LABOUR CODE

OF THE SOCIALIST REPUBLIC OF VIETNAM

THẾ GIỚI PUBLISHERS
HANOI - 1994

LABOUR CODE
of the Socialist Republic of Vietnam

SOCIALIST REPUBLIC OF VIETNAM
Independence-Freedom-Happiness

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CONTENTS

PREAMBLE

Labour is the most important activity of human beings, and creates the material wealth and spiritual values for society. High productivity, high quality and highly efficient labour are decisive factors for national development.

The Law on Labour stipulates the rights and obligations of the employer and the employee, labour standards, principles relating to the use and management of labour. It contributes to the development of production and, therefore, has an important place in social life and in the legal system of the State.

The present Labour Code succeeds in further developing the labour laws adopted by our country since the August Revolution 1945. It institutionalizes the renovation line of the Communist Party of Vietnam and reinforces the provisions contained in the 1992 Constitution of the Socialist Republic

of Vietnam on labour, on the use and management of labour.

The Labour code protects the interests, the right to work and other rights of employees, and at the same time, protects the rights and legal interests of the employers while creating the conditions for harmonious and stable labour relations. These labour relations develop the creativity and talent of intellectual and manual workers and of labour managers in order to enhance productivity, quality and social progress in labour, production and service and to ensure efficiency in the use and management of labour, for the sake of national industrialisation and modernisation, the prosperity of the nation and its members, and the achievement of an equitable and civilized society.

Chapter I
GENERAL PROVISION

Article 1

The Labour Code regulates the labour relations between the wage-earning employees and employers, and the social relations directly relating to labour relations.

Article 2

The Labour Code applies to all workers, all organisations and individuals from various economic sectors and forms of ownership that employ labour in accordance with labour contracts.

The present Labour Code also applies to apprentices, family servants and a number of other kinds of workers as stipulated herein.

Article 3

Vietnamese citizens working in enterprises with foreign invested capital in Vietnam, in

foreign or international agencies and organisations located on Vietnam's territory, and foreigners working in or for Vietnamese enterprises, organisations on Vietnam's territory fall under the scope of the present Code and other laws and regulations of Vietnam, except where otherwise provided for by international agreements which the Socialist Republic of Vietnam has signed or acceded to.

Article 4

Government officials, elected or appointed office-bearers, members of the People's Army and People's Security Forces, members of people's organisations, political and social organisations and members of cooperatives are subject to other laws and regulations, but some provisions of the present Labour Code are applicable to them depending on each specific case.

Article 5

1- Everybody has the right to work, to freely select their occupation and trade, to undergo vocational training and improve their professional

qualifications, without discrimination with respect to sex, ethnical and social origin or religious belief.

2- It is prohibited to ill-treat workers and impose forced labour in whatever forms.

3- The State provides encouragement, favourable conditions or assistance to all activities designed to generate employment, to create employment for oneself, to give and to undergo vocational training.

Article 6

A workers is a person who is at least 15 years old, has the capacity to work and has entered into a labour contract.

An employer is an enterprise, an agency, an organisation or an individual. In the latter case, the individual who hires, employs and provides wages to workers must be at least 18 years old.

Article 7

1- The worker wages are in accordance with an agreement reached between the employee and the employers, but the wages must in no case

be lower than the minimum wages set by the State and must be in accordance with the productivity and efficiency of the former in his or her work. The employee must be given labour protection and must be allowed to work in conditions which protects occupational safety and health; the employee is given a leave system including annual paid leave and social insurance in accordance with the stipulations of the Law. The State prescribes stipulations concerning the labour regime and social policies designed to protect women workers and various kinds of labour which have particular characteristics.

2- The worker has the right to set up trade unions, to join trade unions and to engage in trade union activities in accordance with the Law on Trade Union in order to protect their legal rights and interests. The worker has the right to enjoy collective welfare, to take part in the management of the enterprise in accordance with the regulations of the enterprise concerned and the provisions of the law.

3- The worker has the obligation to fulfill the labour contract, the collective labour agreement

and to abide by labour principle, the regulations on labour and the legal management of the employer.

4. The worker has the right to strike in accordance with the provisions of the Law.

Article 8

1- The employer has the right to select workers, to arrange and manage their labour in accordance with the requirements of production and business, to commend and reward workers and to deal with cases of violation of labour discipline in accordance with labour laws and regulations.

2- The employer has the right to appoint his or her representives for negotiating and concluding a collective labour agreement in an enterprise or in an industry; it is the responsibility of the employer to cooperate and discuss with trade unions various issues relating to labour relations, the improvement of living conditions, both material and spiritual of the workers.

3- The employer has the obligation to fulfill labour contracts, the collective labour agreement

and other agreements reached with the employees and to respect the honour and human dignity of the workers and treat them with deference.

Article 9

The labour relations between the employee and the employer are established and implemented through negotiations and agreements based on voluntariness, equality, cooperation, mutual respect for the legal rights and interests of each other, and due fulfilment of commitments.

The State encourages agreements that ensure, for workers, conditions which are more favourable than those contained in labour laws and regulations.

The workers and the employer have the right to request competent agencies and organisations to settle labour disputes. The State encourages the settlement of labour disputes by means of reconciliation and arbitration.

Article 10

1- The State provides unified management of human resources and management of labour

through laws and enforces policies designed to develop and allocate labour resources and to develop and diversify the forms of labour use and employment services.

2- The State provides guidance to workers and employers in forging harmonious and stable labour relations, marked by mutual cooperation for the sake of the development of the enterprises.

Article 11

The State encourages democratic, fair and civilized labour management in all enterprises and all measures, including deduction of a percentage of profits of an enterprise to award bonuses in order to make labourers feel that they have a stake in the productivity and efficiency of the enterprise and thus achieve a high level of productivity and production management in the enterprise.

It is the policy of the State to enable workers to purchase shares and contribute capital for the development of the enterprise.

Article 12

Trade unions join State agencies and economic and social organisations in providing care to and protecting the interests of worker, in controlling and supervising the implementation of laws and regulations on labour.

Chapter II
EMPLOYMENT

Article 13

All labour activities which generate income and are not forbidden by the Law, are recognised as employment.

It is the responsibility of the State, of enterprises and of the whole society to provide employment and to ensure that all persons that are able to work are given the opportunity to do so.

Article 14

1- The State defines the indexes on employment creation in five-year and annual socio-economic development plans, creates neccessary conditions, provides financial support and loans, tax reduction or exemption and takes various measures of encouragement to enable persons who are able to work to create employment on their own while various organisations, units and

individuals from all economic sectors can develop new trades and thus generate subtantial employment for workers.

2- The State designs preferential policies on employment creation with a view to attracting and using labour from ethnic minorities.

3- It is the policy of the State to provide encouragement and favourable conditions to enable local and foreign organisations and individuals, including overseas Vietnamese residents, to make investments for the development of production and business and to provide employment to workers.

Article 15

1- The Government establishes a national programme on employment, creates investment projects for socio-economic development, organises population migration both for developing new economic zones and implementing the employment creation programme, sets up a national fund for employment creation financed by the State budget and other sources, and develops a system of employment services. The Goverment

submits a national program and funds on employment annually for approval by the National Assembly.

2- The people's committees of provinces and centrally-administered cities establish programmes and funds for employment creation in territories under their jurisdiction and submit them to people's councils at their respective levels for decision.

3- Within the scope of their functions and power, State agencies, economic organisations and people's and social organisations have the responsibility of implementing employment programmes and funds.

Article 16

1- The worker has the right to work for any employer and at any place not forbidden by the Law. The person that seeks employment has the right to make direct contact for this purpose or to register with employment service organisations in order to find a job which is in keeping with his or her aspirations, capacity, professional qualifications and health.

2- The employer has the right to select workers, either directly or through employment service organisations, to increase or reduce the number of workers in accordance with the requirements of production and business and in accordance with laws and regulations.

Article 17

1- If a worker, who has worked regularly in an enterprise for over one year loses his job on account of structural or technological changes, the employer has the responsibility to retrain him or her so that he or she may continue to work at a new post in the same enterprise; if a new job cannot be provided and the worker concerned must be released from service, he or she must be given a severance allowance amounting to one month's wages for each year of work performed or at least totalling two months wages.

2- If it is neccessary to lay off a large number of workers in accordance with sub-section 1 of the present Article, the employer must, after discussing and reaching consensus with the Trade Union Executive Committee of the said

enterprise in accordance with the procedure laid down in sub-section 2 of Article 38 of the present Law, make public a list of the workers that would be released from work by turns in keeping with a sequence that takes into account the requirements of the enterprise, the service seniority, the qualifications, the family situation of each worker and other factors relating to him or her. The lay-off is carried out only after due notice is given to the local labour agency.

3- Each enterprise must establish an emergency severance fund in accordance with Government regulations so as to provide timely payment of the allowance to laid-off labourers of the enterprise.

4- It is the policy of the Government to take steps in providing vocational training, re-training, guidance on production and business, low-interest loans from national funds for employment, and in creating conditions so that workers can seek employment or create their own employment; the Government also gives financial support to localities and industries where there is a large population of unemployed

persons or those who have lost their employment due to structural and technological changes.

Article 18

1- Employment service organisations, which are set up in accordance with the provisions of the Law, have the tasks of providing consultancy, recommending, supplying and helping to recruit workers collecting and supplying information on the labour market. The dispatch of Vietnamese guest workers to foreign countries can only be carried out after due receipt of a permit isued by the relevant competent State agency.

2- Employment service organisations are allowed to collect fees, receive tax exemption or reduction, and allowed to provide vocational training in accordance with the provisions of Chapter III of the present Code.

3- The Ministry of Labour, Invalids and Social Affairs provides unified State management of employment service organisations throughout the country.

Article 19

It is forbidden to resort to enticement, fallacious promises and advertisements to mislead labourers or to misuse employment services for committing illegal actions.

Chapter III
VOCATIONAL TRAINING

Article 20

1- All persons have the right to freely select an occupation and the place where he or she will undergo vocational training in accordance with his or her working requirements.

2- Enterprises, organisations and individuals who meet all conditions as required by the Law are allowed to open facilities for vocational training.

The Government issues regulations relating to the opening of vocational training facilities.

Article 21

1- Vocational training facilities must be registered and perform in accordance with regulations on vocational training; they are allowed to collect training fees and must pay tax in accordance with the provisions of the Law.

2- Facilities which provide vocational training to disabled and sick war veterans, disabled persons, members of ethnic minorities or are located in areas where many people are without work or have lost their jobs, facilities which provide training on traditional trades and crafts, apprenticeship in the workshops or at home can be given tax reduction or exemption.

Article 22

Trainees of vocational training facilities must be at least 13 years old, except for a number of trades and crafts to be specified by the Ministry of Labour, Invalid and Social Affairs and must have the physical capacity to do what is required by the trade or craft which he or she is learning.

Article 23

1- It is the responsibility of the enterprise to organize courses for enhancing the professional standards of workers and provide re-training before transferring a labourer to another post in the enterprise.

2- If vocational training and apprenticeship are provided by an enterprise to a number of

persons with a commitment of subsequent employment for a period of time which is stipulated in the training and apprenticeship contract, there are no need is for registration and collection of fees. The period of vocational training and apprenticeship is included in the senority of service at the enterprise. During the period of training or apprenticeship, if the workers concerned directly produces or takes part in turning out a product for the enterprise, they are entitled to remuneration as agreed between both parties.

Article 24

1- Vocational training must involve a written or oral contract between the trainee and the instructor or the representative of the vocational training facility. If a written contract is made, it must be in duplicate with a copy for each party.

2- The main contents of a vocational training contract must be comprised of training objectives, the venue, the duration, fees and the amount of compensations to be paid in case of violation of the contract.

3- In the event that an enterprise enrolls a number of persons for vocational training with the purpose of using them subsequently as workers, the training contract must contain a commitment to work for a specific duration of time for the enterprise, coupled with an assurance that a labour contract will be concluded at the end of the training course. If at the end of the training course, the trainee decides not to work for the enterprise in accordance with the previous commitments, he or she must pay compensation for the training fees.

4- If for force-majeure reasons the training contract is terminated before term, compensations must not be paid.

Article 25

All enterprises, organisations and individuals are forbidden to misuse vocational training for private gains, to exploit the labour of trainees, or to seduce or force them into carrying out illegal activities.

Chapter IV
LABOUR CONTRACT

Article 26

A labour contract is an agreement between the worker and the employer on wage-earning employment, on the conditions of work, and the rights and obligations of each party in the labour relations.

Article 27

1- A labour contract must belong to one of the following categories:

a, A labour contract with unspecified duration of time;

b, A labour contract with specified duration of time from one to three years;

c, A labour contract with a seasonal character or for specific work with a time duration less than one year.

2- It is prohibited to conclude a labour contract with a seasonal character or for specific work for a time duration less than one year to carry out regular work for over one year or more, unless the worker concerned must replace, on a temporary basis, some one else who is required to perform military service , who is on pre-or post- natal leave or who is on some other temporary leave.

Article 28

The concluded labour contract must be a written document in duplicate with one copy for each party. With respect to temporary work lasting for less than 3 months or household labour services, there can be oral labour contracts in which case both parties must automatically abide by the provisions of labour laws.

Article 29

1- A labour contract must include the following main contents: work to be performed, working time, rest time, wages, workplace, duration of the contract, conditions with respect to ocupational safety and health and social insurance for the worker

2- In the event that part or all of a labour contract provides for the interests of workers at a level below that which is laid down in labour laws, in collective labour agreements, in labour regulations being applied in the enterprise or limits other rights of the worker, that part of the labour contract or the whole contract must be changed or amended.

3- In the event that a labour contract is found to contain clauses similar to that which is mentioned in sub-section 2 of the present Article, the Labour Inspector offers guidance to both parties to change or amend them accordingly. If no change or amendment is made by the parties, the Labour Inspector has the right to cancel these clauses.

Article 30

1- A labour contract is concluded directly between the employee and the employer.

2- A labour contract may be concluded between the employer and the legally accredited representive of the group of workers, in which case the concluded contract has the same effect

as the one concluded between the employer and each worker.

3- A worker can conclude one or many labour contracts with one or many employers, but must ensure the full implementation of all concluded contracts.

4- The work specified in the labour contract must be done by the worker who concludes the contract and cannot be transferred to another person without the consent of the employer.

Article 31

In the event of incorporation or division of an enterprise, or transfer of ownship, of management rights or the usage rights over the property and assets of the enterprise, the successor to the employer has the responsibility to carry on the implementation of the labour contracts concluded with the workers untill both sides agree to change, amend or terminate the contracts and conclude new labour contracts.

Article 32

In the event that an employer and the worker agree on a trial period of employment, they must reach agreement on the period of employment and the rights and obligations of both sides during that period. The wages to be paid to the worker during the trial period of employment must be equivalent to at least 70 % of the wages of a worker who performs the same work on a permanent basis. The duration of the trial period of employment must not exceed 60 days with respect to highly specialized technical labour and must not exceed 30 days with respect to other types of labour.

During the trial employment period, each party has the right to cancel the agreement on trial employment without prior notice and without compensation if the period of trial employment does not meet the requirements agreed upon by both parties. If the period of trial employment satisfies the request, the employer has the obligation to officially accept the worker concerned as a regular employee as provided for in the agreement.

Article 33

The labour contract takes effect from the date it is concluded or from the date agreed upon by both sides.

In the course of a contract, if a party wishes to change the contents of the contract, it must gives notice to the other party at least three days in advance. The change in the contents of the labour contract can be done either by amending the current labour contract or by concluding a new one.

Article 34

1- In the event that unforseen dificulties or pressing production and business requirements, the employer can temporarily transfer a labourer to another post which is not in keeping with his skills for a period which must not exceed 60 days in a year.

2- In such cases of temporary transfer, the employer must give three days prior notice to the worker concerned, including the duration of the temporary transfer, and the new temporary

work must be in keeping with the health and physiological conditions of the worker.

3- The worker who temporarily performs jobs that are not in keeping with his skills as described in sub-section 1 of the present Article will be paid new wages; in the event that the new wages are lower than the old wages of the worker, he or she is entitled to receive the old wages for 30 working days. The new wages must be tantamount to 70 % of the old wages but must not be lower than the minimum wages set by the State.

Article 35

1- The implementation of a labour contract can be postponed in the following circumstances:

a, The worker concerned must perform military service or any other duty as a citizen in keeping with the Law;

b, The worker is under temporary detention;

c, Mutual agreement between both parties.

2- On the expiration of the period of postponement of the implementation of the labour contract, as mentioned in points a and c of sub-section 1 of the present Article, the employer has the obligation to allow the worker to resume his work.

3- Work resumption by temporarily detained workers on the expiration of the period of the postponement of the implementation of the labour contract is subject to government regulations.

Article 36

A labour contract will be terminated in the following circumstances:

1- The duration of the contract has come to an end;

2- The work has been fulfilled in keeping with the terms of the contract;

3- Both parties agree to put an end to the contract;

4- The worker is sentenced to imprisonment or is forbidden to carry out his previous work by decision of the Court.

5- The worker is dead or missing, as pronounced by the Court.

Article 37

1- The worker who works under a labour contract for a specified period ranging from 1 to 3 years, under a seasonal labour contract or for specific employment for a period of less than one year, has the right to unilaterally terminate the contract before term in the following circumstances:

a, He or she is not given the right work, a suitable workplace or the working conditions as agreed upon in the contract;

b, The wages are not fully paid or are not paid in accordance with the time schedule as mentioned in the contract;

c, Ill-treatment, forced labour;

d, Difficult circumstances affecting him or her, his or her family making it impossible for him or her to continue to implement the contract

e, He or she has been elected as office bearer in a selected body or has been appointed to a post in the State apparatus;

g, The employee is pregnant and must stop working in accordance with a doctor's prescription.

2- When unilaterally putting an end to the labour contract in keeping with the provisions of sub-section 1 of the present Article, the worker must give advance notice to the employer:

a, With respect to cases covered by points a, b, c at least three days;

b, With respect to cases covered by point d and e: at least 30 days if the contract provides for a working period from 1 to 3 years: at least 3 days if the contract is seasonal in character or provides for specific employment for a period of less than one year;

c, With respect to cases covered by point e: in keeping with the period of time as provided for in Article 112 of the present Code.

3- The worker who works under a labour contract with an unspecified period of time has the right to unilaterally terminate the contract, but must give, at least a 45-day advance notice to the employer.

Article 38

1- The employer has the right to unilaterally terminate the labour contract in the following circumstances:

a, The worker, on a continual basis, does not fulfil his or her work under the contract;

b, The worker is disciplined and dismissed in keeping with the provisions of Article 85 of the present Law;

c, The worker who works under a labour contract which does not provide for a specific period of illness and who has undergone continuous medical treatment for 12 months; the worker who works under a labour contract which provides for a specific period of illness and who has undergone continuous medical treatment for 6 months; and the worker who works under a labour contract with a time duration of less than one year and who has undergone medical treatment for a perod of time more than one half of the duration of the contract; and the worker capacity of the worker concerned has in no way been restored. When the worker's health

is restored, his or her employment will be considered for a new labour contract;

d, Natural calamities, fire or other force majeure reasons which in spite of all efforts made by the employer to overcome them, compel the latter to reduce production and employment;

e, The enterprise, agency or organisation is closing down;

2- Before unilaterally terminating the labour contract in accordance with points a, b, c of sub-section 1 of the present Article, the employer must discuss and reach consensus over the matter with the Trade Union Executive Committee of the enterprise. In the event that no consensus is reached, both parties must report to the competent agency or organisation. Only 30 days after giving notice to the relevant labour agency can the employer make the decision and he or she must be responsible for his or her decision. In the event that the Trade Union Excutive Committee and the worker concerned do not agree with the decision of the employer, they have the right to request a sollution to the labour dispute in accordance with the procedure as provided for by the Law.

3- In unilaterally terminating a labour contract, the employer must, with exception to cases covered by point b of sub-section 1 of the present Article, give advance notice to the worker concerned:

a, At least 45 days with respect to a labour contract with an unspecified time period;

b, At least 30 days with respect to a labour contract with a time period of 1 to 3 years;

c, At least 3 days with respect to a labour contract of a seasonal character, or specific employment with a time period of less than 1 year.

Article 39

The employer is not allowed to unilaterally put an end to a labour contract in the following circumstances:

1- The worker is ill, is involved in an indostrial accident or is effected by occupational disease(s) and is undergoing medical treatment as prescribed by a doctor, with the exception of cases covered by points c and d, sub-section 1, Artile 38 of the present Law;

2- The worker is on annual leave, on leave for personal reasons or any other leave with the permission of the employer;

3- In the event of a female worker covered by provisions of sub-section 3, Article 111 of the present Law.

Article 40

Each party can refrain from unilaterally terminating a labour contract before expiration of the advance notice period. At the end of the advance notice period, either party has the right to terminate the labour contract.

Article 41

1- In the event that the employer's unilateral cancellation of a contract is legally unwarranted, he or she must rehabilitate the worker and pay the latter a compensation which is tantamount to the wages of the working days denied to him or her. If the the worker concerned no longer desires to return to his/her job, in addition to the compensation tantamount to the wages of the working days denied to him or her, the worker also

must be given an allowance in accordance with sub-section 1, of the present Law.

2- In the event that the worker unilaterally cancels the labour contract in contravention of the Law, he or she is not entitled to a severance allowance.

3- In the event that the worker unilaterally cancels a labour contract, he or she must, in accordance with Government regulations, compensate for the training fees, if any.

4- If the unilateral cancellation of a labour contract involves a violation of the advance notice period, the violating party must pay to the other party a compensation which is tantamount to the wages which the worker should receive during the days not affected by the advance notice.

Article 42

1- If the worker effected by the cancellation of a labour contract has worked regularly for the enterprise, agency or organisation for over one year, the employer has the obligation to give him or her a severance allowance amounting half-a-month

wages for every year of service, along with allowances, if any.

2- If a labour contract is cancelled in accordance with points a and b, sub-section 1, Article 85 of the present Law, the worker is not entitled to a severance allowance.

Article 43

Within a period of 7 days, from the day the labour contract is cancelled, both sides have the responsibility to fully settle all issues relating to the interests of each party; in special cases, the process can be longer but must not exceed 30 days.

In the event that the enterprise goes bankrupt, all issues relating to the interests of workers must be settled in accordance with the provisions of the Law on Bankruptcy of Enterprises.

The employer must make a written entry in the labour book stating the reasons for the cancellation of the labour contract and return the labour book to the workers concerned. Besides relevant entries in the labour book,

the employer must not add anything else which might handicap the worker efforts to seek new employment.

Chapter V
COLLECTIVE LABOUR AGREEMENT

Article 44

1- A collective labour agreement (hereinafter called a collective agreement for short) is a written agreement between a collective of workers and the employer on the conditions of work and employment and the obligations of both parties in labour relations.

The collective agreement is negotiated and concluded by the representive of a collective of workers and the employer in accordance with the principles of voluntariness, equality and openess.

2- The contents of the collective agreement must not be contrary to the stipulations of labour laws and other laws.

The State encourages the conclusion of collective agreements which contain clauses more

favourable to the workers than the Labour Law and regulations.

Article 45

1- The representives of both parties to the negotiation of a collective agreement comprise:

a, The collective of workers is represented by the Trade Union Executive Committee of the facility concerned or the temporary trade union organisation;

b, The employer is represented by the director of the enterprise or a person invested with full powers in accordance with the regulations of the enterprise or a person holding a letter of proxy from the director of the enterprise.

The number of representives to the negotiation of collective agreement is to be agreed upon by both sides, but they must be equal in number.

2- The signatory to the agreement on behalf of the collective of workers is the Chairman of the Trade Union Excutive Committee of the facility or a person holding a letter of proxy from the Trade Union Excutive Committee. The signatory to the agreement an behalf of the

employer is the Director of the enterprise or a person holding a letter of proxy from the latter.

3- The collective agreement is signed when over 50% of the members of the collective of workers in an enterprise approve the contents of the negotiated agreement.

Article 46

1- Each party has the right to put forward a request for a collective agreement and the proposed contents thereof. On receipt of the request, the other party must accept negotiation and must agree to a date for the commencement of the negotiations at the latest 20 days after the receipt of the request.

2- The main contents of a collective agreement comprise commitments on providing and guaranteeing employment, the working time, the rest time, the wages, bonuses, wage allowances, working quotas, ocupational safety and health and social insurance for the worker.

Article 47

1- A concluded collective agreement must be done in 4 copies, of which:

a, One copy is kept by the employer;

b, One copy is kept by the Trade Union Executive Committee of the facility concerned;

c, One copy is to be sent by the Trade Union Executive Committee of the facility to its superior Trade Union Organisation;

d, One copy is to be sent by the employer to the labour agency of the province for the purpose of registration at the latest 10 days after the signing.

In the case of enterprises which have subsidiaries in many provinces and centrally-administered cities, the registration of the collective agreement must be completed with the labour agency of the province where the head office of the enterprise concerned is located.

2- The collective agreement takes effect from the day it is registered with the Provincial Labour Agency which must no later than 15 days following the receipt of the collective agreement notify that the agreement has been registrated. In the absence of such notification at the expiry of the 15 days period, the collective agreement automatically takes effect.

Article 48

1- A collective agreement is considered as partially invalid if and when one or a number of clauses therein are not approved by the Provincial Labour Agency; in such a case, the other clauses which have been duly registered take effect and are implemented.

2- A collective agreement is considered completely null and void in the following cases:

a, The contents of the agreement are in contravention of the Law;

b, The signatory to the agreement is not competent to do so;

c, The agreement is not concluded in accordance with the correct procedure;

d, The agreement is not registered with the Provincial Labour Agency.

3- The cancellation of a collective agreement which is considered as null and void as provided for in point a, sub-section 2, of the present Article, falls within the competence of the Provincial Labour Agency. With respect to a collective agreement affected by points b, c and d, sub-section 2 of

the present Article, if the contents are beneficial to the workers, the Provincial Labour Agency will provide guidance so that the parties may correct the agreement in accordance with the regulations. In the event that no such corrections are made, the Provincial Labour Agency will proclaim the cancellation of the collective agreement concerned.

Article 49

1- When a collective agreement goes into effect, the employer must give notice thereof to all workers in the enterprise. All members of the enterprise, including those who are enrolled after the signing date, have the responsibility to fully implement the collective agreement.

2- In the event that the interests of workers in individual labour contracts are lower than those mentioned in the collective agreement, the relevant corresponding clauses in the collective agreement must be implemented. All labour regulations in the enterprise must be

amended in accordance with the contents of the collectiveagreement.

3- If one party holds that the other party violates or does not fully implement the collective agreement, it has the right to request that the agreement be correctly implemented and both parties must together examine and settle any issues. If the issue(s) cannot be solved, each party has the right to request that the collective labour dispute be settled in accordance with the procedure provided for by the Law.

Article 50

The duration of a collective ageement is from 1 to 3 years. With respect to enterprises which conclude a collective agreement for the first time, the duration of the agreement may be less than 1 year.

The parties have the right to propose changes or amendments to a collective agreement 3 months after it takes effect and is implemented in the case of an agreement with a duration of less than 1 year, and 6 months after it takes effect and is implemented in the case of an agreement

with a duration of 1 to 3 years. Changes or amendments will be made in accordance with the procedure applied to the negotiation of the collective agreement.

Article 51

Prior to the expiry of a collective agreement, both sides can negotiate to prolong it or to conclude a new collective agreement. If a collective agreement expires at a time when both sides are still involved in negotiations, the existing agreement continues to take effect. If more than 3 months have elapsed following the the expiry of the collective agreement and if negotiations do not bring about results, the said collective agreement automatically ceases to take effect.

Article 52

1- In the event of the division of an enterprise or a transfer of its ownership rights, its management rights or the usage rights over its property, the new employer has the responsibility to carry on the implementation of the collective agreement until its expiry or until a new collective agreement is concluded.

In the event of the incorporation of an enterprise, the implementation of the collective agreement is subject to government regulations.

2- If a collective agreement ceases to take effect because the operations of the enterprise are terminated, the interests of the workers are dealt with in accordance with Article 66 of the present Code.

Article 53

The employer bears all the costs relating to the negotiation, signing, registration, and amendments of a collective agreement.

The representives of the labour collective, who are themselves wage-earning workers in the enterprise, continue to receive their wages during the period when they are engaged in negotiation and the concluding of a collective agreement.

Article 54

The provisions in the present Chapter also apply to the negotiations and concluding of collective agreements of economic branches and industries.

Chapter VI
WAGES

Article 55

The wages of a worker is agreed upon by the employer and the employee in the labour contract. Wages are provided in accordance with the productivity, quality and work efficiency of the worker concerned, but must not be lower than the minimum wage level set by the State.

Article 56

Minimum wages are set taking into account the cost of living and the necessity to ensure that the labourer performing the simplest labour activities can recuperate his or her work capacity and accumulate strength for expanded reproduction of work capacity. Minimum wages are used as a basis for the canculation of wage levels for various kinds of labour activities.

The Government decides and makes public the general minimum wage, the minimum wages

for various geographic areas and the minimum wages for various branches, valid for given periods of time, after consulting the Vietnamese General Confederation of Labour and the representives of employers.

If an increase in the consumer price index brings about a decrease in the real wages of the worker, the Government will readjust the minimum wages in order to guarantee real wages.

Article 57

After consulting the Vietnamese General Confederation of Labour and the representives of the employers, the Government makes public the wage scales and tables which would serve as the basis for calculating social insurance, health insurance, wage payment for extra working hours and night work, cases of absence from work, annual leave and other leaves of absence of the worker.

Article 58

1-The employer has the right to choose the specific form of payment-time wages (by the hour,

day, week or month of work), productivity based wages, contract- based wages, but he or she must maintain a given form for a certain period of time and must keep the worker informed.

2- The worker who works on time wages must be given his or her wages after the working hour(s), after the working day(s) or week or must be given a wage package as may be mutually agreed, but at least every 15 days.

3- The worker who works on monthly wages must receive his pay once every month or once every 15 days.

4- The worker who works on product-based wages and contract based-wages is paid in accordance with a pattern agreed upon by both parties. If the work must be performed over many months, he or she must be given advance wages every month in accordance with the volume of work rendered during that month.

Article 59

1- The wages must be paid directly to the worker in full, on time and at the work place.

In case of delay in paying wages due to special circumstanses, the delay must in no case last for more than one month and the employer must pay to the worker a compensation which is tantamount to at least the interests rate on saving deposits as announced by the State Bank at that time.

2- Wages must be paid in cash. Both sides may agree on payment of part of the wages by means of cheque or State money orders on the condition that this does not give rise to losses and problems for the workers.

Article 60

1- The workers has the right to know the reason for any deduction from their wages. Before any such deduction, the employer must hold discussions with the Trade Union Executive Committee of the enterprise and in no case should wage deductions exceed 30% of the monthly wages of the worker.

2- The employer is not allowed to punish labourers by cutting their wages.

Article 61

1- Payment for extra working hours is done as follows:

a, In regard to work days, the worker is given wages which are at least tantamount to 150% of the hourly wages of a regular work day;

b, Regarding weekly rest days and other holidays, the worker is given wages which are at least 200% of the hourly wages of a regular work day.

If the worker works extra working hours at night time, additional pay must be given to the worker in accordance with sub-section 2 of the present Article.

If the worker is given compensation leave to make up for his or her extra working time, the employer will have to pay only the difference in the wage level between extra working hours and regular working hours.

2- The worker performing night work in accordance with Article 70 of the present Law is given additional wages which are tantamount to 30% of day time wages.

Article 62

In the event that a worker must stop working, he or she will be paid as follows:

1- If the employer is at fault, the worker must be paid full wages.

2- If the worker is at fault, no wages are to be given to him or her. Other workers in the same unit who have to stop working are to be given wages, the amount of which is to be agreed upon by the two parties but must in no case be lower than the minimum wages.

3, In case of power failure or lack of water which is not due to the fault of the employer or in the eventuality of force-majeure, the employee's wages shall be agreed upon by both parties but are in no case to be lower than the minimum pay.

Article 63

Allowances, bonuses, wage rises and other incentives may be laid down by mutual agreement in the labour contract and collective agreement or provided for in the regulations of the enterprise.

Article 64

It is the responsibility of the employer to make deductions from his or her annual profits in order to provide bonuses to workers who have been working for more than one year for the enterprise. The bonuses are to be provided in accordance with government regulations and in keeping with the characteristics of each category of enterprise.

Article 65

1- In the event that a contractor or a similar intermediary is used, the employer who is in charge of the enterprise must have a list of names and addresses of these persons along with a list of the workers working under them and must ensure that the contractor or intermediary abides by the Law in paying wages and in ensuring their occupational safety and health.

2- If the contractor or a similar interemediary does not pay the full amount of wages or does not pay wages and does not ensure the other interests of the worker, the employer, who is in charge of the enterprise has the responsibility to pay the

wages and ensure the interests of the worker. In such case, the employer has the right to request the contractor or a similar intermediary to pay compensations or to request that the competent State agency concerned solve the dispute in accordance with laws and regulations.

Article 66

In the case of incorporation or division of the enterprise or transfer of ownership rights, management rights or the usage rights over the property of the enterprise, the new employer has the responsibility to pay wages and ensure the other interests of the worker. In the event that the enterprise goes bankrupt, the wages, severance allowances, social insurance and other interests of the worker as laid down in the collective agreement and labour contracts are the first debts which must be settled on a priority basis.

Article 67

1- If the worker faces personal or family difficults, he or she is given advance wages on terms to be agreed upon by both parties.

2- The employer provides advance wages to the worker who must stop working temporarily in order to perform his or her duties as a citizen.

3- The provision of advance wages to temporarily detained workers is subject to government regulations.

CHAPTER VII
WORKING TIME, REST TIME

Par1: WORKING TIME

Article 68

1- The working time must not exceed 8 hours in a work day or 48 hours in a week. The employer has the right to determine the daily or weekly working time but must give due notice to the workers.

2- The working time in a work day must be reduced by 1 to 2 hours with respect to persons who perform work which involves particular hardships, harmful or dangerous effects as mentioned in a list promulgated jointly by the Ministry of Labour, Invelids and Social Affairs and the Ministry of Health.

Article 69

The employer and the workers may agree on extra working hours which must not exceed 4 hours in a day and 200 hours in a year.

Article 70

The night working time starts from 22.00 to 06.00 hours or from 21.00 hours to 05.00 hours, depending on the climatic zone as stipulated by the Government.

Part II REST TIME

Article 71

1- The worker who works 8 consecutive hours per day has the right to take a 30 minutes' rest, and the rest time is to be deducted from the working time.

2- The worker who works on the night shift has the right to take 45 minutes' rest during the middle of the shift and the rest time is to be deducted from the working time.

3- The worker who works in shifts has the right to take rest for at least 12 hours before starting the next shift.

Article 72

1- The worker is entitled to at least a one- day (24 hours) rest day per week.

2- The employer can arrange for the rest day to take place on Sundays or on any other fixed days in the week.

3- In special cases wherein the labour cycle does not make it possible for workers to have weekly rest days, the employer must make sure that the workers can have at least 4 days of rest in a month.

Article 73

The worker is entitled to paid holidays on the following days:

- Solar New Year's Day: 1 day (January 1, solar calendar)

- Lunar New Year's Day : 4 days (the last day of the old year and the first 3 days of the new year, lunar calendar).

- Victory Day: 1 day (April 30, solar calendar)

- International Labour Day : 1 day (May 1, solar calendar)

- National Day: one day (September 2, solar Calendar)

If these holidays fall on a rest day, the worker is entitled to one more day of rest which must be the day which immediately follows the holiday.

Article 74

1- The worker who works for 12 months in an enterprise or under an employer is entitled to annual leave with full wages, in accordance with the following regulations:

a, The leave would last for 12 working days, in the case of a worker working in normal conditions;

b, The leave would last for 14 working days in the event that a worker's work involves hardships, harmful and dangerous effects and he or she is working in areas where severe living conditions prevail and those less than 18 years old.

c, The leave would last for 16 working days, in case the labourer's work involves special hardships, harmful and dangerous effects and he or she is working in areas where severe living conditions prevail.

Article 75

The annual leave will increase by 1 day for every 5 additional years of service at an enterprise or under an employer.

Article 76

1- After consulting the Trade Union Executive Committee of the enterprise the employer has the right to determine the schedule of annual leave but must give advance notice to all members of the enterprise.

2- The worker can reach agreement with the employer on spending his or her annual leave in several installments. A worker who works in a distant and isolated place may, if he or she so requests, total up two annual leaves and spend them at once, but totalling up three annual leaves and spending them at once must receive the approval of the employer.

3- If, due to redundancy or for other reasons, the worker is not able to spend part or all of his or her annual leave, he or she will be paid for the unspent days of his or her annual leave.

Article 77

1- Upon going on annual leave, the worker is given money in advance which is at least tantamount to the wages paid for the days spent on leave. Travel fares and wages of the worker are to be agreed between the two parties.

2- With respest to a worker who has worked for less than 12 month, the duration of the annual leave will be proportionate to time worked and leave can be settled in the form of money payment.

Part III LEAVE FOR PERSONAL REASONS, UNPAID LEAVE

Article 78

The worker can go on fully paid leave for personal reasons in the following circumstances:

1- Marriage: 3 days of leave;

2- Marriage of sons and daughters: 1 day of leave;

3- Death of fathers and mothers (including father-in-law and mother - in- law), death of wife or husband, death of children: 3 days of leave.

Article 79

The worker can reach agreement with the employer for going on unpaid leave.

Part IV: WORKING TIME AND THE REST TIME WITH RESPECT TO PERSONS ENGAGED IN SPECIAL LABOUR

Article 80

The working time and rest time of persons working at sea, in the mines or engaged in other special employment are subject to Government regulations.

Article 81

The working time and rest periods of those working under contract for only part of the day or part of the week or on price-work basis must be agreed between the employer and the employee.

CHAPTER VIII
LABOUR DISCIPLINE, PHYSICAL RESPONSIBILITY

Article 82

1- Labour discipline involves abidance by regulations relating to time, technology, production and business management as reflected in works regulations.

The works regulations of an enterprise must not be in contravention of labour laws and other laws. An enterprise with 10 labourers or more must have written works regulations.

2- Before announcing works regulations, the employer must consult the Trade Union Executive Committee of the enterprise.

3- The employer must register the works regulations of his or her enterprise with the Provincial Labour Agency. The works regulations enter into force following the day of their

registration. Ten days at the latest following the receipt of the works regulations, the Provincial Labour Agency must give notice of the registration. At the expiry of the 10 day period, if no notice is given by the Provincial Labour Agency, the works regulations automatically enter into force.

Article 83

1- The works regulations must have the following contents:

a, The woking time and the rest time;

b, Order in the enterprise;

c, Occupational safety and health in the workplace;

d, Protection of the property and of the technological and business secrets of the enterprise;

e, Violations of labour discipline, labour disciplinary actions and physical responsibility.

2- All members of the enterprise must be informed of works regulations, the main points of which must be posted in various places as deemed necessary by the enterprise.

Article 84

1- Persons who violate labour discipline, depending on the degree of gravity of the offence, will be subject to the following forms of punishments:

a, To be reproved;

b, To be transferred to another job with lesser wages for a maximum period of six months;

c, To be dissmissed.

2- It is unlawful to apply many forms of punishment for one act of violation

Article 85

1- Dismissal is applied only in the following circumstances:

a, The worker is guilty of robbery, embezzlement, divulgence of technological and business secrets or of any other offence which results in serious losses for the enterprise in terms of property and interests;

b, The worker has been disciplined and transferred to another job but commits a new

offence at a time when the current disciplinary action against him or her is still in force;

c, The worker is deliberately absent from work for 7 days in a month or 20 days in a year without any legitimate reasons.

2- After dismissing a worker, the employer must inform the Provincial Labour Agency of the dismissal.

Article 86

The maximum period of time to be used to deal with cases of violation of labour discipline is 3 months following the day the violation occurs, and in special circumstances must not exceed 6 months.

Article 87

1- In dealing with cases of violation of labour discipline, the employer must be able to prove the fault of the worker concerned.

2- The worker has the right to justify himself or ask a lawyer or a people's advocate to plead his or her case.

3- All proceedings connected with the examination of disciplinary action against a breach of labour discipline must have the presence of the worker concerned and must have the participation of the representive of the Trade Union Executive Committee of the enterprise.

4- Written minutes must be made concerning proceedings connected with the examination of disciplinary action against a breach of labour discipline.

Article 88

1- Respectively 3 months and 6 months after disciplinary action is taken, the worker who is blamed and the worker who has been transferred to another job will be rehabilitated provided that no new offence is committed.

2- The worker who due to disciplinary action has been transferred to another job and who has finished half of the sanction term with due progress recorded, is eligible to consideration by the employer for a reduction in sanction term.

Article 89

The worker who has damaged the tools and equipment, or has committed an action which brings damage to the property of the enterprise, must pay compensation in accordance with legal provisions concerning damage caused. If the damage is not serious and is caused inadvertently, maximum compensations will amount to 3 months of wages and are deducted gradually from the wages as provided for in Article 60 of this Code.

Article 90

The labourer who has lost the tools, equipment and other property entrusted to him by the enterprise or has consumed materials beyond the allowed quotas must, depending on each case, make partial or full compensations in accordance with the current market prices; if there is a contract of responsibility, the compensations are made in accordance with the contract of responsibility concerned; no compensations are required in the event of force majeure circumstances.

Article 91

With respect to compensations for damage caused as provided for in Articles 89 and 90, the procedure to be applied must be in accordance with Articles 86 and 87 of the present Code.

Article 92

1- After consulting the Trade Union Executive Committee of the enterprise, the employer has the right to have a worker suspended from work if the violation of the latter is involved in is complex and if, in his view, the worker's continued work at the enterprise would make it difficult for the investigation.

2- The period in which the worker concerned is suspended from work must not exceed 15 days and, in special cases, must not exceed 3 months. During this period the worker concerned is given advance payment amounting to 50% of the wages and should be received by him or her before the date of suspension.

At the expiry of this period, the worker must be allowed to continue working at the enterprise.

3- If the worker is found guilty and is subjected to a labour disciplinary action, he or she will not have to return the amount of money given.

4- If the worker is found not guilty, the employer must provide him or her full wages and wage allowances in connection with the period of time in which he or she has been temporarily suspended from work.

Article 93

The worker who has been subjected to disciplinary action, who has been compelled to stay away temporarily from work or who must make compensations in accordance with the physical responsibility system and who finds the punishment is not justified, has the right to complain to the employer, to the relevant competent authority or to request a solution to the labour dispute in accordance with the procedure provided by the Law.

Article 94

If the competent authority concludes that the disciplinary action decided upon by the employer

is unjustified, the latter must cancel the decision, make an official apology, and reinstate the worker concerned in terms of honour and other material rights

CHAPTER IX
OCCUPATIONAL SAFETY AND HEALTH

Article 95

1- The employer has the responsibility to provide all adequate means for ensuring the safety, of the worker and to improve the latter's working conditions. The worker must abide by the regulations on occupational safety and health and works regulations of the enterprise. All organisations and individuals who are involved in labour and production must abide by the laws on occupational safety and health and on environmental protection.

2- The Government establishes a national program on labour protection, occupational safety and health which is incorporated in socio-economic development plan and the State budget; the Government shall invest in scientific researches and provides support to the development

of facilities for the production of tools and equipment relating to occupational safety and health and means for individual protection. The Government promulgates systems of rules and regulations on occupational safety and health.

3- The Vietnam Confederation of Labour takes part in the government's work to establish a national program on labour protection,occupational safety and health, to work out a relevant program of scientific research and legislation on labour protection, occupational safety and health

Article 96

1- A new construetion, expansion or improvement of facilities engaged in the production, use, maintenance, storage of various types of machinery, equipment, materials and substances which entail strict demands on occupational safety and health require studies on measures designed to ensure occupational safety and health at the workplace of the labourer and with respect to the surrounding environment in accordance with the provisions of the Law.

The Ministry of Labour, Invalids and Social Affairs and the Ministry of Health promulgates

a list of machinery, equipment, materials and substances which involves strict requirements on occupational safety and health.

2- The production, use, maintenance and transport of various types of machinery, equipment, materials, fuels, electric power, chemicals, insecticides, defoliants, rat poisons and the changes of and importing of technology must be carried out in compliance with the requirements of occupational safety and health. All types of machinery, equipment, materials and substances involving strict requirements on occupational safety and health must be duly declared, registered and must have permits issued by the state inspection agencies on occupational safety and health.

Article 97

The employer must ensure that the work place meets the standards in terms of space, ventilation and brightness and meets the health standards with respect to dust, steam, poisonous gas, radio-activity, electromagnetic field, heat, humidity, noise, vibrations and other harmful factors.

All of these factors must be periodically inspected and measured.

Article 98

1- The employer must periodically inspect and repair machines, equipment, workshops and warehouses in order to ensure that they meet the standards of occupational safety and health.

2- The employer must have adequate means to shield parts and components of machines and equipment which may cause physical harm. Inside the enterprise, the work place, places where machines and equipment are located and places which contain dangerous and noxious elements must be provided with arrangements for coping with incidents and emergencies and instruction boards on safety measures which should be posted at places visible to all and should be easy to read.

Article 99

1- In the event that the work place or the machinery and equipment are susceptible to cause industrial accidents and occupational

diseases, the employer must immediately take remedial measures or give orders for workers to cease working at the work venue and to stop the operation of machines and equipment untill all danger is overcome.

2- The worker has the right to refuse to work at a certain work venue or to leave that place if he or she detects the dangers of an impending industrial accident which might seriously threaten his or her life or health and must give notice to his or her immediate superior. The employer is not allowed to compel the worker to continue working at the place concerned or to return therein before the danger is overcome.

Article 100

A work venue which contains dangerous and noxious elements and is prone to industrial accidents must be provided by the employer with appropriate technical and medical means and labour protection equipment so as to ensure prompt rescue in the event that an industrial accident occurs.

Article 101

The worker whose work involves dangerous and noxious elements must be provided with adequate means to protect himself or herself.

The employer must ensure that the means for individual protection meet quality standards and specifications as provided for by the Law.

Article 102

In recruiting workers and allocating work to them, the employer must take into account the health standards required for specific categories of work, must provide training, guidance and briefing on the regulations and measures relating to occupational safety and health and precautions against accidents which may occur in the work place.

The workers must be given medical examination upon recruitment and periodically thereafter in accordance with regulations. The expenses entailed by medical examinations are borne by the employer.

Article 103

The enterprise has the responsibility to care for the health of the workers and must provide timely first aid or emergency aid to them as is necessary.

Article 104

The worker whose working conditions involve dangerous and noxious elements must be provided with restorative products, must be given preferential treatment in terms of working time and rest time in accordance with the provisions of the Law.

At the end of the working time, the worker who works at a place affected by poisonous or infectious elements must be provided by the employer with means and measures for disinfection and individual hygiene.

Article 105

An industrial accident is an accident which causes damage to any part or function of the body of the worker, and which occurs during the labour process and is closely connected with the

perfomance of his or her employment duties.

Prompt emergency aid and adequate treatment must be given to the worker who is a victim of an industrial accident. The employer will be held responsible, in accordance with the provisions of the Law, for the occurence of the industrial accident.

Article 106

An occupational disease is a disease which arises from the impact of harmful work conditions connected with the occupation of the worker. After consulting the Vietnamese Confederation of Labour and the representive of the employer, the Ministry of Health and the Ministry of Labour, Invalids and Social Affairs shall promulgate a list of occupational diseases.

The worker who is affected by occupational disease(s) must be given adequate medical treatment, periodical medical examination and a separate medical file.

Article 107

1- The worker who has been disabled as a result of industrial accident(s) or occupational

disease(s), shall be given a medical examination in order to ascertain the degree of disability and the degree to which his labour capacity is diminished. Assistance is to be provided for the restoration of his or her work capacity; if the worker can continue to work, he or she will be allocated a job which is appropriate to his or her health conditions in accordance with the conclusions of the Council of Labour Health Experts.

2- The employer must bear all the medical expenses for the worker who is a victim of industrial accident(s) and occupational disease(s) from first aid, to emergency aid or full medical treatment. The worker enjoys labour insurance against industrial accidents and occupational disease(s). If the enterprise has not yet joined a form of obligatory social insurance, the employer must pay to each worker a sum which is tantamount to the amount laid down in Social Insurance Regulations.

3- The employer has the responsibility to pay compensations which are tantamount to at least 30 months of wages to the worker whose labour capacity has decreased by 81% or more or to the

relative of a worker who died due to an industrial accident, occupational disease(s) for which he or she is not to blame. If the worker is to blame for the accident or occupational disease which causes his or her death, the employer must provide compensation equivalent to at least 12 months of wages.

Article 108

All cases of industrial accidents and occupational diseases must be reported and investigated with due records of proceedings, statistics and periodic reports in accordance with the provisions of the Law.

It is strictly forbidden to conceal or provide inaccurate and false reports on cases of industrial accidents and occupational diseases.

CHAPTER X
SPECIFIC REGULATIONS CONCERNING FEMALE WORKERS

Article 109

1- The State guarantees the right to work of women in full equality with men in all fields. It is the State's policy to encourage the employer to create the conditions to ensure that women can be given permanent employment and furthermore can be provided with a large spectrum of job opportunities based on flexible working schedules ranging from part-time jobs and jobs that may be done at home.

2- The State creates policies and measures designed to gradually expand employment, improve the working conditions, enhance the professional qualifications, protect the health and increase the material and spiritual welfare of female workers so that they can efficiently raise

their professional qualifications and combine harmoniously their working and family lives.

Article 110

1- It is the responsibility of state agencies to organize many types of training programs in favour of female workers so as to enable the latter to have, in addition to the occupation they are presently engaged in, a reserve occupational skill, and to make it easy to use female labour in such a way as is fit for the physical and physiological characteristics of women and their functions as mothers.

2- The State creates policies which give preferential treatment and tax reductions to enterprises using a large number of female workers.

Article 111

1- The employer is strictly forbidden to discriminate against women or to hurt their honour and human dignity.

The employer must abide by the principle of equality between men and women in recruitment, use, promotion and remuneration of labour.

2- The employer must recruit a woman worker on a priority basis if the latter meets all the selection criteria for a job which is fit for both male and female workers and which needs to be filled.

3- The employer is not allowed to dismiss or unilaterally put an end to the labour contract of a female worker on account of marriage, pregnancy, natal leave, or nurturing an infant who is less than 12 months old, unless the enterprise itself ceases to operate.

Article 112

The pregnant female worker has the right to unilaterally terminate her labour contract without being required to pay any compensation in accordance with Article 41 of the present Code, if a doctor certifies in writing that continued work would have harmful effects on the foetus. In this case, the female worker's period of advance notice to the employer would depend on the instructions of the doctor.

Article 113

1- The employer is not allowed to use female workers for work which involves hardships,

dangers or contacts with noxious substances which might have a negative impact on their chilbirth and child nurturing functions. The list of such jobs is promulgated by the Ministry of Labour, Invalids and Social Affairs.

Any enterprise which uses female workers for the kinds of work mentioned above must work out a plan to provide professional training and gradually transfer female workers to other appropriate jobs, to increase health protection measures, to improve working conditions or to reduce the working time.

2- The employer is not allowed to employ female workers of any age for work which involves full-time underground mining or immersion of the body in water.

Article 114

1- A female worker has the right to pre-natal and post-natal leave, amounting to a total of 4 to 6 months as provided for in Government regulations and depending upon the working conditions, the degree of hardship and noxiousness involved and in the remoteness of the work

place. In the case of twins or other multiple births, the mother can take 30 extra days leave for each additional child born. The interests of female workers during pregnancy and delivery are provided for in Articles 141 and 144 of the present Code.

2- At the expiry of the period of natal leave as provided for in sub-section 1 of this Article, the female worker can, if necessary and by agreement with the employer, obtain leave from work for an additional period without pay. She can start working again at the enterprise prior to the expiry of her natal leave if she has taken at least 2 months of post-natal leave and if a doctor certifies that an early return to work will not harm her health and if she gives advance notice thereof to the employer. In such a case the female worker concerned continues to enjoy natal allowances in addition to earning full wages for her working days.

Article 115

1- The employer is not allowed to use female workers from their 7th month pregnancy or

female workers who are nurturing infants less 12 months old for extra working hours, night work or work which require them to travel long distances.

2- From their 7th month of pregnancy, female workers engaged in hard work must be transferred to lighter work or, while receiving full pay, must be given a reduction in daily working time by 1 hour per day.

3- During period of menstruation, a female worker has the right to take a 30 minute rest, deducted from the working time, while continuing to receive full pay. A female worker who is nurturing an infant less than 12 months old has the right to take 60 minute rest, deducted from the working time, while continuing to receive full wages.

Article 116

1- An enterprise which uses female workers must have dressing room(s), bathroom(s) and female toilets.

2- If an enterprise uses a large number of female employees, the employer has the

responsibility to help in the organisation of crèches and kindergartens or to support a part of the costs borne by mothers whose children are of crèche and kindergarten ages.

Article 117

1- When a female worker must take a temporary leave of absence from work in connection with pre-natal medical examination(s), implementation of family planning measures, miscarriage, care of ill children who are less than 7 years old, adoption of new born babies, etc., the worker is entitled to a social insurance allowance or an allowance from the employer which is tantamount to the social insurance allowances. The period of absence from work and the allowances referred to in the present Article are provided for in Government regulations. In the event that another person replaces the mother in looking after ill children, the mother is still entitled to social insurance allowances.

2- It is guaranteed that the female worker who returns to work at the expiry of her natal leave or her additional unpaid leave, will retain her old job.

Article 118

1- In an enterprise which uses a large number of female workers, a member of the senior management staff of the enterprise must be assigned the task of looking after and dealing with issues of female workers. In making decisions on issues relating to the rights and interests of women and children, the labour employer must consult the representive of female workers.

2- Membership of labour inspection teams must include an appropriate proportion of women.

CHAPTER XI
SPECIFIC REGULATIONS CONCERNING UNDER-AGE WORKERS AND OTHER CATEGORIES OF WORKERS

Part 1 UNDER-AGE WORKERS

Article 119

1- An under-age worker is a someone who is less than 18 years old. An enterprise which uses under-age labour must have a separate record book which contains entries on the family names and names of the under-age workers, their birth dates, the work they are engaged in and the results of periodic medical examinations. The book must be shown to the Labour Inspector as and when requested by the latter.

2- It is strictly forbidden to abuse the under-age work force.

Article 120

It is forbidden to recruit workers who are less than 15 years old, except for trades and occupations approved by the Ministry of Labour, Invalids and Social Affairs.

Trades and occupations which are allowed to recruit children less than 15 years of age for work, professional training, apparenticeship must have the consent of parents or guardians and must be closely supervised by them.

Article 121

The employer is only allowed to use under-age workers in jobs which are appropriate to the latter's health so as to guarantee the development of their physical and intellectual capacity and psychological well-being. The employer has the responsibility to give proper attention and care to the under-age workers in terms of work, wages, health and training.

It is forbidden to use under-age workers in jobs which involve hardships, dangers or contacts with noxious substanses. The list of such

jobs is promulgated by the Ministry of Labour, Invalids and Social Affairs and the Ministry of Health.

Article 122

1- The working time of an under-age worker must not exceed 7 hours a day or 42 hours a week.

2- The employer is allowed to use under-age workers in extra working hours and night work in accordance with the list of trades and occupations as stipulated by the Ministry of Labour, Invalids and Social Affairs.

PART II: AGED WORKERS

Article 123

An aged worker is a male person who is over 60 years old and a female person who is over 55 years old.

During the last year of employment prior to retirement, the aged worker is given a reduction in daily working time or is allowed to do part-time work in accordance with Government regulations.

Article 124

1- If neccessary, the employer can reach an agreement with an aged worker for prolonging the latter's labour contract or concluding a new labour contract in accordance with provisions in Chapter IV of the present Code.

2- If, after retirement, an aged worker works in accordance with a new labour contract, he or she will receive in addition to all retirement benifits all benifits agreed upon in the new labour contract.

3- The employer has the responsibility to provide attention to and care for the health of aged workers, and must refrain from using them in jobs which involve hardships, dangers or contacts with noxious substances that may have adverse effects on their health.

Part III: DISABLED WORKERS

Article 125

1-The State protects the right to work of disabled people and encourages the creation of employment opportunities for the latter. Every

year, the State makes budget allocation for assisting people with disabilities to restore their health and labour capacity and to learn various skills. It is also the policy of the State to provide low-interests loans so that people with disabilities can create their own employment opportunities and stabilize their living conditions.

2- Facilities which provide vocational training to people with disabilities are eligible for tax exemption, low interest loans and other form of preferential treatment in order to create conditions which make it possible for people with disabilities to learn trades and skills.

3- The Government sets ratios of disabled workers for trades and occupations which enterprises must abide by; if an enterprise does not accept these ratios, it must make financial contributions provided for by Government regulations to an employment fund designed to help in creation of employment opportunities for people with disabilities. An enterprise, whose number of invalid workers exceeds the ratios set by the Government, will receive State support or low-interest loans for the purpose

of creating appropriate working conditions for workers with disabilities.

4- The working time of disabled workers must not exceed 7 hours per day or 42 hours per week.

Article 126

Vocational training, production and business facilities which are reserved for people with disabilities shall receive initial material support from the State in terms of workshops, school premises, class rooms, equipment and tools and are eligible for tax exemption and low-interest loans.

Article 127

1- Facilities which provide vocational training for people with disabilities or use disabled workers must abide by the regulations relating to appropriate labour conditions, work tools, occupational safety and health and must provide regular care for the health of disabled workers.

2- It is forbidden to use disabled workers whose labour capacity has decreased by 51% or more in extra working hours and night work.

3- The employer is not allowed to use disabled workers in jobs which involve hardships, dangers or contacts with noxious substances as is stated in the list promulgated by the Ministry of Labour, Invalids and Social Affairs and the Ministry of Health.

Article 128

In addition to the benifits provided for in the provisions of this Part, the invalid workers also enjoy preferential treatment given by the State to disabled and sick members of the armed forces.

Part IV: HIGHLY QUALIFIED PROFESSIONAL AND TECHNICAL WORKERS

Article 129

1- A highly qualified professional or technical worker has the right to hold several jobs or offices simultaneously on the basis of several labour contracts concluded with employers on the condition that he or she is able to fulfill adequately these contracts and keeps the employer informed of all his or her labour contracts.

2- A highly qualified professional or technical worker's rights are protected by the Law as and when he or she is the author of useful solutions, inventions and discoveries through copy rights. In the case of a research project which is financed by investment funds of an enterprise, he or she is given a share of the benefits in accordance with the contract concluded on the research project concerned.

3- A highly qualified profesional or technical worker can, in agreement with a employer, go on leave, unpaid or partially paid, for a long duration of time in order to undertake scientific research or to improve his or her knowledge and retain his or her job at the enterprise.

4- Provisions of sub-section 1 and 2, Article 124 of the present Code apply, on a priority basis, to highly qualified professional and technical workers.

5- If a highly qualified professional or technical worker is guilty of the divulgence of technological or business secrets of his or her enterprise, he or she will face disciplinary action

as provided for in Article 85 of the present Code and, in addition, must pay compensation in accordance with provisions of Articles 89 and 90 of the present Code.

Article 130

1- The employer has the right to conclude a labour contract with any highly qualified professional or technical worker, and this also applies to government employees and officials if the work concerned is not prohibited by the Public Service Statutes.

2- Highly qualified professional and technical workers shall be given preferential treatment and favourable conditions by the State and employers so that they may continuously develop their capacity to the benefit of the enterprises and the country. The preferential treatment extended to highly qualified professional and technical workers should not be construed as a discriminatory measure in the use of labour.

3- It is the policy of the State to provide encouragement and special preferential treatment to highly qualified professional and

technical workers who work in highland, border areas, islands and areas where many difficult conditions prevail.

Part V: WORKERS WHO WORK FOR FOREIGN ORGANISATIONS AND FOREIGNERS IN VIETNAM, FOREIGN WORKERS IN VIETNAM, VIETNAMESE GUEST WORKERS ABROAD

Article 131

Vietnamese citizens who work in enterprises set up in accordance with the Law on Foreign Investment in Vietnam, in Export Processing Zones, in foreign or international agencies and organisations in Vietnam, and for foreign individuals in Vietnam, and foreigners who employed as workers in Vietnam must abide by and are under the protection of Vietnamese labour laws.

Article 132

1- Enterprises, agencies, organisations and individuals referred to in Article 131 of the present Code must recruit Vietnamese workers

through employment service organisations as provided for in Article 18 of the present Code. If the employment service organisations do not meet the requirements of the above-mentioned enterprises, agencies, organisations and individuals, the latter can directly recruit workers but must keep the provincial labour agencies or other competent authorities informed of their actions.

With respect to tasks involving high technical requirements or management jobs which Vietnamese are not yet able to fill, the above-mentioned enterprises, agencies, organisations and individuals can recruit foreigners for a certain period of time, but must implement training plans or programs which would enable Vietnamese workers to assume these tasks and replace the foreign workers concerned.

2- After consulting the Vietnamese Confederation of Labour and the representives of employers, the Government will decide and make public its decisions concerning the minimum wages to be paid to Vietnamese workers referred to in Article 131 of the present Code.

3- The working time, rest time, occupational safety and health, social insurance, solution of labour disputes and other issues relating to the enterprises, agencies, organisations and individuals referred to in Article 131 of the present Code are subject to regulations of the Government of Vietnam.

Article 133

1- Foreigners working on a regular basis for Vietnamese enterprises, organisations and individuals or for enterprises with foreign invested capital in Vietnam must have Labour Permits issued by the Ministry of Labour, Invalid and Social Affairs.

2- Foreign workers working in Vietnam enjoy interests and must fulfill obligations in accordance with Vietnamese Laws, unless otherwise provided for in international agreements which the Socialist Republic of Vietnam has signed or acceded to.

Article 134

1- Workers who are Vietnamese citizens have the right to work in foreign countries. If, according

to the labour contracts, they work under the management of foreign organisations and individuals, they must abide by the labour laws of the foreign countries concerned. If their work is regulated by labour cooperation agreements concluded between the Vietnamese Government and a foreign government, they must abide by the provisions of the labour laws of the foreign country and of the labour cooperation agreement.

2- The provisions of the present Code apply to workers of Vietnamese citizenship who are allowed to go abroad and work on projects for which a fixed contract has been awarded and are managed and paid by Vietnamese enterprise, unless otherwise provided for in international agreements which the Socialist Republic of Vietnam has signed or acceded to.

Article 135

1- The labourers of Vietnamese citizenship who go and work in foreign countries have the right to be informed of their interests and obligations and are protected by Vietnamese competent authorities abroad in the field of consular and

civil affairs. They have the right to transfer their foreign currency earnings and private property to Vietnam, and receive social insurance benefits and other benefits in accordance with laws in Vietnam and their countries of residence.

2- The workers of Vietnamese citizenship who work in foreign countries have the obligation to contribute a part of their wages to the social insurance funds of Vietnam.

Part VI: OTHER WORKERS

Article 136

Persons who are engaged in special occupations in the field of arts enjoy appropriate regulations with respect to training age and retirement age, the conclusion of labour contracts, working time, rest time, wages and wage allowances, bonuses, occupational safety and health which are subject to Government regulation.

Article 137

1- The worker can reach agreement with the employer on taking orders and doing their work

at home, while receiving benefits similar to those working in the enterprise.

2- The present Code does not apply to workers who work at home on a sub-contract basis.

Article 138

With respect to units which employ less than 10 workers, the employer must ensure their basic interests as provided for in the present Code but may receive reduction or exemption in the application of some standards, norms and procedures laid down by the Government.

Article 139

1- Persons who are hired for household services can conclude oral or written labour contracts with their employers; in case a person is hired for looking after the property, a written contract is essential.

2- The employer must respect the honour and dignity of household servants and has the responsibility to provide due care as and when the household servant is ill or is affected by an accident.

3- Both parties must agree on the wages, working time, rest time and various allowances when they conclude the labour contract. The labour employer must reimburse travel costs to the household servant who goes home at the end of his or her service period, except in the case of a household servant deliberately quitting before the the end of the term of the labour contract.

Chapter XII
SOCIAL INSURANCE

Article 140

1- The State works out social insurance policies with a view to gradually expanding and improving material guarantees, helping to stabilize the living conditions of workers and their families in the event that a worker is affected by illnesses, pregnancy and child birth, retirement age, death, industrial accidents, occupational diseases, retrenchment or any other risks and difficulties.

2- Various types of obligatory or voluntary social insurance are applied to various categories of workers and enterprises so as to guarantee that each worker is given the appropriate kind of social insurance policy.

Article 141

1- Obligatory social insurance is applied to enterprises employing 10 workers or more. In

such enterprises, the employer and the workers must buy social insurance in accordance with provisions of Article 149 of the present Code, thus enabling the workers to receive social insurance allowances in the event of illness, industrial accidents, occupational diseases, pregnancy and child birth, retirement or death.

2- With respect to workers who work in facilities employing less than 10 workers or who are engaged in work lasting less than 3 months, seasonal work or other work of a temporary nature, social insurance allowances are included in the wages provided by the employer and such arrangement would enable the worker to buy the type of voluntary social insurance policy or to make any other insurance arrangements.

Article 142

1- Sick workers are given medical examination and treatment at health facilities in accordance with the social insurance system.

2- If a sick worker receives a certificate from a doctor to undergo medical treatment at home

or in hospital, he or she is given sickness benefit paid by social insurance funds.

The amount on sickness benefit depends on the work conditions of the worker concerned, the type of labour insurance policy bought by him or her, and the length of the subscription time to the labour insurance policy concerned, the two being subject to government regulations.

Article 143

1- While a worker is absent from work in order to undergo medical treatment due to an industrial accident(s) or occupational disease(s), the employer must provide full wages and costs to him or her in accordance with point 2, Article 107 of the present Code.

At the end of the treatment, depending on the degree of weakening of his or her work capacity due to the industrial accident(s) or occupational disease(s), the worker concerned is checked and his injury or infirmity is duly classified so that he may receive thereafter a lump sum payment or a monthly allowance financed by social insurance funds.

2- If a worker dies during working hours through an industrial accident(s) or occupational disease(s), his or her relatives must receive a death benefit as provided for in Article 146 of the present Code and a lump sum social insurance payment which is tantamount to 24 months of the minimum wage as provided for by Government regulations.

Article 144

1- While absent on natal leave , as provided for in Article 144 of the present Code, a female worker who has bought an insurance policy is given a social insurance allowance which is tantamount to 100% of her wages plus an additional month's wages in the event that she gives birth to her first or second baby.

2-Provisions of Article 117 of the present Code provide other benefits for female workers.

Article 145

1- A worker is entitled to a monthly retirement pension if he or she meets age requirements and those concerning the length of the subscription time to the social insurance policy as follows:

a, The male worker must be 60 years old, and the female worker must be 55 years old. The age requirements with respect to workers involved in hard and difficult work, or have contact with noxious substances in the work place or who work in the highlands, border areas, islands and in some other special cases are subject to government regulations.

b, They must have bought social insurance policies for 20 years or more.

2- In the event that the worker does not fully meet the requirements as laid down in sub-section 1 of the present Article but does satisfy one of the following conditions, he or she is entitled to a lower level of monthly retirement pension:

a, He or she fully meets the age requirements as laid down in point a, sub-section 1 of the present Article, but has bought a social insurance policy for 15 to 20 years as required.

b, He or she has bought an insurance policy for 20 years but is respectively only 50 years old (male) and 45 years (female) instead of being respectively 60 years and 55 years old as re-

quired, and his or her work capacity has been reduced by 61% or more.

c, A worker whose work involves special hardships and noxious substances as is provided for in Government regulations, who has bought an insurance policy for 20 years or more and whose labour capacity has been reduced by 61% or more.

3- A worker who does not have all the required conditions for monthly retirement as provided for in sub-section 1 and 2 of the present Article, is given a lump sum payment.

4- The amount of monthly and lump sum retirement pensions as referred to in sub-sections 1, 2 and 3 of the present Article, depends upon the type of insurance policy bought by each worker and the length of subscription time to the social insurance policy concerned, which are subject to Goverment regulations.

Article 146

1- In the event of the death of a worker who is still working for an enterprise, in retirement, or who lives on a monthly allowance due to an industrial accident(s) or occupational disease(s),

the individual responsible for the arrangement of his or her funeral receives a funeral allowance as provided for by the Government.

2- In the event of the death of a worker who has been affected by in dustrial accident(s) or occupational disease(s), who has bought an insurance policy for 15 years or more and who receives a monthly retirement allowance or a monthly allowance for industrial accident(s) or occupational disease(s), if his child is less than 15 years old, if his or her spouse, father, mother are of retirement age and are directly dependent upon his or her income, the relatives mentioned above will receive a monthly death benefit. In the event that no relative of the deceased individual is entitled to a monthly death benefit or the deceased individual did not buy an insurance policy for the duration of 15 years, his or her family is entitled to a lump sum death benefit which may not exceed 12 months of the wages or allowance that the deceased individual had been receiving.

3- Persons who are recipients of monthly retirement allowances, invalid and/or injury

allowances on grade 1 and grade 2 industrial accidents, allowances on grade 1 and grade 2 occupational disease(s) prior to the promulgation of the present Code, will receive a death benefit as provided for in the present Article.

Article 147

1- Before this Code takes effect, the period of service in a State-owned enterprises, where the worker concerned has not yet received severance allowance or a lump sum benefit from social insurance funds will be counted as subscription time to the social insurance policy.

2- Before the present Code takes effect, insurance benefits of persons who are recipients of a retirement pension, monthly invalid benefit, allowance for industrial accident(s) or occupational disease(s) and death benefit will still be ensured by the State budget and readjusted in such a manner as would be in accordance with the system of social insurance in force.

Article 148

Agricultural, forestry, fisheries and salt enterprises have the responsibility to subscribe to

types of social insurance which are suitable in terms of production and the use of the labour force and in keeping with social insurance regulations.

Article 149

1- Social insurance funds are financed by the following sources:

a, The employer contributes a sum equal to 15% of the total wage funds of his or her enterprise;

b, The worker contributes a sum equal to 5% of his or her wages;

c, State contributions and support designed to ensure the implementation of social insurance benefits with respect to the workers;

d, Other sources.

2- Social insurance funds are managed on a unified basis in accordance with the financial rules of the State, on the principles of independent cost accounting and are protected by the State. Measures are taken by the social insurance funds to preserve and increase their value in

accordance with Government regulations.

Article 150

With the participation of the Vietnamese Confederation of Labour, the Government promulgates social insurance rules, establishes the organisational system of social insurance, promulgates the statutes on the organisation and activities of the social insurance funds.

Article 151

1- The worker who has subscribed to social insurance will receive social insurance allowances in full, in a convenient and timely manner.

2- If and when disputes arise between the worker and the employer on social insurance issues, the dispute must be solved in accordance with the provisions of Chapter XIV of the present Code. If disputes arise concerning the social insurance agency, they will be solved in accordance with the statutes on the organisation and activities of the social insurance funds.

Article 152

The State encourages workers, trade unions, employers and other social organisations to establish social mutual aid funds.

Chapter XIII
TRADE UNION

Article 153

1- The Provincial Confederation of Labour must organise provincial trade union organisations in enterprises for the purpose of representing and protecting the rights and interests of the workers and the collective of workers:

a, This must be completed at the latest, six months after the implementation of this Labour Code with respect to enterprises which have been operating but which have no trade union organisations;

b, This must be completed at the latest, six months after an enterprise starts operating, with

respect to new enterprises.

2- The Provincial Trade Union organisation must work in accordance with regulations worked out jointly by the Government and the Vietnamese General Confederation of Labour.

Article 154

1- An employer must recognize the trade union organisation if and when it is established in accordance with the Law on Trade Union and Trade Union Rules.

2- The employer must provide close cooperation and favourable conditions so that the trade union organisation can work in accordance with the provisions of the Law on Trade Union and the Labour Code.

3- The employer must refrain from acts of discrimination against workers who have established or joined a trade union organisation and are engaged in trade union activities or from using economic and other measures in order to interfere with a trade union organisation and its activities.

Article 155

1- It is the responsibility of the employer to ensure the necessary conditions and means for the activities of the trade union organisation.

2- A worker who is not a full-time trade union activist can use part of his or her working time to perform trade union work while continuing to receive full wages from the employer. The amount of working time used for trade union work should depend upon the size of the enterprise and the agreement of the employer and the trade union executive committee in the enterprise, but must not be less than 3 working days per month.

3- A full- time trade union activist receives his or her wages from the trade union funds and receives the interests and welfare benefits given to all members of the enterprise, depending upon the statutes or rules of the enterprise or the collective agreement.

4- If the employer decides to dismiss, or to unilaterally cancel the labour contract of a member of the trade union executive commit-

tee in the enterprise he or she must receive the agreement of the trade union committee concerned; if the dismissed person is the chairman of the trade union executive committee in the enterprise, the decision must receive the agreement from the immediate superior trade union authority.

Article 156

The Vietnamese General Confederation of Labour and the trade union organisations at various levels are entitled to hold discussions with State agencies and the representatives of the employer in order to settle various issues relating to labour relations; they have the right to establish service organisations on employment creation, vocational training, mutual aid and legal consultancy and to set up common welfare facilities for the workers they also have other rights as provided for in the Law on Trade Union and the present Code.

Chapter XIV
RESOLUTION OF LABOUR DISPUTES

Article 157

1- Labour disputes are disputes on the rights and interests relating to employment, wages, earnings and other working conditions, implementation of the labour contracts, collective agreements and the vocational training process.

2- Labour disputes include disputes between a worker and the employer and collective disputes between a collective of workers and the employer.

Article 158

Labour disputes are resolved in accordance with the following principles:

1- Direct negotiations and settlement between the two parties in the dispute at the location where the dispute occurs;

2- Reconciliation, arbitration in accordance with the rights and interests of both parties, the common interests of the society and abidance by the Law;

3- Open, objective, timely, rapid resolution in accordance with the law;

4- The process of resolving the dispute involves the participation of the trade union representive and the representive of the employer.

Article 159

If one party refuses to negotiate, or if both parties have held talks but have failed to reach a resolution, or if one or both parties submits applications for a resolution of the dispute, the labour dispute concerned will be resolved by agencies and organisations in charge of labour disputes.

Article 160

1- In the process of resolving a labour dispute, the parties to the dispute have the following rights:

a, To take a direct role in the process of resolving the dispute or to send its representative(s) to take part in that process;

b, To withdraw the application or change the contents of the dispute;

c, To request that the person directly in charge of resolving the dispute be replaced, if either party has reasons to conclude that the person concerned cannot ensure objectivity and fairness in the resolution of the dispute

2- In the process of resolving a labour dispute, the parties to the dispute have the following obligations:

a, To provide all documents and evidence as requested by the agency or organisations in charge of the resolution of labour disputes;

b, To strictly implement the agreement which has been reached, the record on successful conciliation, the mandatory decision of the agency or organisation in charge of resolving labour disputes and the ruling or mandatory decision of the People's Court.

Article 161

Within the scope of its functions and power, the agency or organisation in charge of resolving labour disputes has the right to request that the parties in the dispute and agencies, organisations and individuals concerned provide documents and evidence; in the course of resolving the dispute, it also has the right to consult experts, witnesses and persons who are connected with the dispute.

Part I: COMPETENCE AND SEQUENCE RELATING TO THE RESOLUTION OF DISPUTES INVOLVING INDIVIDUAL WORKERS

Article 162

Competent State agencies or organisations in charge of resolving disputes concerning individual workers are comprised of:

1- The Council of Labour Conciliation at the enterprise level or the labour conciliator of the labour agency of a district, a town, a provincial town (hereafter referred to as district labour

agency) in areas where there is no enterprise level Council of Labour Conciliation.

2- The People's Court.

Article 163

1- The Council of Labour Conciliation is set up in enterprises using 10 labourers or more, and is comprised of an equal number of members representing the workers and the employer. Both parties must reach agreement on the number of members of the council.

2- The Council on Labour Conciliation has a two year-term. Representives of both parties will serve in turn as chairman and secretary of the Council. The Council's work is based on the principle of agreement and consensus.

3- The employer must ensure the necessary conditions for the activities of the Council of Labour Conciliation.

Article 164

The conciliation of labour disputes will be implemented in accordance with the following procedures:

1- The Council of Labour Conciliation starts its reconciliation work at the latest 7 days after the receipt of the application for conciliation. The reconciliation meeting must be attended by both parties in the dispute (s) or their accredited representatives.

2- The Council of Labour Conciliation submits for the consideration of both parties a conciliation plan. If both parties accept the conciliation plan, a record on successful conciliation is worked out and signed by both parties to the dispute(s), the chairman and the secretary of the Council of Labour Conciliation. Both parties have the obligation to implement the agreement contained in the record on successful conciliation.

3- In the event that conciliation attempts fail, the Council works out a record on unsuccessful conciliation which contains the views of both parties to the dispute and the views of the Council and is signed by both parties, the chairman and the secretary of the Council. A copy of the record must be sent to both parties to the dispute within 3 days following the day when the failure of the conciliation attempt is acknowledged.

Thereupon, each party has the right to request the District People's Court to examine the dispute. The file sent to the People's Court must be accompanied by the record on unsuccessful conciliation.

Article 165

1- The labour conciliator proceeds with conciliation work in accordance with a procedure as provided for in Article 164 of the present Code with respect to labour disputes involving individual workers in enterprises using less than 10 workers, disputes involving household servants and their employers and disputes concerning the implementation of vocational training contracts and vocational training fees.

2- The labour conciliator must start conciliation work at the the latest 7 days following the receipt of the application for conciliation.

Article 166

1- The District People's Court will, on receipt of an application from one or both parties to the dispute, resolve labour disputes involving individual workers which the Council of Labour

Conciliation or the Labour conciliator has failed to solve.

2- Application can be made to request the District People's Court to resolve the following labour disputes involving individual workers, without conciliation at the enterprise level:

a, Disputes regarding disciplinary actions involving dismissal or unilateral cancellation of labour contracts by the employer

b, Disputes regarding damage compensation to the employer

3- The worker is exempted from court fees and costs when he or she is involved in legal proceedings concerning wages, social insurance allowances, compensation, illegal dismissal or cancellation of labour contracts.

Article 167

The period during which applications for resolution of labour disputes involving individual workers can be filed, following the date when each party to the dispute holds that its right

and interests have been violated, is defined as follows:

1- One year with respect to labour disputes provided for in sub-section. 2, Article 166 of the present Code.

2- Six months with respect to other labour disputes.

Part II: COMPETENCE AND SEQUENCE RELATING TO THE RESOLUTION OF COLLECTIVE LABOUR DISPUTES

Article 168

The competent State agencies and organisations which are in charge of resolving collective labour disputes are comprised of:

1- The Council on Labour Conciliation or the Labour Conciliator of the District Labour Agency in an area where there is no enterprise level Council of Labour Conciliation.

2- The Provincial Council of Labour Arbitration.

3- The People's Court.

Article 169

1- The Council of Labour Conciliation, as provided for in Article 163 of the present Code, is competent to resolve collective labour disputes.

2- The Provincial Council on Labour Arbitration is comprised of full time and part time members representing the labour agency, the trade union, the employer and a number of lawyers, managers and social activists of good repute in the province. The membership of the Provincial Council on Labour Arbitration must be of an odd number and must not exceed 9 persons, and the council is chaired by the representive of the Provincial Labour Agency.

The Provincial Council on Labour Arbitration has a 3 - year term.

The council reaches decisions according to the principle of majority and by secret ballot.

The Provincial Labour Agency must ensure the necessary conditions for the activities of the Provincial Council on Labour Arbitration.

Article 170

Collective labour disputes are resolved in accordance with the following sequence:

1- The Council on Labour Conciliation or Labour Conciliator starts its conciliation work at the latest 7 days following the receipt of the application for conciliation. The conciliation meeting must be attended by both parties to the dispute or their accredited representives.

2- The Council on Labour Conciliation or the Labour Conciliator submits for the consideration of both parties a reconciliation plan. If both parties accept the conciliation plan, a record on successful conciliation will be written out and signed by both parties to the dispute, by the chairman and the secretary of the council or the labour conciliator.

Both parties have the obligation to implement the agreement contained in the record on succesful conciliation.

3- In the event that the conciliation attempt fails to achieve success, the Council on Labour Conciliation or the Labour Conciliator will write

out a record on unsuccesful conciliation which contains the view of both parties to the dispute and the views of the Council or the Labour Conciliator and is signed by both parties to the dispute, the chaiman and the secretary of the council or the Labour Conciliator; thereupon each or both parties to the dispute have the right to apply for a resolution mediated by the Provincial Council on Labour Arbitration.

Article 171

1- The Provincial Council on Labour Arbitration proceeds with the conciliation and resolution of a collective labour dispute at the latest 10 days following the receipt of the application.

The meeting held to resolve a collective labour dispute must be attended by the accredited representatives of both parties to the dispute. If necessary, the Provincial Council on Labour Arbitration also invites the representative of the immediate superior trade union authority and the representative of the agency concerned to attend the meeting.

2- The Council submits for the consideration of both parties a conciliation plan. If both parties accept the plan, a record of successful conciliation is written and signed by both parties to the dispute and by the Chairman of the Provincial Council on Labour Arbitration. Both parties have the obligation to implement the agreement contained in the record on successful conciliation.

3- In the event that a conciliation attempt fails to achieve success, the Provincial Council on Labour Arbitration will provide its own resolution to the dispute and must immediately inform both parties of its decision; if both parties have no objection, the decision automatically takes effect.

Article 172

1- If a collective of workers does not agree with the decision of the Provincial Council on Labour Arbitration it has the right to apply for a resolution by the People's Court or organize a strike.

2- In the event that an employer does not agree with the decision of the Provincial Council on Labour Arbitration he or she has the right to

request the People's Court to re-examine the decision of the Council on Labour Arbitration. An employer's request to the People's Court to re-examine the decision of the Council on Labour Arbitration does not prevent the collective of workers from exercising their right to stage a strike.

Article 173

1- While the Council on Labour Conciliation and the Council on Labour Arbitration are engaged in resolving a labour dispute, no party to the dispute is allowed to take unilateral action against the other.

2- The Trade Union Executive Committee at the enterprise level may decide to organize a strike after over half of the collective of workers express approval by means of a secret ballot or signatures.

The Trade Union Executive Committee appoints a delegation comprised of up to 3 persons to present its demands to the employer, and must simultaneously notify the Provincial Labour Agency and the Provincial Confederation of

Labour. The delegation in its demands and communications must make clear points of disagreement, requirements for resolution of the dispute(s) and the results of the vote or collection of signatures in favour of the strike and the date of its commencement

3- It is strictly prohibited to resort to acts of violence, acts which result in damage to machinery, equipment and property of the enterprise and which infringe upon public order and security during the strike.

Article 174

It is forbidden to organize strikes in public utilities and enterprises which are essential to the national economy, national security and defense, a list of which is promulgated by the Government.

State management agencies must periodically elicit the views of the representatives of workers and employers of these enterprises in order to provide timely assistance and resolution in accordance with the legitimate demands of the collective of workers. Cases of collective disputes will be resolved by the Provincial Council

on Labour Arbitration If one party does not agree with the decision of the Council on Labour Arbitration, it has the right to apply to the People's Court for a resolution.

Article 175

If the strike is deemed to be a serious danger to the national economy or public safety, the Prime Minister has the right to postpone or terminate it.

Article 176

1- The following strikes are illegal:

a, Strikes which do not arise from collective labour disputes and strikes which go beyond the scope of labour relations;

b, Strikes which go beyond the scope of the enterprise;

c, Strikes which violate provisions of sub-sections 1,2 of Article 173 and Article 174 of the present Code.

2- It is within the competence of the People's Court to decide whether a strike is legal or illegal.

Article 177

The People's Court has the right to make the final decision on strikes and collective labour disputes.

Article 178

1- It is strictly forbidden to retaliate against persons who have taken part in or led a strike.

2- Persons who prevent the exercise of the right to strike, compell others to strike, resort to illegal acts during the strike, or refuse to execute the decision of the Prime Minister, the People's Court will, depending upon the gravity of the violation, be required to pay compensation for damage and will be subjected to administrative punishments or legal proceedings.

Article 179

The Standing Committee of the National Assembly provides regulations relating to the resolution of strikes and labour court cases.

Chapter XV
STATE MANAGEMENT ON LABOUR

Article 180

State management of labour is comprised of the following:

1- To have a good understanding of supply and demand of labour and its changes which should serve as a basis for deciding national policies, master plans, plans on labour resources, its allocation and utilisation in the whole society.

2- To promulgate legal documents on labour and provide guidance on the implementation thereof.

3- To work out national programs on development, population migration for the development of new economic zones, dispatch guest workers to foreign countries and to organize the implementation thereof.

4- To decide policies regarding wages, social insurance, occupational safety and health, other policies on labour and society and policies relating to the development of labour relations in the enterprise.

5- To organize and carry out scientific research on labour, to gather statistics and information on the labour markets and on the living standards and income of workers.

6- To inspect, control the implementation of labour laws, to deal with the violations of labour laws and to solve labour disputes in accordance with the provisions of the present Code.

7- To expand cooperation with foreign countries and international organisations in the field of labour.

Article 181

1- The Government provides unified State management of labour throughout the country.

The Ministry of Labour, Invalids and Social Affairs provides State management of labour with respect to various branches and provinces throughout the country.

2- The People's committees at various levels provide State management of labour in the territory under their respective jurisdiction. The Provincial Labour Agency assists the People's Committee of its province to provide State management of labour in accordance with the division of responsibility as laid down by the Ministry of Labour, Invalids and Social Affairs.

3- The Vietnamese General Confederation of Labour and Trade Union organisations at various levels take part in supervising State management of labour in accordance with the provisions of the Law.

4- The State creates conditions that enable employers to contribute their views to State agencies on questions regarding management and the use of labour.

Article 182

Within 30 days from the day an enterprise starts operating, the employer must report to the Local Labour Agency on the use of labour; and in the course of the enterprise's operations, the employer must report to the Local Labour

Agency about changes in the labour force of the enterprise as required by the regulations of the Ministry of Labour, Invalids and Social Affairs. Within 30 days from the day an enterprise stops operating, the employer must report to the Local Labour Agency about the cessation of the use of labour.

The employer of a facility which uses 10 workers or more must have a data book on the workers working under him or her, a wages book and a social insurance book concerning the latter.

Article 183

In accordance with the provisions of the Law, each worker is issued a labour book, a wages book and a social insurance book.

Article 184

1- The sending of Vietnemese citizens to work abroad must be permitted by the Ministry of Labour, Invalid and Social Affairs and other competent state agencies according to the provisions of the Law.

It is stricly forbidden to send Vietnamese citizens to work abroad in contravention of the Law.

2- The Ministry of Labour, Invalids and Social Affairs issues labour permits to foreigners who come to Vietnam in order to work for Vietnamese enterprises and organisations and individuals or enterprises with foreign invested capital in Vietnam as provided for in Article 133 of the present Code, on receipt of the applications from the persons concerned and the enteprises, organisations and individuals which require labour.

Chapter XVI
STATE LABOUR INSPECTION, DEALING WITH VIOLATIONS OF LABOUR LAWS

Part 1: STATE LABOUR INSPECTION

Article 185

The Labour State Inspectorate is comprised of Labour Inspectors, Occupational Safety Inspectors and Health Inspectors.

The Ministry of Labour, Invalids and Social Affairs and Local Labour Agencies are in charge of labour inspection and occupational safety inspection. The Ministry of Health and Local Health Agencies is in charge occupational health inspection.

Article 186

State Labour Inspection involves the following main tasks:

1- To inspect the excution of regulations relating to labour, occupational safety and health.

2- To investigate industrial accidents and violations of occupational health norms.

3- To examine and approve practices and standards relating to occupational safety through proposals in economic and technical studies and design plans; to register and give permission for the use of machinery, equipment and materials involving strict requirements in occupational safety in accordance with the list promulgated by the Ministry of Labour, Invalids and Social Affairs.

4- To take part in examining and approving the venues, occupational health measures involved in the use, the new construction expansion or transformation of facilities for the purpose of production, maintenance, storage of radioactive and other noxious substances as listed in regulations of the Ministry of Health.

5- To deal with complaints and charges from workers on violations of labour laws.

6- To make decisions within its own competence on violations of labour laws and submit recommendations to other competent agencies on violations which pertain to the latter's competence.

Article 187

In the perfomance of his or her work, a Labour Inspector has the right:

1- To inspect and investigate at any time and without advance notice, venues which pertain to objects and areas entrusted to him or her.

2- To request the employer and other persons concerned to provide information and materials which are relevant to the issue being inspected and investigated.

3- To receive and solve, in accordance with the provisions of the Law complaints and charges concerning violations of labour laws.

4- To decide to stop temporarily the use of machinery, equipment, workplaces which are likely to be dangerous in terms of industrial

accidents or serious pollution of the work environment and to assume responsibility for the above action and immediately submit a report to the competent State agency.

Article 188

A labour inspector must have no individual interests connected either directly or indirectly with the enterprise or individual being investigated. Even after his or her release from duty, the labour inspector must not divulge his or her professional secrets or the sources of complaint.

Article 189

In proceeding with the investigation, the Labour Inspector must closely cooperate with the Trade Union Executive Committee. If the issue being investigated is connected with the sciences, technology or other professional fields of knowledge, the Labour Inspector can invite qualified experts or technicans to act as consultants; any inspection of machinery, equipment or warehouses, etc., must be carried out

in the presence of the employer and persons in charge thereof.

Article 190

The Labour Inspector directly hands to the person concerned a decision which contains the date on which the decision takes effect, the date by which its execution must be completed and, if necessary, the date of reinspection.

The decision of the Labour Inspector is effective and must be implemented.

The person to whom the decision is given has the right to submit a complaint to the competent State agency but must strictly implement the decision of the Labour Inspector.

Article 191

1- The organisation and activities of the State Labour Inspectorate is subject to Government regulations.

2- The Ministry of Labour, Invalids and Social Affairs and the Ministry of Health have the responsibility, within the scope of their competence

and functions, to set up systems of State Labour Inspectorate, to set criteria on the selection, appointment, transfer, release from duty and dismissal of Labour Inspectors, to issue cards to Labour Inspectors, to work out regulations concerning periodical and extraordinary reports and other necesary rules and procedures.

3- The inspection of occupational safety and health in the fields involving radioactivity, oil and gas exploration and exploitation, railway, river, road and air transportation and the units of the armed forces is carried out by the departments concerned in coordination with the State Labour Inspectorate.

Part II: PUNISHMENT ON VIOLATIONS OF LABOUR LAWS

Article 192

A person whose actions violate the provisions of the present Code will, depending on the gravity of the offence, be subject to punishments ranging from warnings, fines, cancellation or

withdrawal of permits, payment of compensation, forced closure of the enterprise concerned or legal proceedings in accordance with the provisions of the Law.

Article 193

A person who resorts to acts designed to obstruct the work of or to bribe or retaliate against competent officials who are performing their duty in accordance with the provisions of the present Code will, depending on the gravity of the offence, be subject to disciplinary action, administrative punishment or legal proceedings as provided for by the Law.

Article 194

The owner of an enterprise must bear civil responsibility with respect to punishments inflicted on the directors, managers or representives of their enterprises by competent State agencies due to violations of labour law in the course of labour management. The responsibility of the latter in terms of compensations to the enterprise is dealt with in accordance with the statutes and regulations of the enterprise concerned, the responsibility

contract concluded between the parties concerned or the provisions of the Law.

Article 195

Administrative punishments concerning violations of labour laws are subject to Government regulations.

Chapter XVII
IMPLEMENTATION CLAUSES

Article 196

The provisions of the present Code apply to labour contracts, collective agreements and other legal agreements concluded prior to the entry into force of the present Code. Agreements which are more beneficial to the workers as compared with the provisions of the present Code will continue to be implemented. Agreements which are not in keeping with the present Code must be changed or amended.

Article 197

The present Code takes effect from January 1, 1995.

All previous laws and regulations which are in contravention of the present Code are repealed.

Article 198

The Standing Committee of the National Assembly and the Government shall work out specific regulations and provide guidance on the implementation of the present Code.

The present Labour Code was adopted by the 9th Legislature the National Assembly of the Socialist Republic of Vietnam at its 5th Session on June 23, 1994.

Chairman of the National Assembly

Signed
NONG DUC MANH

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