

Rödl & Partner

LABOUR REGULATIONS IN VIETNAM

EMBRACING DIVERSITY



“With an increasingly open business environment and policies that facilitate international integration, Vietnam continues its stable development into one of Asia’s most attractive investment destinations.

In order to further foster foreign investment and to maintain sustainable growth Vietnam constantly modernizes its labour regulations and social security system with the aim to achieve modern international labour standards.”

Rödl & Partner

LABOUR REGULATIONS IN VIETNAM

EMBRACING DIVERSITY

Content

1. Introduction	6
2. Law on Labour Contracts	7
2.1. Labour Contract	7
2.2. Terms of Labour Contracts	8
2.3. Foreign employees	8
2.3.1. Visa	9
2.3.2. Temporary Residence Card (TRC)	10
2.3.3. Foreigners requiring a work permit	11
2.3.4. Application process for a work permit	12
2.3.5. Exemptions for foreigners	13
2.4. Probation	13
2.5. Working hours, rest breaks during working hours, holidays, overtime	14
2.6. Minimum wages	15
2.7. Salary during sickness and maternity / paternity leave	16
2.8. Potential bonus schemes	17
3. Internal Labour Rules (ILR's)	17
3.1. Requirement to register internal Labour Rules	17
4. Labour discipline	18
4.1. Procedures of labour discipline	18
4.2. Health and safety obligations	19
5. Trade Union	19
5.1. Vietnam's trade union system	19
6. Strikes	20
3.1. Legal provisions on the right to strike	20

7. Termination of Employment	20
7.1 Unilateral termination	22
7.1.1 Termination by Employer	23
7.1.2 Termination bay Employee	25
7.2 Bilateral termination	25
8. Taxes and duties	26
8.1 Personal income tax (PIT)	26
8.2 Compulsory social insurance, health insurance, unemployment insurance and trade union fees	27
9. Penalties	28
9.1 Work permit violations	28
9.2 Penalties for employers for violations in Trade Union Contributions	28
About us	30
Contact	32

1. Introduction

With the following we would like to provide a short overview of the regulatory and practical requirements on labour laws and regulations in Vietnam.

Vietnam's population amounts to about 98 million. The current labour force comprises around 58 million people, and about 1 million young adults are entering the labour market annually.

The current legislation is employee friendly and this includes for-foreign employees with a local labour contract. The Labour Code also grants certain additional protection to particular groups of employees (women, disabled, elderly, etc.).

Vietnam's labour legislation and its implementation in practice are well developed. It covers almost all aspects of labour relations in the work place from the right to work to the right to organize in unions, from labour contracts to collective bargaining agreements, from minimum working ages to minimum wages, etc.

Vietnam's participation in the International Labour Organization since 1992 and the World Trade Organization since 2006 have strengthened the country's efforts to create and encourage a secure employment environment.

Subsequent free trade agreements, one of the latest being the EU-Vietnam Free Trade Agreement, further acknowledge the urgent domestic and international demand for the deference to international labour standards.

Indeed it can only be expected that those engagements will preserve the trust and legal certainty in Vietnam's legal framework, Foreign investors in turn are well advised to keep up to date with the dynamic development required for the continuous modernization of Vietnam's labour regulations.

2. Law on Labour Contracts

The main law regulating employment relationships in Vietnam is the 2019 Labour Code, which took effect on 1 January 2021. For foreign nationals, there is also a set of implementing regulations, including Decree 152 /2020 / NĐ-CP, which mainly provide guidance on matters related to work permits for foreign workers in Vietnam.

The labour contract must follow the key contents as provided by laws. This does also apply to multinational companies that prefer to have their own standard contracts for all jurisdictions they do business in.

The Vietnamese Labour regulations provide the legal options of probation, indefinite and definite labour contracts.

2.1. LABOUR CONTRACT

The parties may agree to draft the labour contract either in a foreign language or in Vietnamese, subject to their sole discretion. In case of a bilingual contract, the parties may decide that the foreign language prevails in case of inconsistencies between the two versions. Nevertheless, it is recommended in any case to have a Vietnamese version or at least a translation for submission to or working with authorities when required.

As a general rule, a labour contract is effective from the date stated in the contract, and there are no filing requirements to effectuate the labour relationship. An employer has to declare the engagement of employees to the labour authority within 30 days from the date of its commencement of operation. Further reports on changes to the workforce have to be made every six months.

Salary paid to Vietnamese employees must be paid in Vietnamese Dong (VND). Within the territory of Vietnam all transactions in contracts and agreements are required to be conducted in Vietnamese Dong. However, the law provides several exceptions to this general rule. For example, foreign employees (whether they are residents or non-residents) are permitted to receive salaries, bonuses and allowances in a foreign currency. Therefore, the salary may be stated and paid in any tradable currency.

22. TERMS OF LABOUR CONTRACTS

Probation Period	A Probation Period may be agreed between the parties. The duration of a probationary period depends on the qualification, education and job position of the new employees, but must not exceed the time limits as provided by law, i.e. 6, 30, 60, 180 days on case by case basis.
Definite Term Labour Contract	Definite terms for labour contracts can be agreed by the parties for up to 36 months and twice in a row. An employment agreement with a term of 12 months is common after the end of the probation period.
Indefinite Term Labour Contracts	After two definite term contracts in a row, the employment may only be further extended by an indefinite term contract.
Foreign employees	Locally employed foreigners will in practice usually have 24 months contracts as a maximum due to the applicable regulations limiting the duration of work permits to a term of 24 months.

23. FOREIGN EMPLOYEES

The Labour Code explicitly states that it applies to foreign nationals working in Vietnam, and the general rule is that foreigners working in Vietnam must comply with the Vietnamese labour regulations, unless an international treaty to which Vietnam is party, objects.

Foreign employees either have a local labour contract or are seconded from the parent company ("Internal Transfer"). If a labour contract is signed with a Vietnam-based entity, the law of Vietnam must apply regardless of the choice of law by the parties.

In Vietnam, a visa and a work permit are two separate documents that are used for different purposes. A visa is an official endorsement allowing a foreigner to enter and to remain within Vietnam, while a work permit is the permission for a foreign worker to work in Vietnam.

A visa can be replaced by a temporary residence card (“TRC”) which grants a foreign worker the right to stay in Vietnam for a certain length of time. If a foreigner wants to stay and to work in Vietnam, a work permit and a visa or a TRC will be required.

23.1. Visa

The following visas are relevant in terms of employment and business activities:

Type of Visa	Purpose	Procedure
Business Visa	<ul style="list-style-type: none"> - This type of visa is for foreigners attempting to enter Vietnam for business purposes. - The common validity of a multiple-entry business visa is 3 months. 	<p>The authority receiving the application is the Immigration Department in Vietnam.</p> <p>After obtaining the visa approval, the visa can be picked up at the Embassy / Consulate of Vietnam in the country of residence or at Vietnamese airports.</p>
Family Visa	<ul style="list-style-type: none"> - This type of visa is for direct family members of a foreigner working in Vietnam. The family members must have the adequate evidence of dependency. - The maximum validity of a multiple-entry family visa is 12 months on a case by case basis. 	<p>The authority receiving the application is the Immigration Department in Vietnam.</p> <p>After obtaining the visa approval, the visa can be picked up at the Embassy / Consulate of Vietnam in the country of residence or at Vietnamese airports.</p>

Investment Visa	<ul style="list-style-type: none"> - This type of visa is for foreign investors mentioned in the Enterprise Registration Certificate and the Investment Registration Certificate. - The maximum validity of a multiple-entry investment visa depends on the Investment Value (<3, 3-50, 50-100, 100+ billion VND) and shall be granted for the duration of 1, 3, 5 and/or 10 years depending on the value respectively. 	<p>The authority receiving the application is the Immigration Department in Vietnam.</p> <p>After obtaining the visa approval, the visa can be picked up at the Embassy / Consulate of Vietnam in the country of residence or at Vietnamese airports.</p>
-----------------	--	---

For the Visa application (except for tourist visa) the following points have to be considered:

Required documents	Timeline	Application Result
<ul style="list-style-type: none"> - Application forms - Enterprise Registration Certificate - Copy of passport 	5 working days	An approval letter for the employee to receive the visa at an overseas Vietnamese embassy or consulate or at Vietnamese airports.

Note: In practice, the authorities only issue visas with the maximum validity of one year. To stay in Vietnam for more than one year, a foreigner must have a TRC.

2.3.2 Temporary Residence Card (TRC)

The TRC replaces a visa and can be issued if a foreigner has a work permit, a Law Practice Registration or an Investment Registration Certificate investing more than three billion VND. The family can get the TRC along with the employee as long as they provide dependency evidence. For the renewal of the TRC, it is not required to leave Vietnam if the employer remains the same as for the previous TRC.

2.3.3 Foreigners requiring a work permit

While there are exceptions as outlined below, in general all foreign individuals (i.e. non-Vietnamese citizens) require a Work Permit issued by the Department of Labour, Invalids and Social Affairs (“DOLISA”), before they may enter any employment in Vietnam.

There are three general options:

Manager / CEOs	Specialists	Technicians
<ul style="list-style-type: none"> - Managerial position that is entitled to enter into transactions on behalf of the company and who is mentioned in the company’s license / Charter. - CEO’s appointed (if registered in the license, manager definition above applies). 	<ul style="list-style-type: none"> - At least 5 years of work experience and practicing license satisfying the job requirement, or - Bachelor’s degree (or higher) and at least 3 years of work experience in an area relevant for the proposed position. 	<ul style="list-style-type: none"> - Technical training or other specialized training at least one year and at least three years of work experience in trained field, or - At least five years of work experience and practicing license satisfying job requirement.

Work permits are issued by the local DOLISA of the place of employment. They are issued for a maximum period of two years and may be renewed for one time only. Before employing a foreigner on the basis of a local labour contract, the employer must apply for a need of foreign labour at the local DOLISA . In case of Internal Transfer, the parent company has to confirm that the employee has worked for the parent company for at least one year.

2.3.4. Application process for a work permit

For the application process, the following points have to be considered:

Application process	Required documents	Timeline	Result
Step 1 Registration of the need of using foreign employee	Report on the need of using foreign employee	10 working days	Approval on the need of using foreign employee
Step 2 Application for work permit	<ul style="list-style-type: none">- Application form- Approval on the need of using foreign employee- Criminal record from overseas OR in Vietnam- Health check from overseas OR in Vietnam- Experience confirmation AND Educational qualifications	5 working days	Work permit with the limitation of 2 years
Step 3 Submission of labour contract (recruitment case)	Copy of signed labour contract	Note: The signed labour contract must be submitted to the labour authority within 5 working days from the date of signing the labour contract.	

2.3.5. Exemptions for foreigners

For the application process, the following points have to be considered:

Short term assignment	<ul style="list-style-type: none">- Less than 30 days per time and up to 3 times a year;- Not required to apply for Confirmation on work permit exemption, but required to give prior notice to the local DOLISA
Internal Transfer in 11 service industries	<ul style="list-style-type: none">- Working for the mother company for at least 12 months;- Business lines (CPC code) details stipulated in the relevant guidance;- Required to apply for Confirmation on work permit exemption
Investor / member of Board of Directors	<ul style="list-style-type: none">- Individual Investor / Member (mentioned in the License) with contributed / authorized capital equal to or more than 3 billion VND;- Member of the BoD in the Vietnamese entity with contributed / authorized capital equal to or more than 3 billion VND;- Not required to apply for Confirmation on work permit exemption, but required to give prior notice to the local DOLISA
Lawyer	<ul style="list-style-type: none">- Foreign Registered Lawyer License
Traineeship	<ul style="list-style-type: none">- Currently studying overseas
Foreigner	<ul style="list-style-type: none">- Marrying to a Vietnamese person

24. PROBATION

It is common practice to arrange a probation period in Vietnam when engaging new employees. The duration of a probationary period as agreed by the two parties shall depend on the nature and complexity of the work and the job position. In details, the parties may agree on the following probationary periods:

- up to 180 days in the case of the job being enterprise manager;
- up to 60 days for working in a position requiring college level or higher specialized or technical expertise;
- up to 30 days for working in an industry or trade requiring intermediate level skills or a technician or professional staff; or
- up to six working days for any other position that requires no training.

Presently, a probationary period can be included in either the labour contract or in a separate probation agreement. The probation agreement is a mutual agreement by the employer and the employee to set forth the terms and conditions applied for the employment relationship during the probationary period.

In case the probationary period is included in the probation agreement, there is no obligation to pay social security contributions during the probationary period. If the probationary period is included in the labour contract, though, the employer is required to pay the social security contributions during probation.

During the probationary period, the probationary salary shall be negotiated by both parties but shall not be lower than 85 percent of the ordinary salary for the job. Either party may terminate the employment relationship during the probationary period without serving a prior notice or paying compensation.

25. WORKING HOURS, REST BREAKS DURING WORKING HOURS, HOLIDAYS, OVERTIME

Below please find an overview of working hours, leave and overtime regulations in Vietnam.

Maximum Working Hours	<ul style="list-style-type: none"> - 8 hours a day - 48 hours per week - the State encourages employers to apply 40-hour workweeks.
Rest breaks during working hours	<ul style="list-style-type: none"> - At least 30 minutes break; OR - At least 45 minutes break during night time <p>If an employee works a continuous shift of at least 6 consecutive hours or more, the rest break shall be included in the working hours.</p> <p>The continuous shift working under the Labour Code is an employment practice designed for at least two people or two groups of people taking turns to work on the same working position, calculated for a period of 24 consecutive hours, and the transition time between two shifts not exceeding 45 minutes.</p>
Paid leave (Annual leave)	<ul style="list-style-type: none"> - 12 days paid leave; 1 additional day for every 5 years of employment; - 11 public holidays; foreign employees are additionally entitled to a day off with pay on 1 traditional public holiday and 1 national day of their country; - Additional days off for special occasions (marriage, death, etc.)
Overtime	Not more than 12 hours work / day, 40 hours overtime / month and 200 hours overtime / year (in some sectors 300 hours / year with permission from DOLISA)
Overtime payment	The overtime pay is at least 150 % of actual hourly wage on a normal working day, at least 200 % on a weekly day off and at least 300 % on a public holiday or paid days off (exclusive of wages of public holidays and paid days off prescribed by the Labour Code).

26. MINIMUM WAGES

Vietnam currently applies two different minimum wages simultaneously, the BASIC MINIMUM WAGE and the REGIONAL MINIMUM WAGES. While the Basic Minimum Wage sets the base for the calculation for the cap of social insurance, health insurance and the salary for state-employees, the regional minimum wages play an important role in setting the minimum wage of non-state employees as well as the base for the cap of the unemployment insurance.

BASIC MINIMUM WAGE: The Basic Minimum Wage amounts to 1,490,000 VND per month and is applied across the country.

REGIONAL MINIMUM WAGES: As the cost of living varies, the Vietnam government divides the Regional Minimum wages into four groups to reflect the economic realities.

As of 1 July 2022, the regional minimum wages will increase by roughly 6 percent after two years of stagnation due to the pandemic.

The new regional minimum wages are as follows:

Region	Cities	Minimum Wage
Region I	Parts of Hanoi and HCMC, Dong Nai Province, Vung Tau Province, Binh Duong Province, ...*	4,420,000 VND / month
Region II	Remaining districts of Hanoi and HCMC, Da Nang, Hung Yen Province, Hue province, Can Tho, Rach Gia, ...*	3,920,000 VND / month
Region III	Remaining provincial cities, ...*	3,430,000 VND / month
Region IV	Covers the remaining administrative divisions	3,070,000 VND / month

*For more detailed information cf. appendix Decree No. 90/2019/ND-CP; defined as per November 15th 2019

27. SALARY DURING SICKNESS AND MATERNITY / PATERNITY LEAVE

An employer is not required to pay salary to an employee who is ill or on maternity leave. Salary during this period is paid by the social insurance fund. Maternity leave is six months. A female employee who is pregnant, on maternity leave or has a child below 12 months of age can only be dismissed if the enterprise ceases operation; no other causes for dismissal are recognized. Paternity leave is also stipulated with 5 – 14 working days, depending on the number of children born and the circumstances of the birth.

2.8. POTENTIAL BONUS SCHEMES

It is common in Vietnam to pay a 13th month salary (i.e. Tet bonus). Such bonus can be depending on the performance of the employee and / or the company.

International investors commonly provide an additional private health insurance. Team outings and company trips are commonly expected by the employees and are considered a bonus. In a country with high staff fluctuation, such team events are usually considered important.

3. Internal Labour Rules (ILR's)

3.1 REQUIREMENT TO REGISTER INTERNAL LABOUR RULES

An enterprise with 10 employees or more must have written Internal Labour Rules ("ILR") covering all important items of the working environment. The written ILR come into effect through registration with DOLISA. In case there is an Organization representing the employees at the grassroots level (i.e. internal labour union and / or any organization established on a voluntary basis by the employees at the company), the employer must consult with such organizations.

If an employer employs less than 10 employees, they are not required to register a written ILR. However, provisions regarding the labour discipline and material responsibility must then be included in the labour contracts.

Well-worded ILRs are important in order for the employer to be able to take disciplinary action against employees, or to terminate labour contracts in case of poor performance. It is difficult for an enterprise to dismiss an employee for an offense, if this offense is not specified in the ILR, or if the enterprise does not have duly registered ILR.

An employee who breaches the ILR may, depending on the seriousness of the breach, be disciplined. The limitation period for dealing with a breach of labour discipline is 6 months to 12 months, depending on the violation.

4. Labour discipline

There are various types of labour disciplinary measures which depend on the seriousness of the breach of labour rules committed by an employee, which are:

- Reprimand
- Deferral of wage increase for a maximum of six months
- Demotion
- Dismissal

4.1 PROCEDURES OF LABOUR DISCIPLINE

The procedures for handling a violation of labour discipline must strictly adhere to the procedures outlined by the labour regulations.

The principles for handling a violation must comply with the following regulations:

- A meeting must be organized and duly recorded;
- The employer will bear the burden of proving fault of the employee with the adequate evidences;
- An organization representing employees at the grassroots level, in which the employee is a member, has to participate;
- The employee has the right to defend himself or ask for a lawyer.

It is prohibited to impose more than one form of labour discipline for a single violation. For an employee who simultaneously commits more than one violation of labour discipline, only the highest form of discipline corresponding to the most serious violation can be applied. Exemptions of the application of labour discipline apply to employees that are sick, pregnant, on maternity leave, and / or are mentally disordered.

Prohibited acts when handling violations of labour discipline include:

- Infringing upon the body or dignity of the employee;
- Applying a fine or wage reduction, instead of a disciplinary measure;
- Impose more than one form of discipline for a single violation of labour discipline;
- Disciplining an employee who has committed a violation that is not defined in the internal working regulations or in the labour contract in case the employer hires less than 10 employees.

4.2. HEALTH AND SAFETY OBLIGATIONS

An employer must comply with the law on occupational safety and hygiene. The employer must rely on standards, national technical regulations and local technical regulations on occupational safety and hygiene in order to formulate their own internal rules and working procedures and to ensure occupational safety and hygiene as appropriate for each type of machinery, equipment and workplace.

Employers are required by law to contribute to the basic state health insurance for their employees, and they must also provide regular annual health checks. It is common in international companies to provide an additional private health insurance in order to cover the employee better than the compulsory state health insurance.

5. Trade Union

5.1 VIETNAM'S TRADE UNION SYSTEM

There is a multilevel system of trade unions in Vietnam, which ranges from the Vietnam General Confederation of Labour (VGCL) as an umbrella Organization, to the unions at grassroots level. Apart from collective negotiations, trade unions fulfill such tasks at company level, which are taken over by the works council in other countries.

Unlike in some European countries, trade unions in Vietnam are not entitled to participate in management decisions and presently have no right to be informed about the economic performance of the enterprise.

Employers are not obliged to establish a trade union, but they have the responsibility of creating a favorable environment for the establishment of unions. In order for a union at enterprise level to be established, five or more employees have to unite and request for voluntary participation in the Vietnamese union. Employers must provide the union in their enterprise with a suitable workplace and adequate facilities. Union officers are entitled to certain time off with pay in order to fulfill their functions.

The compulsory trade union fee equals 2 percent of the total salary for social insurance contribution of all employees per month, and has to be paid to the trade union's account, in which 70 percent of the trade union fee will be returned to the grassroots union of the company.

Employees who join the grassroots union of the company are also obliged to pay the trade union member fee, equivalent to 1 percent of the salary that is used as a basis for social insurance contribution to the trade union's account. 60 percent of the trade union member fee will be returned to the grassroots union of the company.

6. Strikes

6.1 LEGAL PROVISIONS ON THE RIGHT TO STRIKE

Any strike organized by unions requires prior notification to the employer and the labour authorities, and has to follow all relevant regulations for going on strike. This procedure is often cumbersome and lengthy. If a strike occurs, it is therefore usually a wildcat strike, i.e. a strike that is not initiated by any union.

The most common reasons for strikes to occur include the desire on the part of the employees to negotiate higher salaries or additional benefits. Such strikes are illegal as the law provides that strikes must be led by a union and are allowed only after dispute resolution mechanisms have failed.

7. Termination of Employment

The rights employees have when their labour contract is terminated depend upon the reason of termination and the type of labour contract. This has effects on the notice period and possible severance payments. The Labour Code is largely oriented towards the needs of the workforce and, in particular in the case of labour disputes, is usually interpreted in favor of the employee.

The employment relationship ends in the following cases:

Basis	Prior notice requirement ¹	Separation benefit	Other requirements
Expiry of labour contract	None	Severance allowance of 0.5 month's salary for each year of employment, excluding periods covered by the statutory unemployment insurance scheme ² ("Severance Allowance")	None
Work completion			
Mutual termination			
Employee is sentenced to serve a jail term, capital punishment, or is prevented from performing the job by judgement or decision of a court			

¹ This requirement means that termination must be notified a certain period of time ahead of it being implemented, as prescribed by Vietnamese Labour regulations. For bases that are not subject to the prior notice requirement, the termination can be communicated at any time that the party having the right to terminate considers appropriate and reasonable.

² Compulsory unemployment insurance has been introduced with effect as of 1 January 2009

Basis	Prior notice requirement ¹	Separation benefit	Other requirements
Foreign employee who is expelled due to judgments or decisions of courts and competent authorities in Vietnam	None	None	None
Foreign employee whose work permit has been invalidated			
Expiry of probation without concluding a labour contract			

7.1. UNILATERAL TERMINATION

A unilateral termination of a labour contract by the Employer is only possible in very few cases and after a long and burdensome process of termination procedures. It is therefore often recommendable to enter into a termination agreement (please see below under 7.2 Bilateral Termination). In principle, an employment relationship can only be terminated if such termination is supported by a legitimate reasons and by observing the applicable notice period.

The statutory minimum notice periods are depended on the type of labour contract.

- Definite-term contracts of less than 12 months: three working days
- Definite-term contract: 30 calendar days
- Indefinite-term contract: 45 calendar days
("Normal Notice Period")

In some special industries and trades and for specific jobs (e.g. enterprise manager), the statutory minimum notice periods shall be as follows:

- Definite-term contracts of less than 12 months:
At least equal to a quarter of the term of the labour contract.
- Definite-term contract and Indefinite-term contract: 120 days
("Special Notice Period")

7.11 Termination by Employer³

Basis	Prior notice requirement ⁴	Separation benefit	Other requirements
<p>Lawful reason triggering the unilateral termination of the Employee:</p> <ul style="list-style-type: none"> - The poor performance of the Employee; - Prolonged illness of the Employee; - Force Majeure events that lead to the reduction of labour force due to a scale- down of business; - Employee reaches the retirement age; - Employee provided untruthful information; - Employee is absent from the workplace following temporary suspension of labour contract; - Employee is absent from workplace without legitimate reason for 5 consecutive working days or more 	<p>Applicable notice period required</p>	<p>Severance Allowance⁵</p>	<p>For the reason of termination due to the poor performance of the Employee: Criteria for assessing the work completion should be provided in a separate performance assessment policy issued by the employer, prior notification and consulting with the Organization representing the employees at the grassroots level (if any) in advance being also required.</p>

Employer conducts restructuring, technological change, economic reason, merger, acquisition, consolidation or division	Notice to the trade union and the Department of Labour, Invalids and Social Affairs where employer is located	Job-loss allowance of one month's salary for each year of employment, excluding periods covered by the statutory unemployment insurance scheme, and in any case not less than two months' salaries.	A labour usage plan must be developed and consulted with the Organization representing the employees at the grassroots level (if any) in advance, giving prior notice of 30 days to the People's Committee of the province and to the employees.
Dismissal	Please refer to Chapter 4 on Labour Discipline.		

³ Termination by employer is not allowed in any of the following situations:

- Employee has been on leave for treatment due to sickness or accident, except in case of basis (c) of Section 1.2;
- Employee is on leave as permitted by the employer;
- Pregnant employee; or
- Employee is on maternity leave or is raising a child under 12 months old.

⁴ This requirement means that termination must be notified a certain period of time ahead of it being implemented as prescribed by Vietnamese labour regulations. For bases that are not subject to the prior notice requirement, the termination can be communicated at any time that the party having the right to terminate considers appropriate and reasonable.

⁵ Except for the cases in which the employee is entitled to receive retirement pension as prescribed by social insurance laws, and the cases in which the employee is absent from workplace without legitimate reason from five consecutive working days or more.

7.12 Termination by Employee

Basis	Prior notice requirement [†]	Separation benefit	Other requirements
At employee's discretion	Normal Notice Period	Severance Allowance	None
Lawful event trigger to the unilateral termination of the Employee.	None	Severance Allowance	None

7.2. BILATERAL TERMINATION

In contrast to a dismissal, the termination agreement is the most common and most viable option for terminating an employment relationship.

The laws and regulations also offer the employee legal remedies for an unlawful termination. The employee can turn to the relevant labour authorities. The labour authorities will then initiate a mediation procedure.

Should this procedure fail, the employee may request the Court for reinstatement and compensation within one year from the day on which the employee discovers the act of infringement of his / her lawful rights and interests. In case the strict formal requirements (as outlined in the previous section 7.1.1) are not observed to the full extent, the employer must reinstate the employee, pay the full salary, compulsory social insurances for the period during which the employee was not allowed to work, plus at least two months' salary specified in the employment contract as compensation.

A mutual termination agreement between the employer and the employee is therefore often used in order to avoid any potential dispute that may arise, or to avoid any shortcoming of the termination procedure.

The termination agreement should cover the date of termination, severance payments, leave days, handover, bonus payments, and any other relevant topics. The more comprehensive a mutual termination agreement is drafted, the less likely it is that the termination will be successfully contested.

8. Taxes and duties

8.1. PERSONAL INCOME TAX (PIT)

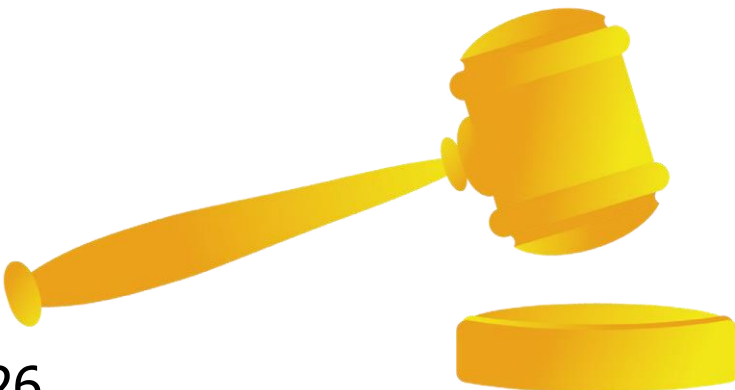
Vietnamese and foreigners working in Vietnam are subject to personal income tax (PIT). The tax base depends on the residence status of the individual. Basically, the duration of a foreign employee's stay determines his tax status. Tax residents are those individuals meeting one of the following criteria:

- Residing in Vietnam for 183 days or more in either the calendar year or the period of 12 consecutive months from the date of first arrival; or
- Having a permanent residence in Vietnam and being unable to prove tax residence in another country in the case where the actual residing days in Vietnam is less than 183 days.

Tax residents are subject to Vietnamese PIT on their worldwide income including both, employment and non-employment income. Foreign tax credit is only applicable to income sourced from overseas, and is conditional upon satisfaction of supporting documents.

Individuals not meeting the conditions for being tax resident are considered tax non-residents. Tax non-residents are subject to PIT on the allocated income for the work relating to Vietnam, irrespective of presence in Vietnam.

While the PIT rates vary for non-employment income, employment income is taxed at a progressive PIT rate of up to 35 percent for tax residents, and a flat rate of 20 percent for non-tax residents.



8.2. COMPULSORY SOCIAL INSURANCE, HEALTH INSURANCE, UNEMPLOYMENT INSURANCE AND TRADE UNION FEES

Vietnam has a compulsory social, health and unemployment insurance scheme. Contributions are to be borne by both, the employer and the employee. The basis for calculating the contributions is the monthly salary as stipulated in the labour contract (capped at 20 times the common minimum wage for social insurance / health insurance, and 20 times the minimum regional wage for unemployment insurance).

An employer is obliged to withhold the employee's portion of the insurance contribution from the salary of the employee and to transfer the amount together with the employer's portion to the insurance carrier.

The contribution rate to trade union funds is set at 2 percent of the salary fund for social insurance contributions for employees. This fee must be paid into the Trade Union funds on a monthly basis.

	Local Employee	Employer	Foreign Employee	Employer
Social insurance	8%	17.5%	8%	17.5%
Health insurance	1.5%	3%	1.5%	3%
Unemployment insurance	1%	1%	-	-
Union Fee	-	2%	-	-
Total	10.5%	23.5%	9.5%	20.5%

9. Penalties

9.1. WORK PERMIT VIOLATIONS

The penalty for employers for failure to apply for work permits and / or an exemption thereof is an administrative fine of up to 150 million VND (6,500 US Dollars) or deportation.

9.2. PENALTIES FOR EMPLOYERS FOR VIOLATIONS IN TRADE UNION CONTRIBUTIONS

Failure to fully contribute trade union fees or to do so in a timely manner will be subject to an administrative fine of 24 to 30 percent of the total union fees due (capped at 150 million VND, approx. 6,500 US Dollars) and interest for late payment.

Failure to contribute trade union fees for all employees will be subject to an administrative fine of 36 to 40 percent of the total union fees due (capped at 150 million VND, approx. 6,500 US Dollars) and interest for late payment.

Hanoi



Ho-Chi-Minh-Stadt



About us

As attorneys, tax advisers, management and IT consultants and auditors, we are present with 107 own offices in 50 countries. Worldwide, our clients trust our 5,260 colleagues.

The history of Rödl & Partner goes back to its foundation as a solo practice in 1977 in Nuremberg. Our aspiration to be on hand wherever our internationally-active clients are led to the establishment of our first, own offices, commencing with Central and Eastern Europe in 1991. Alongside market entry in Asia in 1994, the opening of offices in further strategic locations followed, in Western and Northern Europe in 1998, USA in 2000, South America in 2005 and Africa in 2008.

Our success has always been based on the success of our German clients: Rödl & Partner is always there where its clients see the potential for their business engagement. Rather than create an artificial network of franchises or affiliates, we have chosen to set up our own offices and rely on close, multidisciplinary and cross-border collaboration among our colleagues. As a result, Rödl & Partner stands for international expertise from a single source.

Our conviction is driven by our entrepreneurial spirit that we share with many, but especially German family-owned companies. They appreciate personal service and value an advisor they see eye to eye with.

Our 'one face to the client' approach sets us apart from the rest. Our clients have a designated contact person who ensures that the complete range of Rödl & Partner services is optimally employed to the client's benefit. The 'caring partner' is always close at hand; they identify the client's needs and points to be resolved. The 'caring partner' is naturally also the main contact person in critical situations.

We also stand out through our corporate philosophy and client care, which is based on mutual trust and long-term orientation. We rely on renowned specialists who think in an interdisciplinary manner, since the needs and projects of our clients cannot be separated into individual professional disciplines. Our one-stop-shop concept is based on a balance of expertise across the individual service lines, combining them seamlessly in multidisciplinary teams.

Contact

📍 HO-CHI-MINH-CITY

Michael Wekezer LL.M.

Director Vietnam Practice
5th floor, Friendship Tower
31 Le Duan Street
District 1, Ho-Chi-Minh-City

T +84 28 7307 2788
michael.wekezer@roedl.com

📍 HANOI

Lutz Koch LL.M.

9th floor, Daeha Business Center
360 Kim Ma Street
Ba Dinh District, Hanoi

T +84 24 7300 0077
lutz.koch@roedl.com



Visit us!

www.roedl.com