum allowance from social insurance funds equivalent to 24 months of the minimum wage as determined by the Government.

Section 144. (1) During the period of maternity leave stipulated under section 114 of this Code, female workers who have paid social insurance contributions shall be entitled to social security benefit equivalent to 100 per cent of their wage and to an additional allowance of one month's wage in respect of her first and second maternity period.

(2) Other regimes governing female workers shall be applied in accordance with the provisions of section 117 of this Code.

Section 145. (1) Workers shall be entitled to a monthly retirement pension when they fully meet the required conditions in respect of age and period of social insurance contribution as follows:

- (a) 60 years of age for male workers, and 55 years of age for female workers; the required age for those employed in hard or harmful work or in highland areas, border regions, on islands, and other special cases shall be determined by the Government.
- (b) The required period of social insurance contributions shall be 20 years or more.

(2) Workers who do not fully meet the conditions set out in subsection (1) above, but who meet any one of the conditions prescribed below, shall be entitled to a monthly retirement pension at a lower rate:

- (a) workers who meet the age requirement stipulated in paragraph (a) above and have not completed 20 years of social insurance contribution, but have contributed for a period of at least 15 years;
- (b) workers who have paid social insurance contributions for a period of 20 years or more and do not yet meet the age requirement, but are at least 50 years of age for male workers and 45 years of age for female workers, and whose capacity to work has been reduced by 61 per cent or

more;

- (c) workers employed in especially hard or harmful work as determined by the Government, who have paid social insurance contributions for a period of 20 years or more and whose capacity to work has been reduced by 61 per cent or more.

(3) Workers who do not meet the required conditions for a monthly retirement pension as stipulated in subsections (1) and (2) above shall be entitled to a lump-sum retirement benefit.

(4) The amount of monthly retirement pension and lump-sum retirement benefit referred to above in subsections (1), (2) and (3) of this section shall depend on the level and period of social insurance contribution as determined by the Government.

Section 146. (1) Upon the death of a worker who is currently employed, or a worker currently receiving a monthly retirement pension or a monthly benefit for loss of capacity to work or for employment injury due to an occupational accident or disease, the person who takes care of the workers' burial shall be entitled to a grant for burial expenses as determined by the Government.

(2) In the event of the death of a worker who is a victim of an occupational accident or disease, a worker who has paid social insurance contributions for a period of 15 years or more, a worker currently receiving a monthly retirement pension or monthly injury benefits, the relatives of such workers, mainly any children under 15 years of age, spouses, or parents past their working age who were supported by the deceased in his or her lifetime, shall be entitled to monthly survivors' benefits. With respect to deceased workers who have no relatives meeting the required condition for monthly survivor's benefits or who have not paid social insurance contributions for a period of 15 years or more, the family of the deceased shall be entitled to a lump-sum benefit of not more than 12 months of the deceased workers' previous benefits.

(3) The provisions of this section shall also apply to persons receiving a retirement pension and disability benefit, employment injury benefits in categories 1 or 2 for occupational accidents or categories 1 or 2 for occupational diseases prior to the promulgation of this Code.

Section 147. (1) Provided that no severance allowance or no lump-sum benefits from social insurance funds has been received by the workers concerned, the period of service of the workers in state enterprises prior to the coming into effect of this Code shall be counted as a period of social insurance contribution.

(2) The social insurance rights and benefits of persons receiving a retirement pension, monthly benefits for incapacity or employment injury, or survivors' benefits before this Code comes into effect shall continue to be insured by the state budget, and shall be adjusted accordingly to the social insurance system in force.

Section 148. Enterprises in agriculture, forestry, fishery and the salt-making industry shall be required to participate in the social insurance system suitable to their production and employment characteristics in accordance with the Social Security Regulations.

Section 149. (1) The Social Insurance Fund shall be formed from the following resources:

- (a) contributions of employers at the rate of 15 per cent of the total fund for wages of the enterprise;
- (b) the contribution of workers at the rate of 5 per cent of their wage;
- (c) the contribution and subsidies of the State with a view to ensuring the implementation of social insurance schemes for workers;
- (d) other resources.

(2) The Social Insurance Fund shall be under unified administration in accordance with state financial regulations, have independent accounting and shall enjoy protection by the State. The Fund may carry out measures to preserve and increase its value, as determined by the Government.

Section 150. The Government shall promulgate social security regulations, and establish the system of social insurance organization and the statutes governing the organization and operation of the Social Insurance Fund, with the participation of the Viet Nam General Confederation of Labour.

Section 151. (1) Insured workers shall be paid their social security benefits in full, by a convenient method and at the fixed time.

(2) Social insurance disputes occurring between workers and employers shall be settled in accordance with the provisions of Chapter XIV of this Code. Disputes occurring in respect of social insurance agencies shall be settled by the statutes governing the organization and operation of the Social Insurance Fund.

Section 152. The State shall encourage workers, trade unions, employers, and other social organizations to set up funds for mutual social assistance.

CHAPTER XIII. TRADE UNIONS

Section 153. (1) In order to represent and defend the rights and interests of workers and their labour collectives, the Federation of Labour at the provincial level shall set up provisional trade union organizations in every enterprise, not later than six months from the day that this Code enters into effect in the case of enterprises that are already operating but without a trade union organization, and not later than six months from the date of commencement of operations in the case of newly established enterprises.

(2) The scope of activities of the provisional trade union organization shall be determined by the Government in conjunction with the Viet Nam General Confederation of Labour.

Section 154. (1) When a trade union organization is established in an enterprise in conformity with the Trade Unions Law and the Trade Unions Regulations, the employer must recognize the organization in question.

(2) The employer shall cooperate closely with the trade union and create favourable conditions for it to carry out activities in accordance with the provisions of the Labour Code and the Trade Unions Law.

(3) Employers shall not discriminate against workers on the ground that they are forming or joining trade unions, or participating in trade union activities, and shall not, by economic measures or other manoeuvres, seek to interfere in the organization and activities of trade unions.

Section 155. (1) The employer shall be required to provide the trade union with the necessary working facilities to enable it to carry out its activities.

(2) Workers who are part-time union cadres shall be given some free time during hours of work to conduct their union activities, and shall still be paid their normal wage. The amount of free time 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 per month.

(3) Full-time trade union cadres shall be paid from trade union funds, but shall be entitled to the same rights, benefits, and collective welfare enjoyed by other workers of the enterprise, in accordance with the works rules or the collective agreement concluded within the enterprise.

(4) Dismissal or unilateral termination by the employer of the employment contract of a worker who is a member of a trade union executive committee shall require the consent of that committee; if the worker is the president of the trade union executive committee, the consent of the higher-level trade union organization shall be required.

Section 156. The Viet Nam General Confederation of Labour and trade unions at various levels shall take part, together with the competent authorities and representatives of employers, in discussing and resolving labour relations questions, and shall have the right to establish employment service agencies, vocational training establishments, mutual aid funds, legal consultancy offices and other welfare services for workers, and shall have other rights provided for in the Trade Unions Law and in this Code.

CHAPTER XIV. LABOUR DISPUTES SETTLEMENT

Section 157. (1) Labour disputes are disputes on rights and interests relating to employment, wages, earnings, and other conditions of work; to the implementation of employment contracts and collective agreements; and to issues arising from vocational training or apprenticeship.

(2) Labour disputes shall include individual labour disputes between individual workers and the employer, and collective labour disputes between the workers' collective and the employer.

Section 158. Labour disputes shall be settled according to the following principles:

- (1) direct negotiation and arrangement on their own of the two parties at the place where the dispute arises;
- (2) conciliation and arbitration on the basis of mutual respect of rights and interests, respect of the general interest of society and compliance with the law;
- (3) examination and settlement of disputes publicly, objectively, in a timely manner, rapidly, and in conformity with the law;
- (4) ensuring the participation of representatives of trade unions and of employers in the dispute settlement proceedings.

Section 159. Labour dispute settlement bodies shall proceed to examine the dispute when one of the parties refuses to negotiate or both parties have negotiated but fail to reach agreement, and one or both of the parties submits a request for labour dispute settlement.

Section 160. (1) In the dispute settlement proceedings, the parties to the dispute shall have the right:

- (a) to participate either directly or through their representatives in the dispute settlement proceedings;
 - (b) to withdraw from or modify the substance of the dispute;
 - (c) to ask for replacement of the person directly in charge of settlement proceedings, when they have legitimate grounds to consider that that person cannot guarantee objectivity and fairness in the dispute settlement.
- (2) In the dispute settlement proceedings, the parties to the dispute shall have the obligation:

(a) to provide all relevant documents and evidence upon the request of the labour dispute settlement bodies;

(b) to strictly implement the agreement reached, the conciliation record, the decision or award of the labour dispute settlement bodies, or the sentence or decision of the People's Court which have taken legal effect.

Section 161. Labour dispute settlement bodies, within the limits of their relevant duties and competence, shall have the right to request the parties to the dispute and all bodies, organizations, and individuals concerned to provide documents or evidence, to ask for experts' advice, and to invite witnesses and other persons concerned to take part in the proceedings.

Division 1: Competence and procedure for settlement of individual labour disputes

Section 162. The following bodies shall have the competence to examine and settle individual labour disputes:

(1) the Labour Conciliation Council of the enterprise, or the labour conciliator of the local labour office in wards, districts and towns and cities of provinces (generally referred to hereafter as the "district labour offices level"), in the event that there is no labour conciliation council;

(2) the People's Court.

Section 163. (1) A Labour Conciliation Council shall be established in enterprises employing ten or more workers. The Council shall be comprised of an equal number of representatives of the workers

and of representatives of the employer. The number of council members shall be agreed upon by both sides.

(2) The term of office of representatives on the Labour Conciliation Council shall be two years. The chairman and secretary of the Council shall be appointed by rotation among the representatives of each party. The Council shall work on the basis of the principle of agreement and unanimity.

(3) The employer shall be required to provide all necessary facilities for the work of the Labour Conciliation Council.

Section 164. The conciliation procedure for individual dispute settlement shall be as follows:

- (1) The Labour Conciliation Council shall be required to proceed with conciliation within seven days of the date of receipt of the application for conciliation. Sitzings of the Conciliation Council shall be held in the presence of both parties to the dispute or of their authorized representatives.
- (2) The Labour Conciliation Council shall set forth conciliatory proposals for consideration by the disputing parties. If the conciliatory proposals are accepted by the disputing parties, the Council shall establish a conciliation record, which must bear the signatures of the parties to the dispute and those of the chairman and the secretary of the Council. Both parties shall be duty bound to implement the agreement set out in the conciliation record.
- (3) If the conciliation fails, the Labour Conciliation Council shall establish a record of non-conciliation, indicating the views of the parties and those of the Council and bearing the signatures of the parties to the dispute, and those of the chairman and secretary of the Council. Copies of the record of non-conciliation shall be sent to the parties to the dispute within three days of the date when the conciliation is declared unsuccessful. Each party to the dispute shall have the right to request the People's Court at the district level to settle the dispute. The file submitted to the People's Court must be accompanied by the record of non-conciliation.

Section 165. (1) Labour conciliators shall examine and settle, in accordance with the procedure stipulated in section 164 of this Code, individual labour disputes at enterprises employing fewer than ten workers, disputes between domestic workers and their employers, and disputes relating to the implementation of vocational training contracts and training costs.

(2) Labour conciliators shall be required to proceed with the conciliation within seven days of the date of receipt of the application for conciliation.

Section 166. (1) The People's Court at the district level, upon receipt of an application from either of the two parties to the dispute, shall examine and settle individual labour disputes which fail to be settled by the Labour Conciliation Council or labour conciliator.

(2) The following individual labour disputes may be submitted to the People's Court at the district level without undergoing the conciliation procedure at the enterprise:

- (a) disputes concerning labour, disciplinary measures consisting of dismissal or unilateral termination of an employment contract;
- (b) disputes concerning material liability of workers to compensate for damages.

(3) Workers shall be exempted from court expenses in proceedings involving claims for wages due, social security rights and benefits, compensation for injury due to occupational accident or disease, and compensation for damages, for illegal dismissal or for illegal termination of an employment contract.

Section 167. The time-limits for requesting settlement of individual labour disputes, commencing from the day when a party considers that its rights and interests have been infringed upon (i) and (ii) should be listed below shall be the following:

- (i) one year for cases indicated under subsection 166(2) of this Code;
- (ii) six months for other cases.

Division 2: Competence and procedure for settlement of collective labour disputes

Section 168. The following bodies shall have the competence to examine and settle collective labour disputes:

- (i) the Labour Conciliation Council of the enterprise, or the labour conciliator of the district labour office in cases where there is no labour conciliation council;
- (ii) the labour arbitration council at the provincial level;
- (iii) the People's Court.

Section 169. (1) The labour conciliation council of an enterprise as provided for under section 163 of this Code shall also be competent to examine and settle collective labour disputes.

(2) The labour arbitration council at the provincial level shall consist of full-time and part-time members who are representatives of the labour office, the trade union, the employers and a number of authoritative lawyers, administrators and social workers in the locality. The arbitration council shall have an odd number of members, which shall not exceed nine, and shall be chaired by the representative of the provincial labour office.

The term of office of the labour arbitration council shall be three years.

The labour arbitration council shall take its decisions by majority and secret ballot.

The provincial labour office shall be required to provide all necessary facilities for the work of the labour arbitration council.

Section 170. The conciliation procedure for collective labour dispute settlement shall be as follows:

- (1) The labour conciliation council or the labour conciliator shall be required to proceed with the conciliation within seven days of the date of receipt of the application for conciliation. Sittings of the conciliation council shall be held in the presence of both parties to the dispute or of their authorized representatives.
- (2) The labour conciliation council or the conciliator shall set forth conciliatory proposals for examination by the disputing parties. If the conciliatory proposals are accepted by the disputing parties, the council shall establish a conciliation record, which must bear the signatures of the parties to the dispute and those of the chairman and the secretary of the council or the conciliator. Both parties shall be duty bound to implement the agreement set out in the conciliation record.
- (3) If the conciliation fails, the conciliation council or the conciliator shall establish a record of non-conciliation, indicating the views of the parties and those of the council or the conciliator and bearing the signatures of the parties to the dispute, and those of the chairman and secretary of the council or the conciliator. Each party or both parties to the dispute shall have the right to request the labour arbitration council at the provincial level to settle the dispute.

Section 171. (1) The labour arbitration council shall be required to proceed with the conciliation and settlement of the collective labour dispute within ten days of the date of receipt of the application for dispute settlement.

Sittings of the council for the settlement of labour disputes shall be held in the presence of authorized representatives of both parties to the dispute. Where it deems necessary, the arbitration council shall invite representatives of trade unions of a higher level and representatives of the competent authorities concerned to attend its sittings.

(2) The arbitration council shall set forth conciliatory proposals for examination by the disputing parties. In the event of agreement by both disputing parties, the council shall establish a conciliation record, which must bear the signatures of the parties to the dispute and those of the chairman and the secretary of the council. Both parties shall be duty bound to implement the agreement set out in the conciliation record.

(3) If the conciliation fails, the arbitration council shall issue its award in settlement of the dispute and shall immediately notify both disputing parties of the award. If there is no objection from either party, the award shall automatically become enforceable.

Section 172. (1) In the event of objection to the award of the labour arbitration council by the labour collective, the latter shall have the right to request the People's Court to settle the dispute, or to strike.

(2) In the event of objection to the award of the labour arbitration council by the employer, it shall have the right to request the People's Court to review the award of the arbitration council. The employer's request for review of the award of the arbitration council shall have no impeding effect on the right to strike of the labour collective.

Section 173. (1) While the collective dispute is under examination of the labour conciliation council or the labour arbitration council, neither party shall be allowed to take unilateral action against the other party.

(2) The decision to strike shall be declared by the executive committee of the trade union of the enterprise after obtaining approval in a secret ballot or through a collection of the signatures of the majority of workers in the labour collective.

The executive committee of the trade union of the enterprise must send a maximum of three representatives to present the written demands of the labour collective to the employer and, at the same time, to send notice thereof to the provincial labour office and the federation of labour at the same level. The demands and notices must indicate the issues of disagreement, the proposed solutions, the results of the secret ballot or collection of signatures approving the decision to strike, and the starting time of the strike.

(3) All acts of violence, damage to machinery, equipment and property of the enterprise, and acts in contravention of public order and safety during a strike shall be strictly prohibited.

Section 174. Strikes shall be prohibited at certain enterprises of public service and enterprises which are essential to the national economy or national security and defence, as indicated in the list issued by the Government.

The competent authorities shall be required to organize periodic consultations with representatives of the labour collective and the employer at these enterprises in order to provide prompt assistance and response to legitimate demands of the labour collective. Where a collective labour dispute occurs, it shall be settled by the labour arbitration council at the provincial level. If either party does not agree with the award of the labour arbitration council, that party shall have the right to request the People's Court to settle the dispute.

Section 175. When it is considered that a strike may cause a serious threat to the national economy or public safety, the Prime Minister of the Government shall have the power to issue a decision to suspend or to stop the strike.

Section 176. (1) The strike shall be considered illegal when:

- (a) it does not arise from a collective labour dispute; it goes beyond the scope of labour relations;
- (b) it extends beyond the scope of the enterprise;
- (c) it breaches the provisions of sections 173 and 174 of this Code.

(2) Decisions regarding the legality of a strike shall be within the competence of the People's Court.

Section 177. The People's Court shall be empowered to make the final adjudication on strikes and collective labour disputes.

Section 178. (1) All acts of repression or reprisals against persons who take part in or have a leading role in a strike shall be strictly prohibited.

(2) Persons who obstruct the exercise of the right to strike, or force another person to strike; persons who commit unlawful acts during a strike; and persons who fail to comply with the above-mentioned decision of the Prime Minister of the Government or decisions of the People's Court shall, depending on the gravity and the nature of the offence, be liable to compensation for damages, administrative sanctions, or to prosecution for ultimate responsibility.

Section 179. The Standing Committee of the National Assembly shall make provisions governing the resolution of strikes and the adjudication of labour cases.

CHAPTER XV. LABOUR ADMINISTRATION

Section 180. Labour administration by the State shall include the following main functions:

- (i) to achieve a full awareness of the position and evolution of labour supply and demand as the grounds for determining national policies, plans or human resources projects, and distribution and utilization of labour in the overall social context;
- (ii) to promulgate laws and regulations and to provide guidance for their enforcement;
- (iii) to draw up and implement national programmes for employment, migration for setting up new economic zones, and for employment in foreign countries;
- (iv) to determine policies concerning remuneration of labour, social security, and occupational safety and health, and other policies in the labour and social fields; and policies concerning the development of labour relations within enterprises;
- (v) to organize and carry out scientific research on labour and social matters, and to gather statistics and information on labour and the labour market and on the living standards and income levels of workers;
- (vi) to carry out inspection and supervision of the application of labour legislation, to impose sanctions for breaches of labour laws, and to settle labour disputes in accordance with the provisions of this Code;
- (vii) to further international cooperation relations with foreign countries and with international organizations in the labour field.

Section 181. (1) The governments shall assume the unified state administration in the entire country.

The Ministry of Labour, War Disabled and Social Affairs shall carry out the state administration of labour in all branches and localities within the country.

(2) People's committees at all levels shall carry out the state administration of labour within their respective localities. The local labour officers shall assist the people's committee at the same level in the performance of the state administration of labour according to the levels of duties assigned by the Ministry of Labour, War Disabled and Social Affairs.

(3) The Viet Nam 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) The State shall provide appropriate conditions for employers to put forward their views to the competent authorities on questions of administration and utilization of labour.

Section 182. Within 30 days of the date of commencement of operations, the employer shall declare the number of workers employed and, subsequently during the period of operation, shall report to the local labour office on changes in the labour situation of the enterprise, according to the regulations issued by the Ministry of Labour, War Disabled and Social Affairs. Within 30 days of cessation of the activities of the enterprise, the employer must submit a report on termination of employment of labour to the local labour office.

Where ten or more workers are employed, the employer must establish and maintain labour records, wage records and social security records.

Section 183. Workers shall be issued with individual labour books, wage books and social security books in accordance with the provisions of the law.

Section 184. (1) The dispatch of Vietnamese citizens to work abroad must be carried out under permits issued by the Ministry of Labour, War Disabled and Social Affairs and other competent authorities in accordance with the provisions of the law.

Illegal dispatch of workers for employment abroad shall be strictly prohibited.

(2) The Ministry of Labour, War Disabled and Social Affairs shall issue work permits to foreign nationals who wish to enter Viet Nam to work for Vietnamese enterprises, organizations, or individuals, or in enterprises with foreign invested capital in Viet Nam as provided for under section 133 of this Code, upon application by the persons concerned and by the respective enterprises, organizations or individuals requiring their employment.

CHAPTER XVI. STATE LABOUR INSPECTION: PENALTIES FOR CONTRAVENTIONS OF LABOUR LAWS

Division 1: State labour inspection

Section 185. State labour inspection shall include general labour inspection, occupational safety inspection and occupational health inspection.

The functions of general labour inspection and of occupational safety inspection shall be carried out by the Ministry of Labour, War Disabled and Social Affairs and by the local labour office. The functions of occupational health inspection shall be carried out by the Ministry of Health and by the local health authorities.

Section 186. The state labour inspectorate shall have the following duties:

- (i) to carry out inspection of compliance with statutory provisions on labour, occupational safety and occupational health;
- (ii) to investigate occupational accidents and violations of prescribed standards on occupational health;
- (iii) to examine and approve the criteria and measures for occupational safety in economic technical feasibility studies and project designs; to register and issue licences for the use of machinery, equipment and materials having strict occupational safety requirements, as indicated on lists drawn up by the Ministry of Labour, War Disabled and Social Affairs;
- (iv) to participate in the examination and approval of the location and measures for occupational health for new construction, expansion or transformation of premises for production, and for the use, conservation and storage of radioactive materials and harmful substances as indicated on the list drawn up by the Ministry of Health;
- (v) to deal with grievances and complaints of workers in respect of contraventions of labour laws;
- (vi) to decide on sanctions against contraventions of labour laws falling within its competence and to make recommendations to other competent authorities to deal with breaches falling within their competence.

Section 187. While carrying out their inspection functions, labour inspectors shall be empowered:

- (i) to inspect and investigate any place liable to inspection within their competence, at any time without advance notice;
- (ii) to require the employer and other persons concerned to supply situation reports and data and documents relevant to inspection or investigatory work;
- (iii) to receive and deal with grievances and complaints concerning contraventions of labour laws, in accordance with the provisions of the law;
- (iv) to take decisions on the temporary stoppage of the use of machinery, equipment, and working places which indicate an immediate danger of occupational accidents or serious pollution of the working environment. Labour inspectors shall bear personal responsibility for their decisions and shall have the duty to report immediately to the competent authorities.

Section 188. Labour inspectors shall not have any personal interest, either direct or indirect, in matters coming within the scope of their inspection functions. Labour inspectors, even after their functions have ceased, shall be obliged to not reveal any secret that has come to their knowledge in the course of their duties and to keep absolutely confidential all sources of complaint.

Section 189. While carrying out their inspection duties, labour inspectors shall cooperate closely with the executive committee of the trade union. In the event that the matters under inspection are related to scientific, technical or other professional and specialized fields, appropriate specialists and highly

qualified experts may be invited to participate as consultants. The inspection of machinery, equipment and stores must be carried out in the presence of the employer and of persons directly in charge of the items in question.

Section 190. The decisions of labour inspectors shall be given directly to the persons concerned and must clearly indicate the date of their taking effect, the date of completion of execution and the date of reinspection, if necessary.

The decisions of labour inspectors shall have executory force and must be implemented.

Persons to whom the decision applies shall have the right to appeal to the competent authorities, but shall nevertheless be required to correctly implement the decisions of labour inspectors.

Section 191. (1) The Government shall establish regulations on the organization and activities of state labour inspection.

(2) The Ministry of Labour, War Disabled and Social Affairs and the Ministry of Health shall be responsible for organizing the system of state labour inspection, for prescribing criteria for the recruitment of labour inspectors who are under their respective competence and functions; for the appointment, transfer, discharge and dismissal of labour inspectors, for issuing inspector cards, and for setting schedules for periodic or extraordinary reporting and for establishing other necessary systems and procedures.

(3) The inspection of occupational safety and health in the fields of radiation work; oil and gas prospecting and exploitation; means of transportation by rail, water, road or air; and in establishments of the armed forces; shall be carried out by the State management bodies for the branches of activities in question, in coordination with the state labour inspectorate.

Division 2: Penalties

Section 192. Any person acting in contravention of the provisions of this Code shall, depending upon the degree of infringement, be liable to the following penalties: warning, fine, suspension or withdrawal of permits or licences, obligation to pay compensation, forced closure of the enterprise, or prosecution for penal responsibility in accordance with the provisions of the law.

Section 193. Any person who obstructs, bribes or takes revenge upon the competent authorities provided for under this Code while they are carrying out their duties shall, according to the degree of the offence, be liable to disciplinary or administrative sanctions, or shall be prosecuted for penal responsibility in accordance with the provisions of the law.

Section 194. Owners of enterprises must bear responsibility under civil law in respect of the decisions of the competent authorities to impose penalties according to the law on the director, the manager or the legal representatives of the enterprise for contraventions of labour laws in the exercise of labour management. Liability of the persons concerned to payment of compensation to the enterprise shall be resolved in accordance with the enterprise's statutes or work rules or with the contract of responsibility entered into by the parties concerned, or with the provisions of the law.

Section 195. The Government shall prescribe administrative penalties for contraventions of labour laws.

CHAPTER XVII. IMPLEMENTING PROVISIONS

Section 196. The provisions of this Code shall also apply to employment contracts, collective agreements and other lawful agreements which were signed before the entry into force of this Code. Agreements providing for conditions that are more favourable to workers than those provided for in this Code shall continue to be implemented. Agreements that are inconsistent with the provisions of this Code must be amended and supplemented accordingly.

Section 197. This Labour Code shall enter into effect on 1 January 1995.

All previous provisions contrary to this Code are hereby repealed.

Section 198. The Standing Committee of the National Assembly and the Government shall make detailed provisions and provide guidance for the enforcement of this Code.