



International
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► Industrial Relations Report 2019

Towards Genuine Collective Bargaining





Industrial Relations Report 2019

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► Preface

As part of the collaboration between the International Labour Organization (ILO) - Country Office for Viet Nam and Institute for Labour Science and Social Affairs (ILSSA)- Ministry of Labour, Invalids and Social Affairs of Viet Nam, it is with compliment that the National Industrial Relations Report 2019 is introduced herein. It is hopeful that the report will be referred to as a working paper for labour researchers, labour practitioners and policy makers in industrial relations.

The report is developed by a group of authors under technical support from the ILO NIRF/Canada Project¹ in 2019. Thus, the view expressed in the report should be considered in line with the legal framework of the time, especially in recognition of the Labour Code 2012 and considering changes in the Labour Code 2019.

The report has been validated with relevant stakeholders on 20 November 2020 in Ha Noi, under the support from the ILO's NIRF/USDOL Project ². Participants' comments have been reviewed and incorporated as appropriate.

The views expressed in the report are those of the authors alone and do not necessarily reflect those of either the ILO or ILSSA. Similarly, the use of data source and information represented in the report does not imply endorsement of the ILO or ILSSA for validity.

¹ The ILO's NIRF/Canada Project, funded by the Government of Canada from March 2017 to September 2019, provides supports to build capacity for improving national industrial relations database for evidence-based policy-making.

² The ILO's NIRF/USDOL Project is funded by the United States Department of Labor under Grant number OLIL-29690-16-75-K-11. Any statements made do not necessarily reflect the views or policies of the United States Department of Labor, nor does the mention of trade names, commercial products or organizations imply endorsement by the US Government. One hundred percentage of the total costs of the project or program is financed with Federal funds, for a total of 5.1 million dollars.

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The Report was developed with the instruction and technical advice from Dr. Dao Quang Vinh - Former ILSSA Director, and Dr. Chang-Hee Lee - Director of the International Labour Organization (ILO) in Viet Nam.

Chapter I is compiled by Ms. Nguyen Huyen Le. Chapter II is compiled by Le Dinh Quang, Nguyen Thuy Linh, Do Quynh Chi and Nguyen Duy Phuc. Chapter III is compiled by Dr. Do Quynh Chi, who is also responsible for editing the entire Report.

We would like to thank the staff of Ho Chi Minh City (HCMC) and Hai Phong Departments of Labour, Invalids and Social Affairs (DOLISA) for their active participation in data survey and field research.

We would like to thank ILSSA and NIRF Project staff for supporting us in the preparation of this Report.

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Abbreviations

BIFA	Binh Duong Interior & Furniture Association
CBA	Collective bargaining agreements
CPI	Consumer price index
CPTPP	Comprehensive and Progressive Agreement for Trans-Pacific Partnership
CSR	Corporate social responsibility
DOLISA	Department of Labour, Invalids and Social Affairs
EVFTA	EU-Viet Nam Free Trade Agreement
EVIPA	EU-Viet Nam Investment Promotion Agreement
FDI	Foreign direct investment
FES	Friedrich Ebert Stiftung
FOL	Federation of Labour
FTA	Free Trade Agreement
GSO	General Statistics Office
HCMC	Ho Chi Minh City
ILO	International Labour Organization
ILSSA	Institute of Labour Science and Social Affairs
IR	Industrial Relations
IWTU	Institute of Workers and Trade Unions
MOLISA	Ministry of Labour, Invalids and Social Affairs
MPI	Ministry of Planning and Investment
NIRF	New Industrial Relations Framework
PICC	Performance Improvement Consultative Committee
SME	Small and medium sized enterprise
SOE	State-owned enterprise
VCA	Viet Nam Cooperative Alliance
VCCI	Viet Nam Chamber of Commerce and Industry
VGCL	Viet Nam General Confederation of Labour
VINASME	Viet Nam Association of Small and Medium Enterprises
VITAS	Viet Nam Textile and Apparel Association
VND	Viet Nam Dong
WRO	Workers' representative organization

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► Executive background

The socio-economic context in the period of 2016-18 is favorable for the stable development of IR: Viet Nam's economy has recovered its rapid development, the inflation rate falls below 5 per cent/year, foreign direct investment (FDI) inflows continue to increase sharply, especially in the processing/manufacturing sector, the private sector continues to expand. As a result, the number of waged workers increases continuously, with the average growth rate at 4.58 per cent per year.

The proportion of unskilled workers is still high. The shortage of skilled workers makes enterprises step up in on-the-job training: nearly 70 per cent of jobs are performed by unskilled and low-skilled workers. The lack of linkage between training and demands of market persists when one third of workers are performing jobs which are not connected to their technical/professional qualifications. However, the fact that up to 27 per cent of workers are performing jobs with required expertise higher than their technical/professional qualifications indicates that enterprises have conducted on-the-job training to improve the skills and expertise of their labour force.

The growth rate of wage is higher than that of labour productivity but the average monthly wage is still low: the nominal wage growth rate in the period of 2010-18 is 11.56 per cent while that of labour productivity is 4.7 per cent. However, the disparity is decreasing in the period of 2016-18. The average monthly wage of workers is only 5,776,000 dong Viet Nam in 2018, lower than the living wage estimated by international organizations.

The union density rate of workers increases slightly in the period of 2016-18: the union density rate of workers increases slightly from 18.1 per cent to 19 per cent while that of waged workers decreases slightly from 43.9 per cent to 43.5 per cent. The reason is because the growth rate of waged workers is higher than that of union membership. Approximately 70 per cent of union members are in the non-public sector. With total union membership of 10.3 million, the union system is facing many challenges such as the lack of union officers at immediate upper-level unions, unreasonable allocation of resources, and the demand for renovating union models in enterprises to better suit the needs of different groups of workers.

Social dialogue is carried out at enterprise, multi-employer and national levels, yet it is still formalistic: the provisions on social dialogue in the Labour Code 2012 have helped promote dialogue at enterprises. The dialogue conducted at national level through the National Wages Council and the National IR Committee has certain effects. There have been some initiatives regarding dialogue with multi employers and in industrial parks. However, most enterprises still organize dialogue in a formalistic manner instead of considering it as an inner needs for the enterprises.

Individual labour disputes has increased, while strikes decrease but there are more interest-based strikes: individual labour disputes is increased continuously over the years, of which only a small proportion is handled through mediation. Strikes has decreased sharply during 2016-18, of which half are purely interest-based. Wage is the main cause of both individual labour disputes and strikes, suggesting that genuine bargaining between workers and employers have not been demonstrated through the current collective bargaining mechanism.

The number of collective bargaining agreements (CBA) has increased; however, the quality remains average. Over 60 per cent of enterprises have CBAs signed with their grassroots trade union (the unit trade union established at the enterprise level, hereafter GTU) (in 2018). The ratio of waged workers covered by CBAs to workers covered by CBAs is 24.6 per cent to 10.7 per cent (in 2018), lower than the ratio of unionized wage workers to unionized workers. Most of the CBAs is a mere copy of the law, with only approximately 15 per cent of CBAs having higher-than-law provisions.

Initiative on “pattern” collective bargaining at enterprise and multi-employer levels: Hai Phong and HCMC trade unions have enhanced their support to GTUs and used pressure from the labour market to promote “pattern” collective bargaining (i.e. big enterprises conduct collective bargaining and it becomes a pressure for small ones to make adjustments accordingly). Sectoral CBAs have not brought much effectiveness, but multi-employer CBAs have proven to be a suitable model to strengthen the bargaining power of trade unions and workers, thereby moving towards genuine bargaining and benefiting both workers and employers.

► Introduction

After 30 years of Doi Moi (Reform) implementation, Viet Nam's economy has made remarkable progress, pulling millions of people out of poverty. Viet Nam's industrialization and new development strategies are the foundation for the country to continue its success in implementing international integration policies. Viet Nam has negotiated and signed many free trade agreements (FTA) and has become one of the hubs attracting investment capital to produce goods for big brands in the global supply chain.

Along with the international economic integration, especially the joining in new generations of FTAs such as the EU-Viet Nam Free Trade Agreement (EVFTA), Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), Viet Nam is committed to meeting international labour standards, especially IR-related ones. Besides, the development of harmonious, stable and advanced industrial relations in Viet Nam is facing big challenges. Firstly, social dialogue has not yet become a part of corporate culture; secondly, the labour dispute prevention and settlement system is not effective, reflected in limited quantity and quality of the personnel, implementation mechanisms and institutions. In particular, genuine collective bargaining is rare, especially in relation to wage setting; meanwhile, individual and collective labour disputes as well as strikes that do not follow law-prescribed procedures are mainly wage related.

The National Industrial Relations Report 2019 is developed with a view to evaluating industrial relation development trends such as the development of unions, social dialogue, collective bargaining, labour disputes and strikes during 2016-18 period. Since the lack of genuine collective bargaining has actually been the cause to many of the IR problems, Chapter III of this Report focuses on analyzing collective bargaining situation and initiatives at the enterprise, multi-employer and sectoral levels, thereby making recommendations to social partners to promote and to the rollout of genuine collective bargaining.

Chapter I utilises data from the General Statistics Office (GSO)'s Labour and Employment Survey and other GSO socio-economic data to show economic and labour market development trends which may exert or have exerted an impact on IR at national, sectoral and local levels.

Chapter II employs data from MOLISA, Viet Nam General Confederation of Labour (VGCL) and GSO to calculate IR indicators as recommended by ILO. The Report also uses IR indicators calculated and provided by HCMC and Hai Phong DOLISAs. However, as there is a discrepancy between the IR indicator calculation method and Viet Nam's IR inventory method, some indices remain incompletely calculated.

³ A federation of labour is a federation of enterprise-level grassroots trade union, established at the province level and district level within one province

In **Chapter III**, the authors use information from the field research conducted in three provinces/cities including HCMC, Binh Duong and Hai Phong. Specifically, the authors conducted 88 in-depth interviews with officials of DOLISA, provincial/municipal Federations of Labour (FoL³) and industrial parks, representatives of business associations, of employers and of workers in Hai Phong, HCMC, Binh Duong, and representatives of parties involved in the bargaining of the CBAs of garment and rubber industries.

It is seen that certain IR developments are observed in the period 2016-18: the recovery of the economy and the reduction of inflation have helped create more jobs to waged workers and real wages have increased steadily. As a result, the number of strikes as well as the impacts caused by wildcat strikes also decrease significantly. At the same time, since social dialogue is stipulated in the Labour Code, enterprises have been paying more attention to democracy at the grassroots level. The union membership has increased with over 10 million union members and GTUs are also established in enterprises with less than 50 workers. In addition to the aforementioned progress, there exist challenges in some of the key IR institutions. Although the number of CBAs has increased, the percentage of CBAs resulting from genuine bargaining is still low - accounting for only 15 per cent of the signed CBAs. In enterprises, employers often determine wages unilaterally without consultation or genuine bargaining with the GTU and the workers' collective in general. Therefore, the majority of low-skilled workers are enjoying a wage close to the statutory minimum level. That is also the reason why workers engage in strikes, mainly interest-based ones, for the sake of raising their income and working conditions above the minimum threshold stipulated by the law. Moreover, when individual and collective labour disputes arise, the limitations in the existing labour mediators in both quantity and quality makes the settlement of such disputes difficult.

On the other hand, the period of 2016-18 also witnesses many initiatives of social partners in promoting genuine collective bargaining. For example, at enterprise level, the immediate upper-level trade unions in Hai Phong and HCMC have enhanced their support and connection to GTUs during the bargaining process, while taking advantage of the pressure from the labour market to set better CBA provision favouring workers. In particular, the pilot collective bargaining at multi-employer level in Binh Duong, Hai Phong, Da Nang and some other provinces/cities shows a new direction to enhance the bargaining power of trade unions and workers, address employers' needs for IR stabilization, thereby leading to genuine bargaining benefiting both IR actors.



SOCIO - ECONOMIC CONTEXT OF
INDUSTRIAL RELATIONS IN 2016 - 2018

Chapter

1



Chapter 1

Socio-economic context of industrial relations in 2016-2018

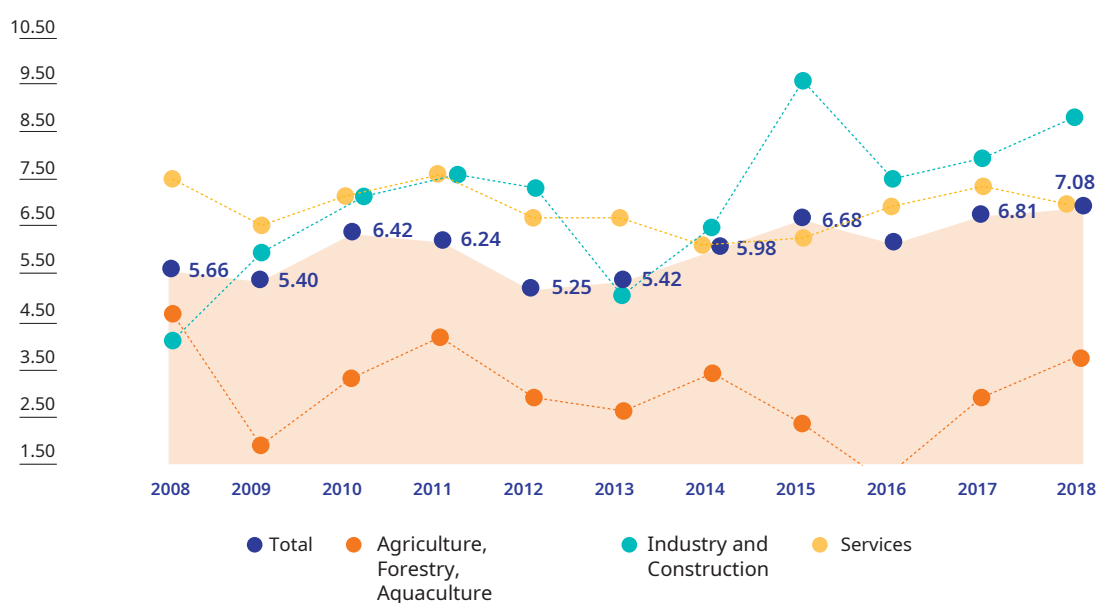
1.1 Economic development situation

► Restoring high and stable economic growth rate

Since Doi Moi (Reform) implementation in 1986, Viet Nam has shifted from a centrally planned economy to a socialist-oriented market economy and has made certain socio-economic advances. After the period of 2008-14, the economic growth slowed down due to the impact of the world's economic

crisis. In the period of 2016-18, the economy recovered. Especially in 2018, Viet Nam's economic growth rate reached 7.08 per cent - the highest increase since 2008 (see Figure 1). In 2019, despite the volatile world economy, Viet Nam's economy continued its high rise of 7.02 per cent.

Figure 1. Economic growth rate 2008-18 (%)



Source: -GSO, Statistical Yearbooks 2008-2017
- GSO, Socio-economic situation in 2018

► **Inflation maintained at a low rate**

In the period of 2008-13, the consumer price index increased highly, sometimes up to 22.97 per cent (in 2008), greatly affecting the lives of workers as well as industrial relations climate. However, since 2014, through the implementation of a series of financial and monetary measures, with inflation maintained at a low rate, the CPI has continuously decreased to 3.54 per cent in 2018 and 2.73 per cent in 2019.

► **Foreign investment continues to increase but mainly in processing industries with low technological contents**

The period of 2016-18 noted Viet Nam's outstanding successes in attracting FDI. In 2018, the investment capital newly/additionally registered and obtained through capital contribution and share purchase was over 35.46 billion USD. The year 2018 has FDI disbursement reach a record level, up to 19.1 billion USD – an increase of 9.1 per cent compared to that in the same period of 2017. FDI is one of the important factors driving Viet Nam's economic growth, creating over 50 per cent of industrial production value and contributing 72 per cent of the export value. The FDI sector creates 4 million direct jobs (performed by 26 per cent of the total business workforce) and approximately 5-6 million indirect jobs. However, over 90 per cent of FDI projects use simple technologies, mainly for assembly and processing. Only 6 per cent of FDI projects use modern technologies (Ministry of Planning and Investment-MPI,

2018). FDI enterprises have not been able to spread technological and management effects to domestic enterprises because they have little production linkages to domestic businesses.

► **Domestic enterprises are blooming but most of them are small and medium sized enterprises (SMEs)**

The number of newly established enterprises has increased. Specially, from 2016 to September 2019 it reaches a record of nearly 102.3 thousand enterprises. The number of workers in enterprises established in the first 9 months of this year is 929.8 thousand, an increase by 13.4 per cent compared to the same period of last year. The increased number of enterprises has led to the increased number of workers. However, 98 per cent of enterprises are SMEs and micro enterprises.⁴

1.2. Labour market

► **The number of waged workers continues to increase, of whom the majority are unskilled workers**

In 2018, the country had 54.25 million employed workers, an increase of 594 thousand people (1.02 per cent) compared to 2017. In the period of 2009-18, the employment growth rate reached an average of 1.34 per cent per year, but tended to slow down in 2011-18. Jobs in the "processing/ manufacturing" and "wholesale, retail, automobile/ motorcycle/ motorbike repair" industries accounted for a large proportion of the total employment (17.78 per cent and

⁴ <http://tapchitaichinh.vn/tai-chinh-kinh-doanh/ho-tro-doanh-nghiep-nho-va-vua-viet-nam-phat-trien-trong-giai-doan-hien-nay-314736.html>

13.38 per cent respectively) and grew considerably in 2018, at 3.09 per cent and 4.63 per cent respectively. By type of workers, unskilled workers accounts for a large proportion with 19.44 million people (contributing 35.98 per cent to the total employment); craftsmen, assemblers and operators of machinery and equipment account for 17.82 million people (32.99 per cent share of the total employment).

In 2018, the country had 23.66 million waged workers (making up 43.8 per cent of the total employment). Over the past 10 years, the employment growth rate has increased significantly among waged workers (4.58 per cent per year), while sharply decreased among business owners (-4.47 per cent per year) and slightly decreased among self-employed and household-based workers (-0.94 per cent per year) in the same period.

In brief, together with the economic recovery and the development of enterprises, the total share of waged workers in employment has increased impressively, from 33.8 per cent in 2009 to 43.8 per cent in 2018. However, nearly 70 per cent of the jobs performed by waged workers are simple jobs or of low skills.

There still exists disparity between jobs and technical/professional expertise of workers

In 2018, of the total employed population in the economy, 62.33 per cent performed jobs that were suitable to their technical/professional expertise and over

one third performed jobs that were not connected to their technical/professional expertise, which shows a big disparity between skill training and labour market's demands. Among workers who performed jobs beyond their technical/professional expertise, 10 per cent are working on jobs of lower expertise than their qualifications, i.e. they are not equipped with necessary skills to find suitable jobs. In contrast, over 27 per cent are performing jobs with required expertise higher than their qualifications, suggesting that enterprises and workers themselves are making efforts to provide/receive on-the-job training to supplement and improve workers' technical skills and expertise for meeting professional requirements, instead of relying purely on vocational training institutes and centers.

Local migrant workers continue to increase, with more female migrant workers from younger age groups

According to GSO, the number of local migrant workers has increased from 5.14 million in 1999 to 8 million (accounting for 9.4 per cent of the population) in 2019. Migrant workers contribute 70-90 per cent of the total workforce in industrial parks in major provinces/cities. The proportion of female migrant workers is increasing, while the age of female workers at their first migration becomes lower (nearly 29 per cent of the women surveyed said they were 15 -19 years old at their first migration) (Oxfam Viet Nam, 2015). Migrant workers are more

⁵ This refers to jobs performed by workers without a labour contract or with verbal agreements only. According to the Labour Code 2012, workers without labour contract are not entitled to mandatory social insurance and health insurance. Also, they are at risk of being fired at any time as they are not covered by the labour law.

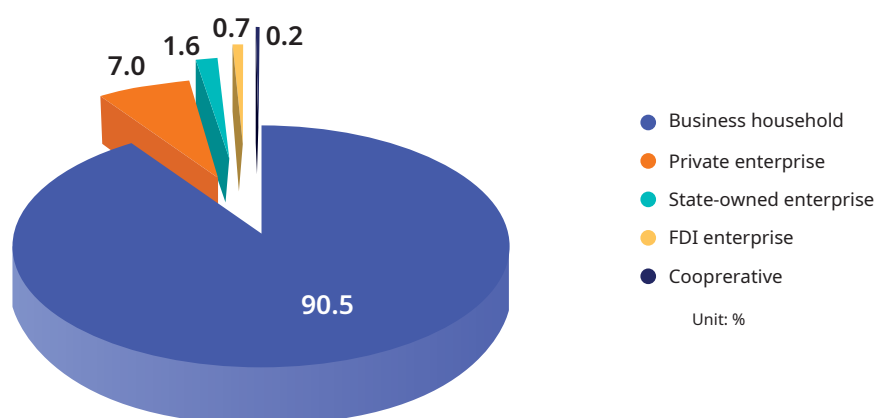
vulnerable due to disadvantages in accessing information and basic social services as well as in enjoying fundamental rights at work and in life (Action Aid 2009). Therefore, features of migrant workers are an important factor affecting industrial relations.

The number of vulnerable jobs tends to increase

Notably, vulnerable jobs⁵ tend to increase among waged workers. In 2018, of the total 23.66 million waged workers, 9.67 million – which was an increase of 286

thousand compared to 2017 - did not have labour contracts, accounting for 40.87 per cent. Over 90 per cent of the workers without labour contracts work in individual business households, the rest are found in all economic sectors, including both formal and informal sectors (see Figure 2). This situation shows the lack of compliance with the labour laws by a large number of employers in both formal and informal sectors of the economy.

Figure 2: Distribution of workers without labour contracts by economic sector



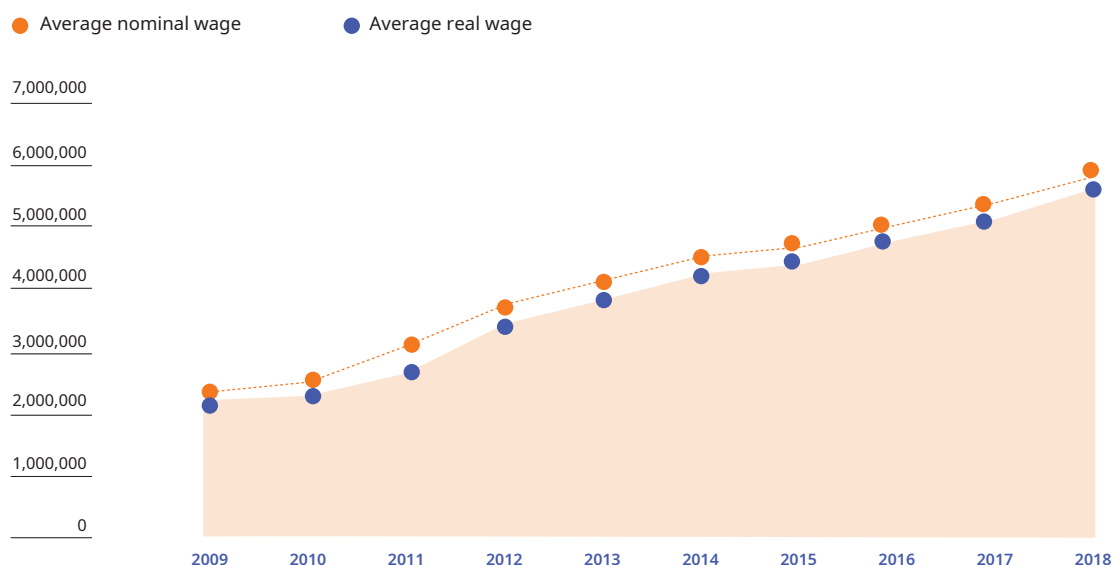
Source: GSO, 2016

1.3. Wage and income of workers

► **The wage growth rate is fast in the period of 2009-18 but the average monthly wage is still low**

In the 2009-18 period, the (nominal) average monthly wage of waged workers has increased significantly. The difference between the average nominal

wage of workers in 2018 and that in 2009 was 2.44 times (see Figure 3). However, the nominal wage growth rate tended to slow down: in 2018, the average monthly nominal wage of waged workers was VND 5,776,000, an increase by 7.5 per cent compared to the previous year and lower than the average wage growth rate of the 2010-18 period.

Figure 3: Average nominal and real income, 2009-18

Source: Calculation from data of the GSO Labour and Employment Survey, 2009-18

Unit: VND

For manufacturing/processing industry, which was considered as the main driving force for economic growth and job creation, in the period of 2009-18 the nominal wage growth rate was quite high, at 11.57 per cent. Specifically, the wage growth rate of the footwear, garment and electronics industries was 13.02 per cent, 12.04 per cent and 10.63 per cent, respectively. The average monthly wages in 2018 of the three industries were VND 5,998,000, VND 5,325,000 and VND 6,592,000 respectively.⁶ These average wages are lower than the estimated living wage.⁷

► **The gap between the wage growth rate and labour productivity is shortened**

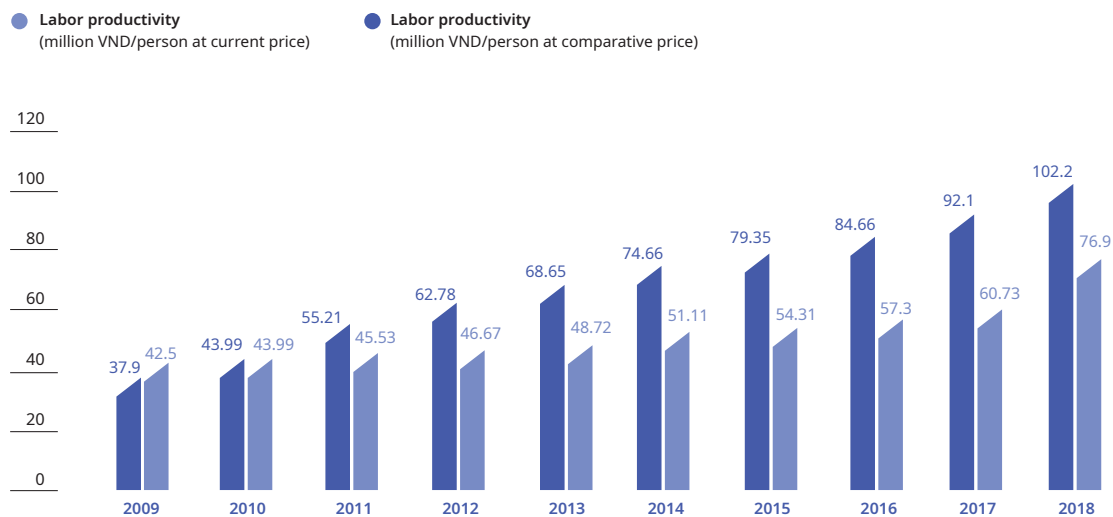
At current price, the labour productivity was increased by 2.7 times from 37.9 million VND/worker in 2009 to 102.2 million VND/worker in 2018 (Figure 4). At comparative price, the average growth rate of labour productivity in the 2010-18 period was 4.7 per cent and that in the 2016-18 period alone was 5.77 per cent⁸.

⁶ ILSSA's calculation based on data from the GSO Labor and Employment Survey 2009-18.

⁷ According to Wage Indicator, the living wage in urban areas of Viet Nam in January 2018 was 7,331,200 VND/ person/month. According to Asian Floor Wage Alliance, the living wage in 2018 was 9,448,000 VND/person/ month (Link: <https://wageindicator.org/salary/living-wage/vietnam-living-wage-series-january-2018>)

⁸ Aggregated from annual socio-economic reports 2009 to 2018, GSO.

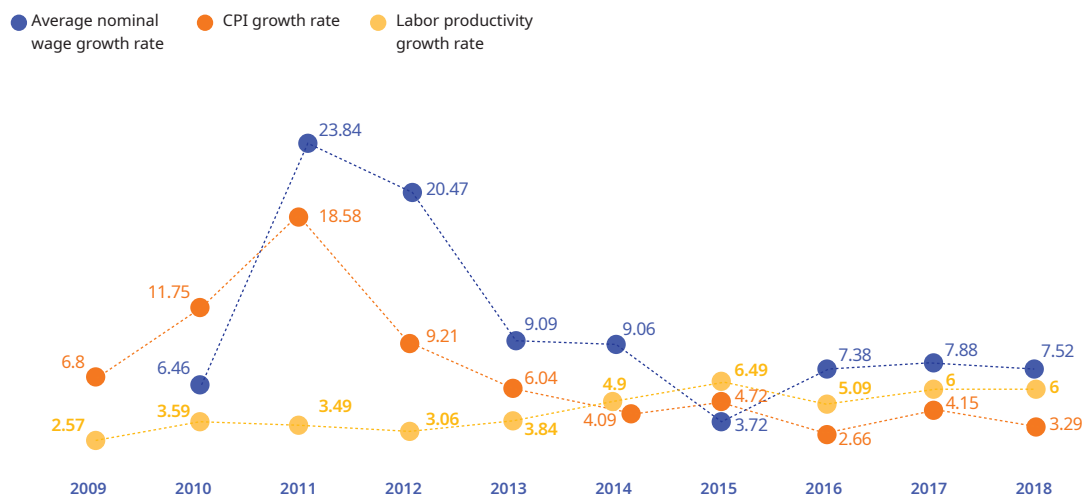
Figure 4: Trend of labour productivity growth, 2009-18



Source: Annual Productivity Reports of Viet Nam National Productivity Institute

Unit: million VND

Figure 5: Average real wage growth rate, CPI and labour productivity, 2009-18 (%)



Source: ILSSA's calculation based on data from socio-economic reports 2009-18 and GSO Productivity Report 2018

Unit: million VND

The average monthly real wage growth rate of waged workers in the period of 2010-18 is 11.56 per cent per year, much higher than the labour productivity growth rate in this period (4.7 per cent). However, in 2018, the gap tended to decrease when the real wage growth rate was 8.52 per cent and the labour productivity growth rate was 6 per cent compared to the previous year (Figure 5).

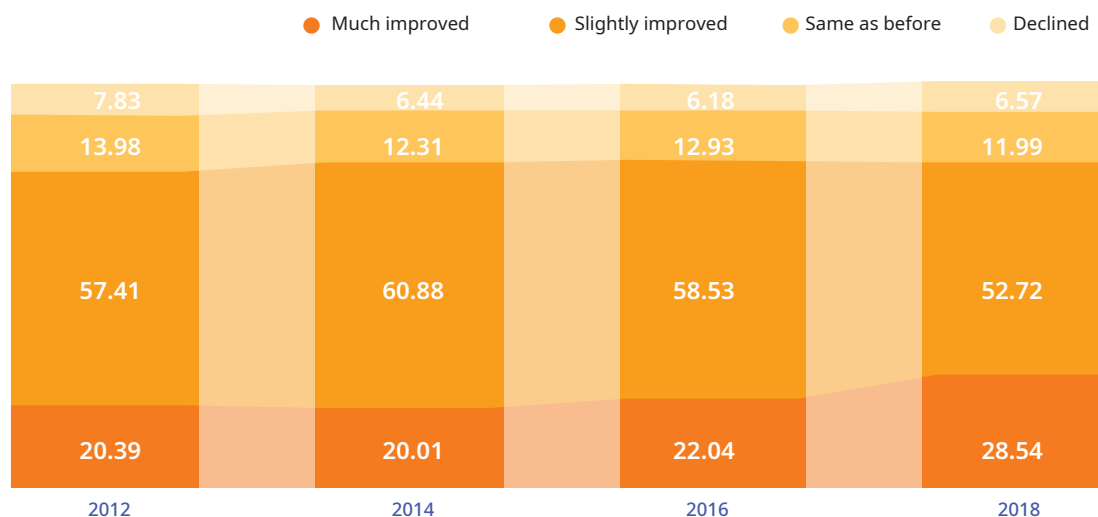
► **Workers' living standards have gradually improved but low wages and wage-related issues are still the cause of labour disputes**

From 2008 to date, the regional minimum wage has been adjusted annually. The adjustment of the minimum wage has an impact on not only the workers who are enjoying a wage rate close to the

minimum wage but also all workers in most enterprises. For example, according to a MOLISA survey, in 2019, 72.5 per cent of enterprises adjusted wages of all workers in view of the new regional minimum wage, with an average increase of 6.02 per cent; the remaining 21.4 per cent of enterprises only adjusted wages of the workers who enjoy a wage rate lower than the minimum one, with an increase of 5.93 per cent⁹.

According to the Household Living Standards Survey, over 80 per cent of workers self-assessed their living standards as "improved over the last 5 years". In particular, the proportion of workers saying that their living standards have been much improved has increased from 20.39 per cent in 2012 to 28.54 per cent in 2018 (Figure 6).

Figure 6: Situation of living standard improvement in 2012-18 period compared to the 5 previous years



Source: Household living standards survey, GSO, 2012-18.

⁹ Finding from a MOLISA survey of 2,000 enterprises in 18 provinces/cities representing 8 economic regions.

However, wages and income are still hot IR issues. According to a survey by Oxfam Viet Nam and the Institute of Workers and Trade Unions (IWTU), 74 per cent of garment workers enjoy a base wage (excluding the overtime premium) lower than Anker living wage (Oxfam 2019). A number of other surveys show that low wages and wage-related issues (such as how wages are determined, unit prices, overtime payment, etc.) are causes of 40 per cent of collective labour disputes (ILO Viet Nam 2011) and of 84.7 per cent of workers' complaints in garment, footwear and electronics industries (Do Quynh Chi, 2017).

1.4. Labour commitments in international trade agreements

Viet Nam's economy is increasingly integrating deeply into the region and the global economy. To date, Viet Nam has signed 13 trade agreements (including 7 agreements signed as an ASEAN member and 6 agreements signed as an independent party). In particular, Viet Nam has just joined the CPTPP and is about to ratify the EVFTA and EU-Viet Nam Investment Protection Agreement (EVIPA). These new generation FTAs are very important to Viet Nam's economic integration process.

As international integration will continue to be promoted, industrial relation system will have to meet both local demands and requirements of international integration. At national level, Viet Nam is bound by bilateral and multilateral obligations in new - generation FTAs (such as CPTPP, EVFTA,

etc.) with commitments to "adopt and maintain", in the law and in practice, fundamental labour standards according to the ILO Declaration 1998. As of the end of 2019, Viet Nam has ratified 7 of the 8 ILO fundamental conventions and pledged to ratify Convention 87 concerning Freedom of Association and Protection of the Right to Organize by 2023. At the same time, enterprises exporting goods to the countries participating in the above-mentioned FTAs must also fulfill their corporate social responsibility (CSR), which includes national and international labour standards.

To Viet Nam, respecting workers' freedom of association not only helps fulfil its commitments to the signed FTAs, but it is also the demand of IR actors in a market-oriented economy. The Labour Code amended in 2019 which shall come into force from 1 January 2021 allows workers to set up their new representative organizations at enterprise level outside the trade union system of VGCL. This will contribute to better protection of workers' rights and interests, especially the right to collective bargaining with employers, thereby improving their income and working conditions above the minimum threshold specified in the law.

The socio-economic and labour market picture in the period of 2016-18 shows that the economic recovery is driving the labour market to a strong development and transition. The number of waged workers continues to increase rapidly, although unskilled and low-skilled workers still dominate. Real wages

continue to rise, with the gap between the real wage growth rate

and the labour productivity growth rate narrowing gradually. Although there have been certain improvements in workers' living standards, wages and income of workers - especially among the unskilled and low-skilled ones, are still much lower than the living wage. In order to maintain a stable labour market as the basis for economic development and to improve workers' life and working conditions, it is necessary to further promote IR

mechanisms in the market economy, with a focus on strengthening genuine collective bargaining between representatives of workers' collectives and employers at all levels and in all industries. This is not only consistent with Viet Nam's commitments to new generations of FTAs but also contributes to addressing Viet Nam's internal challenges in the coming period such as labour shortage, improvement of workers' skills, or adaptation to the effects of technological changes.

DEVELOPMENT TRENDS
OF INDUSTRIAL RELATIONS

Chapter 2

2



Chapter 2

Development trends of industrial relations

The analysis of the socio-economic context and the labour market in Chapter 1 shows that the IR system has more favourable conditions to develop stably in the period of 2016–18 than it did in the period of 2008–15. Chapter 2 will analyze the development trends of the four most important aspects of IR, including: (i) trade union system; (ii) social dialogue; (iii) collective bargaining, and (iv) labour disputes and strikes. In addition to the IR indicators commonly used in Viet Nam, Chapter 2 will also present a number of new IR indicators compatible with the IR indicators recommended by ILO, e.g. union density rate of workers, CBA coverage rate, number of working days lost due to strikes.

2.1. Development trend of Viet Nam Trade Union system

► The union density rate has increased slightly, mainly in the non-public sector

The number of union members as well as of GTUs continuously increased in the period of 2016–18. According to VGCL statistics, by 31 December 2018, there were over 10.3 million union members nationwide (compared to 9.6 million in 2016), of whom 70 per cent were in the non-public sector (see Table 1). The country had over 126,000 GTUs, of which nearly 60 per cent are in the public sector. It can be seen that although the number of GTUs in the non-public sector was smaller, the number of union members in this sector was bigger as there were many big enterprises there.

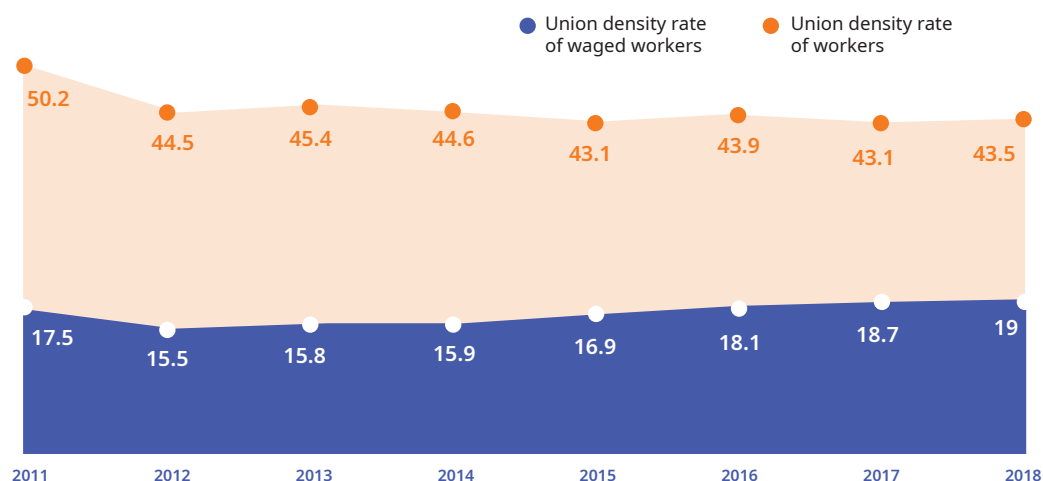
Table 1: Basis data on Viet Nam Trade Union system, 2018

# immediate upper-level unions	1.593
# district FOLs	706
# industrial part unions	44
# unions of local sectors	369
# unions of corporations, economic groups, ministries	228
# GTUs	126.878
In public sector	59.28%
In non-public sector	40.72%
# union members	10.300.446
In public sector	3.098.669
In non-public sector	7.201.777
# union officers	256.987
Full time	8.966
Part time	248.021

Regarding the union density rate of waged workers, it has remained at 43-44 per cent in 2015-18, which is a decrease compared to 50.2 per cent in 2011 (Figure 7). This is due to the high growth rate of waged workers in the 2015-18 period. Meanwhile, the union density rate of workers increased slightly from 17.5 per cent to 19 per cent in the period of 2011-18. With the union membership in the public sector (i.e. state-owned

enterprises - SOEs and public service providers) reaching nearly 90 per cent, the increase of union density rate depends mainly on the recruitment of union members in the non-public sector. Currently, VGCL has expanded the establishment of trade unions to small-sized enterprises; specifically, nearly 88 per cent enterprises with ≥ 30 workers and 57.46 per cent of enterprises with ≥ 10 workers have set up GTUs (VGCL 2019).

Figure 7: Union density rate of workers and waged workers¹⁰ (IR1& IR2)



Source: VGCL data on union members and GSO data on waged workers

The number of immediate upper-level unions at grassroots level was quite big, up to 1593 (Table 1); however, on average, each of these immediate upper-level union structure had only 3.5 full-time union officials who were in charge of about 80 GTUs. This is a fairly heavy workload for immediate upper-level unions, especially in the context where VGCL wants to focus union activities more on the grassroots level.

► The union system promotes activities to represent workers at grassroots level

In the period of 2008-18, the union system has promoted activities to represent workers at grassroots level. Specifically, the number of enterprises holding workers conferences increased from 45.36 per cent (2008) to 53.26 per cent (2018); the number of dialogues increased from over 9,000 (2014) to over 33,000 (2018). In the period of 2013-2018,

⁹ IR1: Union density rate of workers is the number of union members per the total number of workers nationwide.

IR2: Union density rate of waged workers is the number of union members per the total number of waged workers nationwide

nearly 120,000 regular and irregular dialogues were organized. In terms of collective bargaining, by the end of 2018, there were 28,876 CBAs signed at enterprise level (an increase of 13,429 CBAs compared to 2008), 2 CBAs at central sector level, 2 CBAs at local sector level, 4 CBAs with multi employers. The number of workers covered by CBAs was 5,830,430, accounting for 72.34 per cent of the total number of workers in unionized enterprises.

Over the past 10 years, trade unions have participated in resolving 5,037 collective work stoppages/strikes,¹¹ provided advice to 446,179 individual labour disputes, guaranteed interests for 1,518,667 workers; participated in the settlement and protected workers at the court for 9,480 cases, which made 18,137 workers get back to work, 35,174 workers paid with severance allowances, 141,922 get a pay rise, 393,122 workers get their social insurance premiums paid, 919 workers free from labour discipline and from material compensation liabilities. The total amount of compensation claims was VND 94,602 billion (excluding the social insurance premiums in arrears for tens of thousands of workers).

► Challenges in union activities

Firstly, at the moment the union system includes both sectoral unions and local unions, with the former ones organized at both central and local sector levels in accordance with the management model of SOEs. Some unions of central sectors are just immediate upper-level unions (e.g. unions of corporations) while some

others cover agencies/units from various industries (i.e. multi-industry unions). When SOEs are reorganized, the size of unions at both central and local sector levels is increasingly shrinking. Meanwhile, GTUs of non-public enterprises, which are employing the majority of workers in industries, are organized as local unions (e.g., FOL, union of industrial park/export processing zone). The division of sectoral unions and local unions makes it difficult for GTUs in the same industry to collabourate and create collective power for workers in collective bargaining.

Secondly, the model of immediate upper-level unions has certain shortcomings. Immediate upper-level unions are only available to a number of private enterprises and foreign-invested ones, thus if an investor makes investment in various localities, his enterprises will be managed by different provincial/municipal FOLs. SMEs are constantly growing but there are very few models to gather or develop union members and to organize union activities, especially in enterprises with <30 workers, thus many enterprises do not have a union ¹².

Thirdly, union members are assumed to gather in order to unite in trade union activities and promote their strength in performing the functions of unions, but in fact unions are only organized in accordance with the management model of enterprises. There lack other diverse models to gather union members, to organize union activities to meet the legitimate needs of union members, and to exercise the institutions prescribed by law.

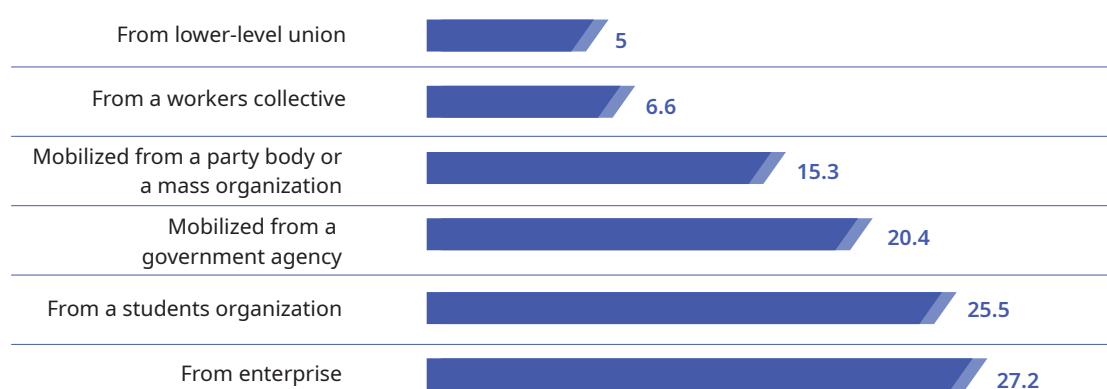
¹¹ FDI enterprises account for 71.36 per cent of the total cases.

¹² Currently, there are 40,718 enterprises with a union, accounting for 19.5 per cent of the total enterprises.

Fourthly, the unreasonable allocation and use of union personnel affect the budget dedicated to trade union activities. Due to overlapping regulations on the permitted number of officers working for trade unions and other socio-political organizations, it is impossible to flexibly adjust the number of union officers to suit the size of GTUs with different union membership and complexity of industrial relations¹³. On the other hand, in addition to the existing personnel (previously assigned), VGCL also allows provincial/ municipal FOLs to sign labour

contracts with additional staff. Therefore, in order to manage the big workload, many unions have to use most of their budget for staffing, thus the budget left for union activities is very limited. Specifically, 35 provincial/municipal FOLs have their immediate upper-level unions spend over 50 per cent of their total budget on salaries and allowances for union officers; 18 provincial/municipal FOLs and unions of central sectors spend over 50 per cent of their total budget on salaries and allowances for union officers.

Figure 8: Background of full-time trade union officers (per cent)



Source: the authors analyzed data of 7,078 people before they become VGCL full-time union officers

Fifthly, there is a lack of full-time union officers who are from grassroots level with practical knowledge about union activities. Reports by 60 out of 63 provincial and municipal FOLs and 19 out of 20 unions of central sectors showed that as much as 61.2 per cent of full-time union officers at immediate upper level union and above either come from students' organizations or are mobilized from party/youth union bodies or mass organizations. In this regards, they do not have much experience and practical skills

relating to union work (Figure 8). Meanwhile, the proportion of full-time union officers coming from lower-level trade unions and workers' collectives accounts for only 11.6 per cent.

Because of the above-mentioned challenges, it is very difficult for trade unions to gather the strength of workers at immediate upper level. When union members stay in different enterprises without any linkages among GTUs under the effective support of immediate

¹³ Currently, VGCL bases on the number of union members and of GTUs under local FOLs to assign the number of full-time union officers. However, according to regulations of Decision No. 282-QD/TW dated April 1, 2015 of the Party Secretariat, the functions, tasks, organizational structure and staffing of specialized bodies to advise and assist Viet Nam Fatherland Front Committee and socio-political organizations at provincial and district levels are to be decided by local party committees.

upper-level unions, unions' capacity for representing the rights and interests of workers in each enterprise will be decreased. This is also an important cause leading to the fact that collective bargaining in enterprises remains formalistic and has not brought real benefits to workers.

The trade union system is introducing many solutions to overcome these challenges and to strengthen linkages and representation capacity, specifically:

- *New approach in union membership development:* since 2013, the union system has been organizing unions using the bottom-up approach (Article 17, Charter of Viet Nam Trade Union, 11th tenure). In the period of 2013-2018, 1,010 GTUs have been established in accordance with Article 17, with 97,231 members. In addition, the establishment of syndicates in the informal sector (e.g. syndicates of motorbike taxi drivers, fishermen, etc.) is also underway.
- Strengthening of social dialogue: in addition to strengthening the organization of workers conferences and regular dialogues, local unions also pilot the organization of social dialogues with enterprises in industrial parks, with domestic and foreign business associations to solve IR problems at regional and sectoral levels.
- Pilot of collective bargaining: besides promoting genuine collective bargaining at enterprise level through the improvement of GTU officers' negotiating skills, Viet Nam Trade Union also pilots new forms of bargaining such as collective bargaining at multi - employer and sectoral levels.

2.2. Social dialogue

► Institutionalization of social dialogue institutions suitable for the market economy

According to the ILO, social dialogue constitutes all types of negotiation, consultation or simply exchange of information between, or among, representatives of governments, employers and workers, on issues of common interest relating to economic and social policy. The main goals of social dialogue are to resolve important economic and social issues, encourage good governance and maintain healthy industrial relations. Social dialogue promotes consensus building and democratic involvement among the main stakeholders. Social dialogue is not a "right" but is an inevitable process when the fundamental rights to association and bargaining are exercised. It can exist as a tripartite or bipartite process (i.e. with or without government involvement); can be informal or institutionalized, and often it is a combination of both. It can take place at the national, regional or at enterprise level. It can be inter - professional, sectoral or a combination of these.

In Viet Nam, the formation of a number of bipartite and tripartite social dialogue mechanisms/institutions only started some years ago. After the country implemented Doi Moi (Reform) process - especially after 1990, the legal system on social dialogue at the enterprise began to be formed and developed. This ensued in the issuance of the Law on Trade Union dated 30 June 1990, Ordinance on Labour Contracts dated 30 August 1990, Decree No. 18/CP on Collective Bargaining Agreement dated 26 December 1992 by the Council of Ministers, the Labour Code 1994 and a number of other legal instrument related to democracy mechanism at enterprise level.

► Box 1: Forms of social dialogue

1. Forms of social dialogue at enterprise level:

- Mechanism for information sharing and consultation between employers and workers and/or workers' representatives on issues related to workers' rights and interests, and issues on production or work.
- Mechanism for implementation of democracy at enterprise level, with two forms that have been institutionalised: regulation on the relationship between the trade union and the employer, and workers conference (previously known as congress of workers and public employees in SOEs);
- Collective bargaining.

2. Form of social dialogue at national level:

- The Industrial Relations Commission, the first national social dialogue mechanism relating to industrial relations, was established under the Prime Minister's Decision No. 68/2007/QĐ-TTg dated 17 May 2007. It functions to advise the Prime Minister on mechanisms, policies and solutions for building healthy industrial relations; formulate a collaboration mechanism among inter-sectoral agencies and organizations in preventing and settling labour disputes and strikes.
- The National Wage Council was established in 2013 under the Decree No. 49/2013/ND-CP dated 14 May 2013, with the function of advising the Prime Minister on annual adjustment of the regional minimum wage based on the consensus of the tripartite constituents.

After nearly 30 years of the implementation of Doi Moi (Reform) policy, the nature of industrial relations has changed. As industrial relations actors have brought forward conflicts of interest that require mechanisms and institutions to reconcile them, giving rise to the need for social dialogue that must be carried out in a regular, genuine and widespread manner. Stemming from this practical requirement, for the first time the Labour Code 2012 provides for a tripartite institution at the national level - the National Wages Council, and workplace dialogue. The Government has issued documents detailing the implementation of these forms of social

dialogue¹⁴. Although there exist limitations, in general legal regulations on social dialogue are better developed and more in line with the requirements and principles of industrial relations in a market economy.

► Social dialogue at national level

At the national level, the National Wage Council and the IR Commission have been steadily operated and have initially obtained certain achievements. The National Wage Council consists of 15 members, 5 of whom representing MOLISA, 5 representing VGCL and the other 5 representing employers' organizations. To carry out the tasks, the

¹⁴ The Government's Decree No. 60/2013/ND-CP dated June 19, 2013 detailing Clause 3, Article 63 of the Labor Code on implementation of grassroots democracy at the workplace (which has been replaced by Decree No. 149/2018/ND-CP dated November 7, 2018), which provides for subjects, principles, contents (topics), forms, consequence, procedures, institutions of bipartite consultation and cooperation; and enforcement mechanisms as well as the conditions necessary for the effective operation of the bipartite consultation mechanism at the workplace.

Chairperson of the National Wage Council establishes a technical team (consisting of 25 members from the agencies participating in the Council from related ministries/sectors, universities, research institutes and Independent experts). After 6 years of operation, the NWC establishment is seen as a right decision by the State, in line with requirements of the development of the market economy and the trends of international integration and participation in international conventions/agreements. The operation of the National Wage Council has changed the mechanism for setting the minimum wage in Viet Nam from determination by the State (according to the Labour Code 1994) to determination upon results of bargaining and agreements at the national level among tripartite partners. According to the assessment by local and foreign researchers, the bargaining conducted at the National Wage Council is becoming increasingly genuine, even quite harsh at times (Torm and Do 2017). Since 2013, the National Wage Council has organized bargaining successfully and convinced the Government to approve increased regional minimum wages 6 times, in 2014 increased by 15.4 per cent, in 2015 increased by 14.2 per cent, in 2016 increased by 12.4 per cent, in 2017 increased by 7.3 per cent, in 2018 increased by 6.5 per cent and in 2019 increased by 5.3 per cent.

The IR Commission is composed of 9 members: 3 members are MOLISA representatives, 2 members are VGCL representatives and 4 members are from employers' representative organizations at central level (Viet Nam Chamber of Commerce and Industry-VCCI, Viet Nam Cooperative Alliance-VCA and Viet Nam Association of Small and Medium

Enterprises-VINASME). In the 2016-18 period, under the coordination of the Committee, the members have carried out their tasks effectively without any overlap/duplication among agencies.

However, there exist certain limitations in the current structure, composition and activities of the National Wage Council and the IR Commission. At the same time, there lacks the participation of independent experts. The National Wage Council is responsible for providing advice on setting of the minimum wage only, not on other wage-related issues. The IR Commission mainly focuses on education and dissemination of laws.

► Dialogue at enterprise level

The forms of dialogue at enterprises are diverse. Given the forms of dialogue prescribed by the Labour Code 2012, the number of regular dialogues and workers conferences has increased constantly from 2013 to date. Specifically, the number of enterprises holding workers conferences was increased from 45.36 per cent (2008) to 53.26 per cent (2018); the number of regular and irregular dialogues was increased from over 9,000 (2014) to over 33,000 (2018). Workplace dialogue is gradually becoming a part of corporate culture with over 90 per cent of SOEs and over 50 per cent of FDI enterprises establishing grassroots democracy regulations, 53.26 per cent of unionized enterprises have been organizing annual workers conferences.¹⁵

In addition to the forms of dialogue prescribed in law, enterprises also conduct many other forms of dialogue. For example, enterprises participating in the Better Work Programme have established Performance Improvement Consultative Committees (PICC), the

¹⁵ IR and Wage Department, MOLISA (2019), aggregated from DOLISA reports.

membership of which being representatives of both employers and workers collectives (in unionized enterprises, 50 per cent of the membership are members of the GTU Executive Committee and 50 per cent are elected by workers; in non-unionized enterprises, 100 per cent of the membership are elected by workers). This is to share information, discuss and propose initiatives to enterprises so that they can comply well with provisions of labour law in order to protect workers' rights and interest as well as the enterprise's interest from the evaluation of importers of goods. In the IDH-implemented Race to the Top Project with the participation of export footwear and apparel factories in Viet Nam, dialogues between workers and the management are used to promote lean manufacturing. In order to continually improve the production process, workers and the management must have regular dialogues on all issues, from production, technology, to safety, hygiene, meals, wages and labour contracts. Based on such dialogues, the management and workers collaborate better to continually improve the production and increase the labour productivity.¹⁶

However, enterprise-level dialogues are still facing many difficulties. Firstly, many enterprises organize workers conferences and regular dialogues in a formalistic manner without actually creating a forum for workers to raise their opinions democratically. Secondly, in many enterprises, the choice of topics for dialogue remains among non-controversial topics (e.g. vacations, welfare activities), while important issues to workers such as wages/income, occupational safety and others are avoided. Thirdly, in certain enterprises, the management only engages in dialogues with the GTU Executive

Committee; however, the GTU itself does not have an effective channel to collect opinions of workers before the dialogues, leading to dialogues non-useful to workers. No matter how a dialogue is organized, if workers are not fully informed and have no chance to express their opinions, such dialogue will neither be genuine nor bring expected outcomes to industrial relations at the enterprise.

► Dialogue with group of multi employers

Viet Nam has promoted the establishment of concentrated industrial clusters. Examples include clusters for producing garment, footwear and furniture products in HCMC, Binh Duong and Dong Nai, clusters for manufacturing electronic products, assembling cars and motorcycles in northern provinces around Ha Noi, cluster for producing wooden furniture in Binh Dinh, or clusters for processing agricultural and aquatic products in the southwest region (Nguyen Xuan Thanh 2016). Within each industrial cluster, there is also a connection among enterprises in the same industry, from the same nationality, from the same industrial park or locality, or in the same supply chain. The above-mentioned clusters have labour-related issues that they need to dialogue and collaborate with one another to solve them, for example: competition for workers, collective labour disputes, problems of non-local workers, etc. Therefore, dialogues between immediate upper-level unions (i.e. unions of industrial parks, district FOL, provincial FOL) and multi-employers groups have been conducted. For example, the social dialogue between a group of 6 garment enterprises in Linh Trung Industrial Park (HCMC) and the union of HCMC industrial parks and export processing zones in 2019 has been held on wages, social

¹⁵ Race to the Top" project:

<http://racetothetop.info/taskforces/task-force-3-lean-manufacturing-practices-facilitate-worker-management-dialogue/>

welfares, occupational safety. Dialogue was also held between Binh Duong Furniture Association (BIFA), Tan Uyen District FOL and Binh Duong Provincial FOL in 2018-2019, between the Taiwanese Business Association in Dong Nai (which represents Taiwanese wood processing enterprises in Dong Nai) and Dong Nai Provincial FOL; and between the Van Lam District FOL (Hung Yen province) and 4 local garment enterprises. At each dialogue, workers' representatives present workers requests and employers' representatives respond to them. On the other hand, employers' representatives also make recommendations to workers' representatives, e.g. avoiding competition for workers, preventing illegal black credit among workers, etc.

Although dialogue with multi-employers groups has not become common, it shows initial results. Dialogues with the above-mentioned groups of employers have led to the successful bargaining and signing of multi-employer CBAs (which will be analyzed in detail in Chapter 3). Dialogue with multi-employers groups is opening a new social dialogue channel suitable to the current industrial concentration structure in the country, and at the same time brings practical benefits to both workers and enterprises. The biggest difficulty for dialogue with multi employers setting is in persuading employers and business associations to take part in dialogues in a serious and genuine manner. Most employers have yet to fully appreciate the benefits of social dialogue to their business and to the management of workers, thus they tend to avoid it or do it formalistically. The second difficulty is that a close link between immediate upper-level unions and GTUs is required in order to fully collect workers' opinions and reflect them accurately in dialogues with employers.

► **Direction for developing social dialogue effectively**

- Continuing to consolidate and renovate the organization and operation of tripartite mechanisms (National Wage Council, IR Committee) to further promote their representative role as well as the proactiveness and creativity of relevant parties in solving IR issues.
- Improving the law on social dialogue towards: i) ensuring and strengthening the independence and representation of the entities participating in social dialogue; ii) ensuring social dialogue principles in the industrial relations of a market economy; iii) ensuring the true participation of workers in the dialogue process; iv) improving the institutions for organizing and supporting social dialogue; and v) improving enforcement mechanisms and the conditions necessary for effective social dialogue.
- Improving dialogue skills for stakeholders, especially workers' representative organizations and workers themselves.
- Diversifying the forms of dialogue which is organized outside enterprises, for example: regular dialogues with domestic employers' representative organizations, foreign business associations in Viet Nam at central, provincial, district and industrial zone levels; dialogues between trade unions and multi-national brands/companies, contractors and suppliers of multi-national brands/companies in Viet Nam.

2.3. Collective bargaining

Collective bargaining agreement is one of the core institutions of industrial relations at all levels. In a market economy,

collective bargaining as a result of genuine and good faith bargaining between workers’ representatives and employers will bring benefits which are more favorable to workers than laws, while contributing to creating stable industrial relations in enterprises, groups of enterprises, industries and the economy. From economic perspective, collective bargaining is an important institution in the labour market, helping workers and employers secure a balance of benefits quickly, flexibly and sustainably. From social perspective, collective bargaining is an important tool to protect and improve the interests of low-skilled and vulnerable workers, especially when the minimum wage and legal provisions have limitations.

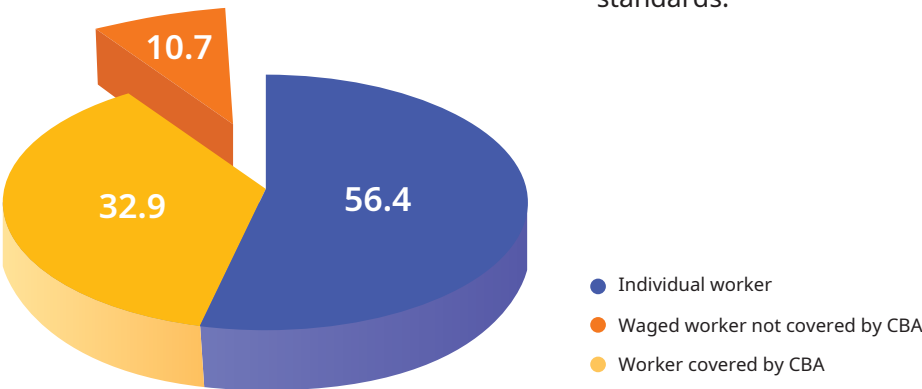
► **The right to collective bargaining has been increasingly expanded**

In Viet Nam, the Labour Code 1995 allows GTUs to represent workers to negotiate CBAs at enterprise level. The Labour Code 2012 extends this right by permitting immediate upper-level unions to represent workers in non-unionized enterprises to negotiate and sign CBAs. In addition, regarding multi-employer and sectoral CBAs, although the Labour Codes 1995 and 2012 do not have specific

provisions, since 2010 a number of CBAs of these types have been negotiated and signed, such as the CBAs signed in the garment and rubber industries or the CBA signed with tourism enterprises in Da Nang, Ha Long, etc.

In June 2019, Viet Nam ratified ILO Convention 98 concerning the Right to Organize and Collective Bargaining - one of the eight fundamental Conventions. Convention 98 includes three main contents: protection of workers and unions against acts of anti-union discrimination; protection of unions against acts of interference by employers; and introduction of measures to promote voluntary collective bargaining. At the end of 2019, the National Assembly passed the Labour Code 2019 with many new provisions. For example, it allows the establishment of workers’ representative organizations at grassroots level that are not affiliated to VGCL system which can represent workers to participate in collective bargaining at enterprise level (Article 68 of the Labour Code 2019). In particular, the new Code supplements provisions on collective bargaining at multi-employer and sectoral levels (Articles 72 & 73 of the Labour Code 2019). It can be said that the legal framework for collective bargaining at all levels is relatively complete and close to the requirements of international labour standards.

Figure 9: Coverage rate of CBAs, 2018



► **Collective bargaining at the enterprise level: the quantity increases but the quality is not high**

According to VGCL statistics, by the end of 2018, there were 28,876 CBAs signed at enterprise level (an increase of 13,429 CBAs compared to 2008), 2 CBAs at central sector level, 2 CBAs at local sector level, 4 CBAs with groups of multiemployers¹⁹. The number of workers covered by CBAs was 5,830,430. The percentage of waged workers covered by CBAs in 2018 was 24.6 per cent and that of workers in general was 10.7 per cent (Figure 9). It can be seen that the CBAs coverage rate was lower than the union density rate (which was 43.5 per cent for waged workers and 19 per cent for workers in general).

In 2018, over 60 per cent of unionized enterprises signed CBAs at enterprise level. The proportion was 100 per cent for SOEs, 64.4 per cent for private enterprises and 60 per cent for FDI enterprises (VGCL, 2018). Although the percentage of unionized enterprises having signed CBAs is high, collective bargaining has not yet become a mechanism for setting wages and working conditions for two reasons:

Firstly, the coverage of signed CBAs is not wide enough. There are currently no accurate data on the number of workers covered by the signed CBAs. However, according to the estimates based on the data published by VGCL, in 2016 there were 12.46 per cent of waged workers covered by CBAs. According to the ILO/NIRF Project which pilots the implementation of IR

indicators in Hai Phong and HCMC, in 2017 the CBA coverage rate in these two cities was 23.3 per cent and 21.5 per cent respectively. It can be said the coverage rate of CBAs was quite low compared to the union density rate as well as the number of waged workers.

Second, the number of CBAs concluded as a result genuine bargaining is very low. According to a survey conducted in 2015 by Friedrich Ebert Stiftung (FES) Institute and Institute for Workers and Trade Union (IWTU), only approximately 15 per cent of over 20,000 registered CBAs offer a wage rate higher than the minimum wage. A VGCL-categorised ranking show a proportion of 11 per cent of CBAs signed at the enterprise level as type A, followed by a 15.6 per cent as type B, another 26.4 per cent as type C, and the rest of 21.2 per cent as type D. Type-A CBAs are considered to be of the best quality, which fully follow the bargaining process guided by VGCL²⁰, engaging workers during the process, and containing provisions that are most favorable to workers. The other three type ranks B, C, D all contain higher-than-law provisions, but they are lower than those in

Type-A agreements and they do not fully comply with the bargaining process guided by VGCL (Pham Thu Lan 2019). According to another survey conducted by the authors of this report in HCMC, Binh Duong, Hai Phong and Quang Ninh, the percentage of CBAs with provisions more favorable than laws ranges from 15 to 20 per cent.

¹⁹ In 2015: 25,396 CBA, increased by 4,7% compared to 2014. In 2016: 27,049 CBAs, increased by 6,5 per cent compared to 2015. In 2017: 27,866 CBAs, increased by over 3 per cent compared to 2016.

²⁰ The categorization of CBAs is based on VGCL's Guidance No. 1580/HD-TLD dated October 21, 2014. The decision on whether a CBA is of type A, B, C or D is based on the score given to that CBA in relation to the bargaining process, contents that are more favorable to workers than laws, organization of CBA implementation, impact of the CBA on union members and workers. The maximum score is 100. Type A: ≥80 scores, in which items No. 7 and 11 in the criteria list must not be lower than 70 per cent of the benchmark. Type B: 65 - <80 score, in which items No. 7 and 11 in the criteria list must not be lower than 50 per cent of the benchmark. Type C: 50 - <65 score. Type D: <50 score.

As such, the percentage of workers who benefit from genuine CBAs with provisions more favorable than laws is less than 5 per cent. There are many reasons causing the low CBA coverage rate as follows:

Firstly, the planned economy still leaves a strong influence on IR actors. Not only the trade union system but also many Vietnamese enterprises are familiar with the planned mindset, according to which IR actors only do what is prescribed by law instead of actively negotiating with each other to come up with provisions more favorable than laws. Therefore, many employers as well as GTUs get confused when engaging in collective bargaining.

Secondly, as analyzed in Section 2.1, the current Viet Nam Trade Union system includes both local and sectoral unions, resulting in a decrease in union's strength. For example, the union of the garment industry currently has about 150 GTUs while there are over 8,000 garment enterprises in the country. The majority of GTUs of garment companies are under the management of local unions such as district FOLs, unions of industrial parks instead of being under sectoral unions. As a result, the collaboration and coordination among unions to create strength in bargaining has been limited.

Thirdly, 98 per cent of Vietnamese enterprises are SMEs and micro enterprises, which operate scatteredly and most of them are non-unionized. Therefore, organization of collective bargaining is neither a priority nor mandatory to these enterprises.

Fourthly, in order to ensure successful collectively bargaining, the most important weapon of unions in the world is collective actions to pressure employers and show the power of workers'

collectives. In Viet Nam, however, unions have never organized any strike although there have been more than 6,000 collective work stoppages. Experience in the world shows that in absence of strong support from sectoral unions and of ability to pressure employers through collective actions, it will be difficult for collective bargaining to bring better benefits to workers.

► **Towards genuine collective bargaining**

Promotion of genuine collective bargaining at enterprise level

The period of 2016-18 has witnessed many initiatives and solutions of trade unions, labour management agencies and social organizations which have been implemented and created new and positive directions for collective bargaining in enterprises. Labour management agencies encourage enterprises to bargain only provisions that are more beneficial to workers even if the CBA is only 2-3 pages long (instead of dozens of pages long as before). Immediate upper-level unions actively supports GTUs in the bargaining process. For example, immediate upper-level unions have organized many training courses for GTU officers on collective bargaining, focusing on practical skills. Unions of industrial parks and economic zones organize clubs for GTU officers to discuss regularly with one another about bargaining experience, the allowance rate or meals that each union has bargained successfully. In Hai Phong, HCMC, Binh Duong and Dong Nai, immediate upper-level unions have developed initiatives to synthesize data on average wages, allowances and meals offered by local enterprises and on the annual inflation rate, then share them with GTU presidents as a basis for conducting collective bargaining at the enterprise.

Table 2: List of valid CBAs signed with multi employers, 2019

Employer	Industry	Province	participating enterprises	of workers covered	Validity
Trang Due	Electronics	Hai Phong	19	7.000	2019- 22
Tourism enterprises in Da Nang	Tourism	Da Nang	10	2.700	2018- 20
Timber enterprises in Dong Nai	Wood processing	Dong Nai	6	12.303	2019- 20
Garment enterprises in Linh Trung industrial park	Garment	HCMC	5	5.921	
Kindergartens in Quang Nam	Education	Quang Nam	10	27	2019- 21
Timber enterprises in Binh Duong	Wood processing	Binh Duong	16	9.730	2019- 20
Garment enterprises in Van Lam district	Garment	Hung Yen	5	4.000	2019- 20
Tourism enterprises in Ha Long	Tourism	Quang Ninh	28	4.600	2018- 20
Rubber sector (Phase 2)	Rubber growing & processing	Nationwide	60	6.500	2019- 21
Garment sector (Phase 4)	Garment	Nationwide	80	120.000	2017- 20
Garment sector in Binh Duong (Phase 3)	Garment	Binh Duong	13	7.000	2017- 20
Garment sector in Hanoi	Garment	Hanoi	27	5.000	2017-20

Promotion of collective bargaining with multi employers

One solution towards the extension of the CBA coverage and the strengthening of bargaining power of workers' representatives is to conduct bargaining at multi-employer and sectoral levels. Since 2010, VGCL and a number of domestic and international partners such as ILO, CNV International have piloted a number of multi-employer CBAs. Initially, VGCL supported unions of sectors (e.g. garment, rubber, petroleum) in negotiating sectoral CBAs. So far, the CBA of the garment sector has come to phase 4 (2017-2020) and that of the rubber industry has just been signed for the second time (2019-2021). However, the above-mentioned sectoral CBAs have only been signed by SOEs which are subsidiaries of state-owned corporations. Therefore, since 2016, VGCL has cooperated with ILO to pilot CBAs signed with multi non-public sector employers (see Table 2). The initial pilot results show that to some extent, genuine and good faith bargaining has been carried out by both unions and employers. This has brought about benefits, albeit modest, to workers. The pilot CBAs signed with groups of multi employers will be analyzed in depth in Chapter 3 of the Report.

2.4. Labour disputes and strikes

► Institutions and mechanisms

Compared to the Labour Code 1995, the Labour Code 2012 has made certain adjustments to the procedures for resolving individual and collective labour disputes, in particular it supplements procedures for settling strikes that are organized outside the law-prescribed procedures (this provision is detailed by

Decree No. 05/2015/ND-CP. However, only a small proportion of individual labour disputes are resolved in accordance with the law-prescribed procedures and the settlement of most collective labour disputes ignores such procedures.

The three notable points relating to labour dispute settlement mechanisms provided in the Code are:

(i). Mediation is a required step in settling both individual and collective labour disputes. There is no difference in the processes and procedures (and personnel) for mediating collective labour disputes (both right-based and interest-based ones) and individual labour disputes.

(ii). The difference in nature between mediation and arbitration is not clearly set out in the Code

(iii). The procedures for handling strikes that are organized against the law-prescribed order prescribed in the Labour Code and Decree No. 05/2015/ND-CP are inappropriate and cannot be implemented in practice.

► Individual labour disputes

According to statistics of the Supreme People's Court, the number of individual labour disputes resolved at the Court has constantly increased since 2000 (see Table 3). Most labour disputes are settled at the courts of localities where industrial zones are located such as HCMC, Binh Duong, Can Tho, Hanoi, Hai Duong, and Vinh Phuc. The majority of labour disputes occur in foreign-invested enterprises. According to the labour lawyers representing the workers at labour courts, most of the cases brought to court are related to unlawful dismissal, unilateral termination of labour contracts and occupational accidents.

Table 3: Number of individual labour disputes settled by courts

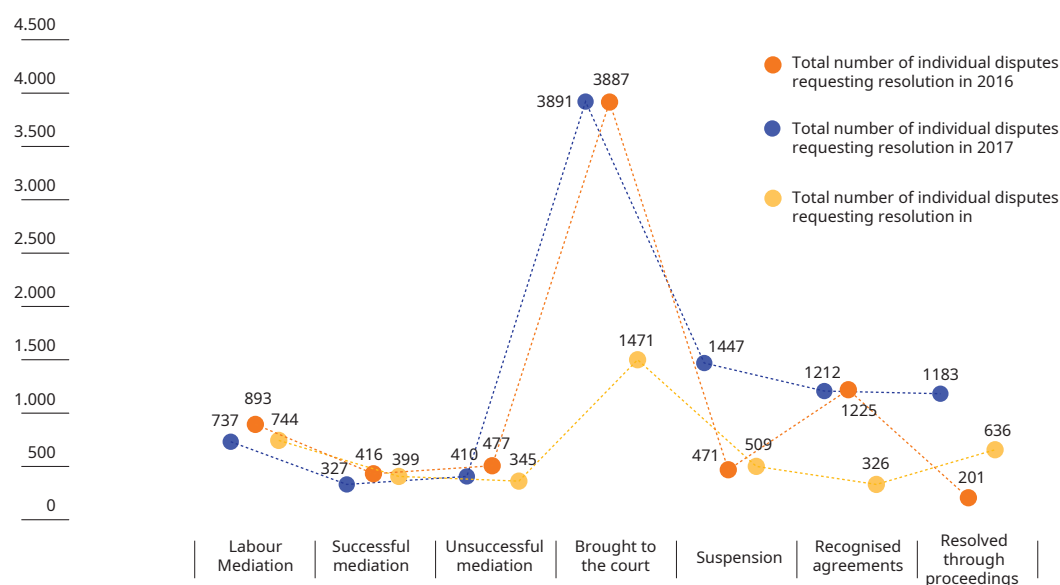
Year	disputes settled by courts
2000	745
2001	690
2002	805
2003	652
2004	714
2005	950
2006	820
2007	1022
2008	1701
2009	1890
2010-11	N/A
2012	3117
2013	4470
2014	4682

Source: Evaluation report of Supreme People's Court on the implementation of the Law on Complaints, 2015

In practice, the total number of individual labour disputes resolved through various channels such as labour mediators, labour inspectors and courts is much larger. For example, according to statistics from HCMC DOLISA, the number of mediated individual labour disputes increased from 737 in 2016 to 893 in 2017 and then decreased to 744 in 2018, of which successful mediation accounted for 45 per cent. The main causes of disputes were wages and severance allowances (accounting for an average of 43 per cent in the period of

2016-18), followed by labour contracts and labour discipline (Figure 10). However, Figure 10 also shows that the number of labour disputes brought to the court was much higher, reaching 3891 in 2016 and halving to 1471 in 2018. Meanwhile, the percentage of disputes handled by the court fluctuated sharply from 30.4 per cent in 2016 to 5.7 per cent in 2017 then to 43 per cent in 2018. This was because many disputes were resolved through the agreement of the disputing parties or were suspended.

Figure 10: Individual labour disputes in HCMC, 2016-18



Source: Report of HCMC DOLISA September 2019

Đơn vị tính: Vụ

In order to prevent and resolve thoroughly individual labour disputes, effective dialogue systems at enterprise level and professional labour mediators are required. However, currently the number of labour mediators is very small. For example: in Binh Duong and HCMC, there is only 1 labour mediator per 1000 enterprises. In addition, many enterprises do not have an effective and proactive dialogue system to address the risks of disputes, instead they just deal with conflict in a passive and temporary manner, thus it is very likely that such conflicts turn into disputes (Do Quynh Chi 2017).

► Collective labour disputes and strikes

Since 2012, the number of annual strikes has been steadily decreasing to 101 in 2018 (see Figure 11). One feature of the strike trend is that it is positively related to the inflation rate (Schwelshelm and Do

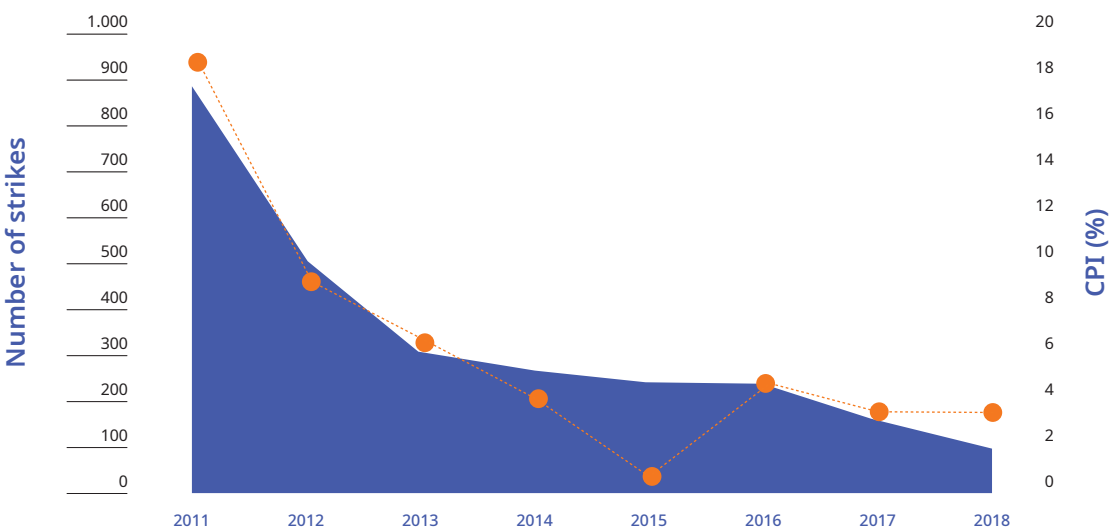
2018). Normally, when the inflation rate is high (over 20 per cent), like in the period of 2011-13, the number of strikes increases. On the contrary, when the inflation rate falls below 5 per cent, like in the period of 2016-18, the number of strikes also decreases sharply (Figure 11). It can be seen that increased inflation puts a great pressure on the lives and income of workers in enterprises, especially in processing factories employing unskilled workers, leading to wildcat strikes of workers to request the adjustment of wages to catch up with the inflation rate.

Strikes mainly occur in labour-intensive provinces which have many enterprises such as HCMC, Binh Duong and Dong Nai. The average number of workers participating in a strike is 685.²¹ All those strikes have occurred outside law-prescribed order and procedures.²²

²¹ MOLISA report on situation of strikes and strike settlement in 2018.

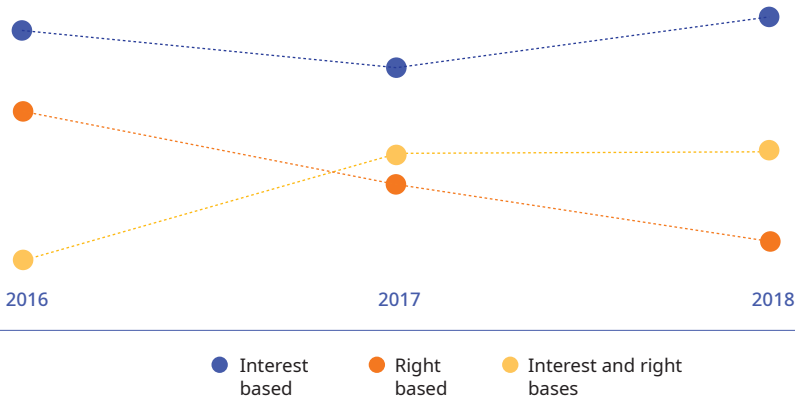
²² In fact, those strikes are not led by trade unions and ignore all law-prescribed order and procedures such as mediation, arbitration, settlement by Chairman of the District People's Committee, or voting by workers before strike.

Figure 11: Number of strikes and inflation rate, 2011-18



Source: Strike data from IR and Wage Department (MOLISA) and CPI data from GSO

Figure 12: Proportion of right-based and interest-based strikes, 2016-18



Source: IR and Wage Department (MOLISA)

Statistics of the IR and Wage Department (MOLISA) show that in the period of 2016-18, the proportion of collective interest-based labour disputes was much higher than that of right-based ones. In 2015, the proportion of interest-based labour disputes was only 38.37 per cent and in 2018 it increased to 49.5 per cent, while the proportion of right-based disputes decreased from 38.37 per cent in 2015 to 18.8 per cent in 2018. (Figure 12). This shows that the disputing parties have matured and adjusted themselves in IR. Previously employers violated labour laws, leading to workers stopping work to ask for their rights respected. Nowadays most strikes occur because workers want to demand benefits higher than stipulations. In other words, most enterprises have guaranteed minimum wages and working conditions in accordance with the law. However, such wages and working conditions do not meet the core needs and expectations of workers. Therefore, in enterprises where workers cannot have genuine collective bargaining with employers, they have resorted to strikes to pressure employers to gain benefits higher than stipulations. This can be seen clearly in the demands of workers during strikes in 2016-18: the number of requests relating to wages, bonuses and mid-shift meals still account for the largest proportion. The number of strikes due to late payment of wages and bonuses is the biggest.

The distribution of strikes by region, industry and business type in the 2016-18 period has not changed compared to the previous period. Specifically, in terms of business type, in 2016-18 the number of strikes occurring in the private sector accounted for only 22.14 per cent. Meanwhile, the figure was 77.86 per cent

for the FDI sector and 0 per cent for the public sector. Strikes continued to occur the most in South Korean and Taiwanese enterprises, accounting for 36.31 per cent and 20 per cent of the total number of strikes nationwide, respectively.

Regarding the locations, strikes mainly occur in provinces/cities with many industrial parks with Ho Chi Minh City, Binh Duong and Dong Nai accounting for 20.58 per cent, 20.39 per cent and 18.83 per cent of the total number of strikes nationwide respectively. In 2018, the figures were 17.9 per cent, 14.15 per cent and 33.96 per cent, respectively.

As for industries, strikes were commonly found in garment, footwear and wood processing industries, in which the garment industry alone accounts for over 40 per cent of the total number of strikes. In the 2016-18 period, the number of strikes in the garment, footwear and wood processing industries accounted for 42.52 per cent, 18.45 per cent and 10.1 per cent, respectively.

The total number of workers participating in strikes in 2016, 2017 and 2018 were 156711, 110763 and 71876, respectively. Statistics from 206 strikes occurring at the end of 2017 and the whole year of 2018 showed that the average proportion of the workforce in each enterprise participating in strikes was 64.29 per cent. This rate has decreased compared to over 70 per cent in the 2010-2011 period (ILO Viet Nam 2011).

On average, each strike lasted 2.4 days (Table 3). One-day strikes accounted for 42.19 per cent in the period of 2016-18. Meanwhile, the number of strikes lasting over 5 days accounted for approximately 7 per cent. During the 2016-18 period,

there were only 7 strikes lasting 10 days or more, of which 1 lasted 20 days. It can be seen that the duration of strikes was relatively short, indicating that employers have made concessions to workers. In addition, state agencies have jumped in quickly and drastically to quickly bring workers back to work and stabilize the security and order in the area. Whenever a strike is reported, local governments will quickly set up an inter-sectoral task force to resolve the strike. Members of the task force will meet workers and union officers to learn about the workers'

aspirations, then ask the workers' collective to assign representatives to join bargaining together with the GTU Executive Committee. At the same time, members of the task force will also meet representatives of the business owner to collect details of the case. After that, the task force will hold a meeting for the disputing parties to work out suitable solutions and persuade workers to return to work. Most strikes end with partial or full concessions of employers. The success rate in strike settlement is 100 per cent.

Table 4: Duration of strikes and number of lost working days, 2016-18

	2016	2017	2018	Average 2016-18
Average duration of strikes (day)	2,52	2,35	2,36	2,4
1-day			47,17%	42,19%
2-3 days			39,62%	38,25%
4-5 days			5,49%	11,84%
> 5 days			4,72%	6,99%
lost working days	581.407	283.999	198.513	354.639
lost working days/strike			1872	2066

Source: Aggregated data from the IR and Wage Department (MOLISA)

Along with the decreased number of strikes, the impact of the strike also plummeted. Specifically, the number of working days lost due to strikes decreased from 58,407 days in 2016 to 198,513 days in 2018 (Table 4). On average, during the period 2016-18, 354,639 working days were lost due to strikes per year. Every strike in this period

caused 2066 lost working days. However, the size of strikes in the foreign invested sector was much bigger than in the private sector. Specifically, the number of working days lost per strike in the private sector was 456.8 days, while that in the foreign invested sector was 2267.9 days. The reason is because FDI enterprises often employ more workers than private

ones, so when strikes occur the impact is also greater.

► **Comments on the trend of labour disputes and strikes**

It can be seen that a key reason to individual labour disputes and strikes is disagreements over wages and income. The lack of transparency on wages/bonuses has led to the majority of individual and collective disputes in 2016-18. This shows that enterprises are lacking mechanisms of genuine bargaining between workers and employers over these issues. Due to the absence of genuine collective bargaining, employers unilaterally set wage rates for workers that result in lower than the living wage or do not have transparent wage policies, leading to individual and collective disputes. The shift of strikes from right issues to interest issues has clearly shown this shortcomings in industrial relations in the enterprises.

In the coming time, when the Labour Code 2019 comes into effect, and there are new workers' representative organizations (WRO) at grassroots level, the nature of collective labour disputes may change and these disputes may become more complex:

- (i). The proportion of interest-based labour disputes will continue to increase rapidly if collective bargaining fails to become more common in a more genuine manner;
- (ii). There will begin to emerge collective labour disputes and strikes that take place legally, requiring labour mediators and arbitrators to act effectively and meet requirements of the reality;

(iii). There will continue to be strikes that occur outside law-prescribed procedures and are more complex because workers have higher demands, and such strikes are better organized with the involvement of new WROs outside the VGCL system, especially in case where they may not have access to the rights to collective bargaining.

(iv). The implicit linkage among WROs can lead to big number of strikes which take places in a similar period of time.

(v). The development of social networks can lead to virtual linkages and the formation of "virtual organizations" of workers, and this may change or redirect the trend of collective labour disputes.

2.5. Direction for stable and sustainable IR development

The analysis of the industrial relations trend in Chapter 2 shows that industrial relations institutions are quite stable: the union density rate increases slightly, social dialogue is gradually taking roots, and the number of wildcat strikes has decreased. However, given the low average wage, especially in labour-intensive industries, while it is the main cause of individual labour disputes and strikes, genuine collective bargaining is essential to further improve workers' income. Genuine bargaining will reduce workers' needs for interest wildcat strikes.

Another important mechanism to assist disputing parties in resolving conflicts is labour mediation. The case of HCMC shows that labour mediators are contributing significantly to the

settlement of individual labour disputes and strikes. However, the quantity and quality of labour mediators still do not meet requirements of the reality.

Promoting genuine collective bargaining and strengthening the contingent of labour mediators will be the two key points to minimize disputes and ensure stable and sustainable industrial relations development in enterprises and localities not only in the context of a well

- developed economy but also when there are economic downturns. In particular, in the coming time when the Labour Code 2019 takes effect and Viet Nam is increasingly embedded in the global supply chain, these will be the two 'safety valves' to ensure effective management of conflicts in industrial relations and act as a basis for stable and harmonious development.

TOWARDS GENUINE
COLLECTIVE BARGAINING

Chapter

3



Chapter 3

Towards genuine collective bargaining

Industrial relations institutions and practices in Viet Nam have undergone many changes over the period of 2016-18. Currently, as the economy is moving towards a new level of development in terms of technological contents and added values, the workforce needs to improve its skills and adapt itself to changes at the workplace. In order to facilitate such development, a stable and appropriate industrial relations practices is needed to assist workers and enterprises in adapting themselves to changes. To this end, the IR system needs to be governed by agreements between employers and workers through genuine collective bargaining conducted at enterprise, multi-employer or sectoral levels. As analyzed in Chapter 2, although collective bargaining has been regulated in the labour law since 1995, genuine collective bargaining is still very limited. Wages and working conditions are mainly set based on the minimum thresholds provided by the law or unilaterally decided by employers with rare involvement of workers' collectives and unions. The absence of genuine collective bargaining is also the cause of labour disputes and the lack of linkages between workers and enterprises, hindering the skills development of the labour force in industries.

In the 2016-18 period, social partners sought and piloted many initiatives to promote genuine collective bargaining, some of which were successful to some

extent. The authors of this Report have surveyed a number of prominent collective bargaining pilots at all the 3 levels: enterprise (in Hai Phong and HCMC), multi employers (in Hai Phong and Binh Duong) and sector (garment and rubber) in search of factors that could facilitate genuine bargaining.

Chapter 3 is compiled on: (i) data provided by Hai Phong and HCMC DOLISAs; (ii) survey questionnaires filled by representatives of the management and GTUs of 32 enterprises participating in multi-employer CBAs in Hai Phong and Binh Duong; and (iii) 88 in-depth interviews with union officers, representatives of business associations, of enterprises and of workers in Hai Phong, HCMC, Binh Duong, and representatives of the parties participating in negotiating the CBAs of the central garment sector and rubber sector.

3.1. Collective bargaining at enterprise level: case studies in Hai Phong and HCMC

Hai Phong and HCMC are the two cities with a very big number of enterprises. In 2018, Hai Phong had more than 100,000 enterprises while the figure in HCMC was more than 600,000,²³ of which over 90 per cent were SMEs and micro enterprises. Currently, collective bargaining is mostly organized in unionized enterprises. By September 2019, there were 9,791 valid CBAs in HCMC - covering 55 per cent of

²³ Data are provided by Hai Phong and HCMC DOLISAs through in-depth interviews, September 2019

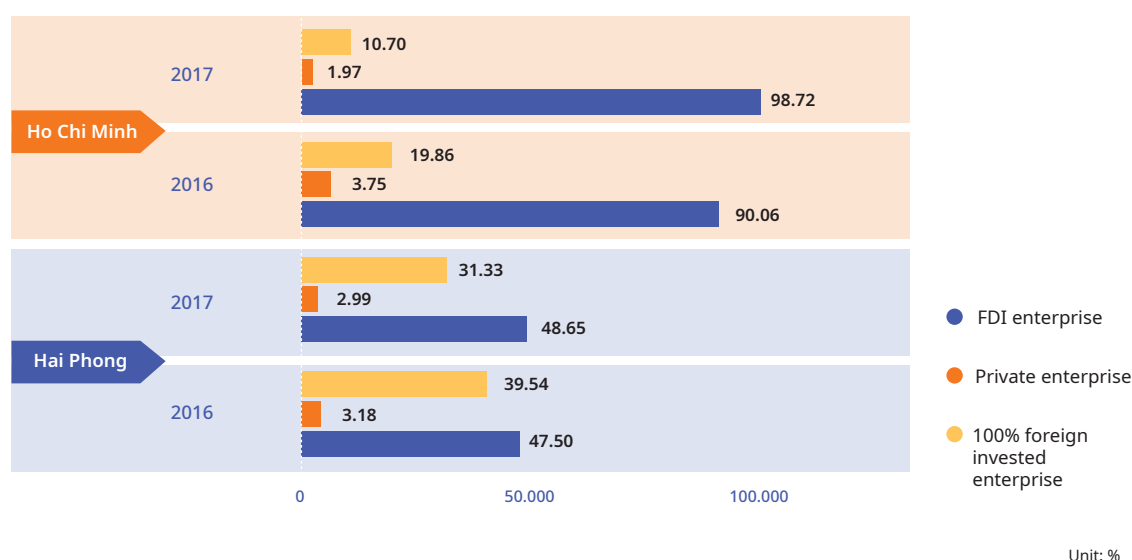
the total number of unionized enterprises, and 889 CBAs in Hai Phong – covering 64.7 per cent of the total number of unionized enterprises. The CBA coverage rate among waged workers in Hai Phong and HCMC in 2017 was 23 per cent and 21 per cent respectively, close to the national average (24 per cent).²⁵

However, in comparison to the total number of enterprises in both cities, the proportion of non-public enterprises with signed CBAs was very low. Specifically, the proportion of private enterprises with signed CBAs in HCMC decreased from 3.75 per cent (2016) to 1.97 per cent (2017). The figures for FDI enterprises also decreased to 10.7 per cent in 2017. Since 97 per cent of private enterprises in HCMC are SMEs and micro enterprises, the number of unionized enterprises is very limited. In addition, compared to 2016, HCMC had a big number of private and FDI enterprises

newly established in 2017, resulting in a reduced proportion of enterprises with signed CBAs. Meanwhile, the disparity in Hai Phong was not as big as in HCMC. The proportion of FDI enterprises and SOEs with signed CBAs was almost the same, while that of private enterprises was only 3 per cent (see Figure 13).

According to union officers and labour management staff of the two cities, only 15-20 per cent of the signed CBAs are the results of genuine bargaining with higher-than-law benefits to workers. As analyzed in Chapter 2, the union system is facing many challenges, both intrinsic and objective ones, in carrying out genuine collective bargaining. In the period of 2016-18, Hai Phong and HCMC had taken initiatives to promote genuine collective bargaining at enterprise level.

Figure 13: Proportion of enterprises with signed CBAs in Hai Phong and HCMC (%)



²⁴ Workers in non-unionized enterprises can participate in collective bargaining through bargaining with multi employers or by authorizing immediate upper-level unions to proceed with it on their behalf. Currently, Hai Phong and HCMC FOLs have started to organize collective bargaining in non-unionized enterprises.

²⁵ Data provided by Hai Phong and HCMC DOLISAs under the ILO/NIRF (Canada) project, 2018-2019

► **Hai Phong: Enhancing support from immediate upper-level unions to GTUs**

Like the FOLs in many other provinces and cities, Hai Phong FOL has focused on improving GTU officers' knowledge and skills relating to collective bargaining. Specifically, Hai Phong FOL has organized training for all local GTU Executive Committee members on collective bargaining methods, process, contents and skills. In training courses, upper-level union officers provide not only theory but also on-the-job guidance so that GTU officers can practice what they have learnt at their enterprises.

However, the biggest challenge faced by GTUs is not the lack of skills and knowledge relating to collective bargaining but the lack of bargaining power. Firstly, members of GTU Executive Committees are mostly middle and senior management staff (Trinh 2013). The conflict of their two roles – representative for both workers and the management – makes it difficult for these union officers to gain the real trust from workers or pressure employers during the bargaining process. Secondly, VGCL sees itself as a 'bridge' between employers and workers (Pham Thu Lan 2019). Therefore, the bargaining is rarely an equal play between the two parties, instead it is more like GTUs' persuasion to employers, and in many cases, like an asking-giving exercise.

In recognizing the aforementioned weakness of GTUs, Hai Phong has enhanced the support from upper-level unions in order to strengthen the bargaining power of GTUs. An upper-level union officer in Hai Phong said: *"GTU officers are sometimes in a difficult position, they do not dare bargain frankly with*

*business owners. In such cases, upper-level union should provide direct support, e.g. providing information about other enterprises, or participating in worker consultation sessions, which will make the bargaining go more smoothly".*²⁶ To support GTUs, the union of Hai Phong Economic Zone has established a club for GTU officers from member industrial parks who exchange with one another mainly via a social network (Zalo). These officers share information about results of the bargaining conducted at their enterprise for reference by other enterprises. For example, mid-shift meals are an issue of interest to many workers, but labour-intensive enterprises are often very cautious about increasing the mid-shift meal allowance. Before bargaining, the GTU Chairperson will collect data on the mid-shift meal allowance of other companies in the same industrial park as a basis for comparison and making recommendations to the management. As a result of this approach, in 2019 the GTU at Bluecom Vina company has successfully increased the mid-shift meal allowance from VND 19,000 to VND 22,000 after their bargaining session.

In addition, in each industrial park there are a number of leading enterprises which have an impact on other enterprises. Whenever a big enterprise adjusts its wages, allowances and working conditions, the upper-level union endeavours to immediately inform other GTUs in the park so that they can proactively propose adjustments to the management before their workers make comparison and decide to leave the enterprise or go on work stoppage. The upper-level union also tries to incorporate all adjustments in wages and working

²⁶ In-depth interview, September 2019

conditions in a CBA.

The support provided by upper-level unions to GTUs in collective bargaining is quite effective in enterprises in industrial zones because they are highly concentrated and often connected to one other, e.g. from the same country, in the supply chain, etc. In addition, the workers of industrial parks often live in concentrate living quarters and have good linkages. Therefore, any changes made by some enterprises in the industrial park have a significant impact on other enterprises. However, for enterprises outside industrial parks which are normally of smaller size, in different industries and scattered in various regions, it is more difficult for upper-level unions to stay connected with and provide support to the workers and GTUs.

► **HCMC: taking advantage of the impact of the labour market in collective bargaining**

With the largest number of enterprises in the country, of which 97 per cent are small and micro enterprises, HCMC FoL's strategy is to focus on promoting bargaining in big-sized enterprises which have large impact in each region, thereby creating orientation for smaller enterprises to follow. In big-sized enterprises, GTUs often survey their workers' spending, including food, accommodation, transportation and education for their children. On the basis of survey findings, the GTU reflects the negotiated wage in the draft CBA. Then the draft CBA will be sent to the upper-level union for consultation and adjustment if needed. After that, the GTU starts to bargain with the management. However, according to immediate

upper-level union officers, employers often accept adjustments close to the average in the market only, very few employers agree to pay higher than enterprises in the same region or the same industry.

In the period of 2016-18, the real wage in HCMC increased rapidly, at a rate of 15-20 per cent each year²⁷. An important reason for the continued high wage increase lies in the shortage of workers of all types, including unskilled ones in HCMC. In order to retain workers, enterprises have to adjust wages in accordance with changes in the labour market. Due to market pressure, many enterprises adjust their wages twice a year. When starting collective bargaining process, enterprises often include the provisions that have previously been implemented into the CBA. Therefore, in fact collective bargaining does not occur, instead it is just the formalization once again of the adjustments made by the enterprise into the CBA.

The cases of Hai Phong and HCMC show that genuine collective bargaining at enterprise level is still very rare and difficult. GTUs, with the support of upper-level unions, are taking advantage of the competitive pressure from the labour market to promote a form of pattern bargaining - that is, bargaining at leading enterprises that leads to the bargaining or adjustment of wages and

working conditions in other enterprises in the same region. The model of pattern bargaining benefits workers in SMEs because they can enjoy the spillover effects of increased wages and working conditions in big-sized enterprises

²⁷ In-depth interview with representative of HCMC DOLISA, 2019

through the bargaining performed by the GTU. However, this model only works in concentrated industrial parks and enterprises that are in shortage of manpower.

3.2. Sectoral collective bargaining

The pilot of sectoral bargaining and signing of sectoral CBAs has been conducted since 2010, starting with a CBA of the garment industry signed between union of the central garment sector and Viet Nam Textile and Apparel Association (VITAS). To date, there have been further CBAs signed between industrial associations or state-owned corporations and sectoral unions in CBAs of the rubber

industry, petroleum industry, and garment industry of Hanoi and Binh Duong. Most of the enterprises participating in these CBAs are SOEs, state-governed equitized enterprises or members of state-owned corporations. Although known as “sectoral CBAs”, they only cover a small number of enterprises and workers in industries (except for the CBA of the petroleum industry). For example, the CBA of the garment industry covers 130,000 workers, accounting for approximately 6.5 per cent of the total workforce in the whole industry (nearly 2 million) (see Table 5); the CBA of the rubber industry covers 65,000 workers, equivalent to only 13 per cent of the total workforce in the industry.

Table 5: Coverage of the CBA of the garment industry 2010-2017

Validity of the CBA	Participating enterprises	Workers covered
2010-11	69	90.260
2011-14	92	120.000
2014-17	100	136.000
2017-20	80	130.000

Source: In-depth interview with VITAS representative (September 2019)

Enterprises participating in sectoral CBAs are usually not located in one locality but spread across provinces/cities. Therefore, direct bargaining with each enterprise does not take place, instead enterprises study the draft CBA, raise their opinions in writing and then authorize the relevant association or parent corporation to

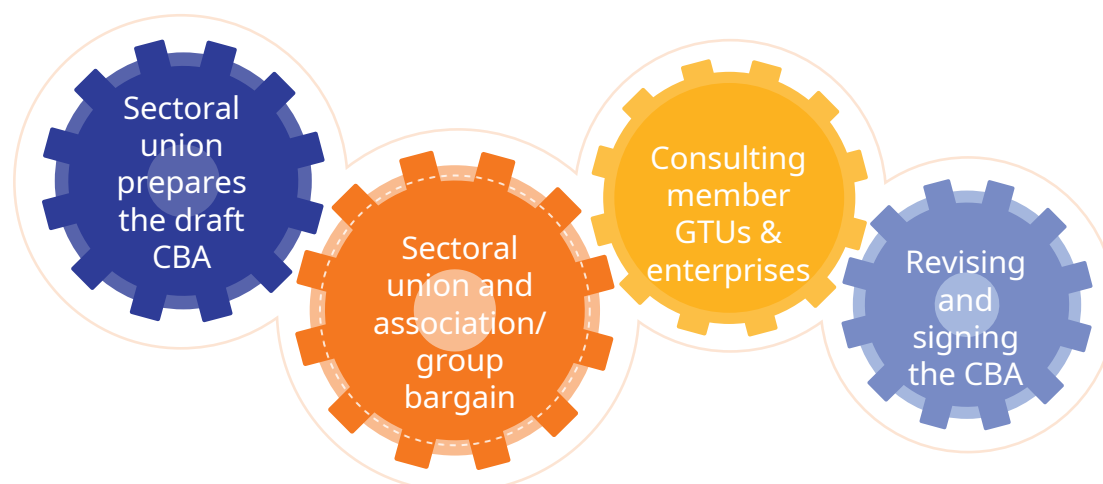
bargain with the union. The decision on participation in sectoral CBAs by member companies depends on two factors: (i) business results of each enterprise; and (ii) the degree of influence of the parent corporation/association on the enterprise. In surveying the CBAs of the central garment sector and the rubber

sector, it is found that only enterprises which offer payments higher than what are proposed in the sectoral CBAs agree to participate. If the business results of an enterprise are not good, it will withdraw from the CBA in the following phase. In addition, the mother corporations which hold dominant shares are more willing to enter into sectoral CBAs. “In recent years, the rubber industry has encountered many difficulties. Sales price often remains equal to the production costs, so all member enterprises are afraid to participate in sectoral CBAs. Only those that hold dominant shares will participate but the Group itself must have a careful look at the terms to avoid any impact on the affordability of the participating enterprise.” – says the General Director of Viet Nam Rubber Group²⁸.

Due to the above-mentioned factors, sectoral unions also “simplify” the steps

to consult workers. In the first bargaining, the unions of the garment industry (2010) and rubber industry (2014) sent a team to member enterprises to survey and consult workers. The draft CBA is prepared thereupon. Then, when the bargaining completed and before the CBA was signed, the draft CBA was sent to workers of participating enterprises for their comments. However, in our survey conducted in 2019, it was found that the initial consultation with workers was not conducted. Instead, the sectoral union prepared the draft CBA, basing on the CBAs of every enterprise and reports of GTUs. The majority of CBA in the later phases are inherited from previous CBAs, with some adjustments, if any, mainly relating to the minimum wage, mid-shift meals and some types of allowances/ bonuses.

Figure 14: Process for bargaining sectoral CBAs



Source: Information aggregated from the in-depth interview with VITAS, union of the garment sector, Viet Nam Rubber Group and union of the rubber sector, September 2019

²⁸ In-depth interview with Viet Nam Rubber Group, HCMC September 2019

In the next step, the sectoral union bargain with the association/group. The bargaining is usually conducted at the technical level and the final outcomes are adopted at a high level meeting. This bargaining process may include some struggle but it is not as harsh as the bargaining with multi employers. In most cases, the union makes concessions to the requests by the association/group representatives and consensus will be obtained after approximately 2-3 bargaining sessions. The terms of sectoral CBAs are not higher than those currently implemented by participating enterprises, thus they have no direct impact on workers' interests. A VITAS representative said: "Enterprises participating in sectoral CBAs often already have wage or benefits higher than what is proposed in such CBAs. For enterprises that only partially meet the criteria, they are also eager to join if some criteria can be lowered. In other countries, unions may go on strike to pressure employers but in our country, if terms in a CBA are not affordable to enterprises, they will not participate in it" (in-depth interview, September 2019).

There are two important reasons for the limited results of sectoral CBAs. Firstly, the coverage of sectoral CBAs which only comprises of state-owned corporations is not suitable for Viet Nam's concentrated industrial structure. Secondly, participating enterprises are located in different localities, therefore the benefits in relation to stabilization of the labour force and avoiding of wage competition are not brought about by these CBAs. It is not to mention that the coverage of sectoral CBAs is very small in the entire industry, so the level of influence or impact on enterprises not covered by the

CBAs is very limited. Secondly, the enterprises participating in sectoral CBAs are mostly well-functioning enterprises, without many challenges in labour management, so sectoral CBAs are not the solution they really need.

The second reason is that the relationship among workers, GTUs and sectoral unions is not close enough to form a solidarity block, thereby increasing the bargaining power of trade unions. The fact that workers are not deeply involved in the bargaining process makes it hard for them to really capture and understand the benefits a sectoral CBA introduces. Due to the geographical distance and the lack of local branches, the contact between sectoral unions and GTU/workers is very weak, mainly through written documents. Because of these factors, the linkage among workers, GTUs and sectoral unions becomes fragmented and formalistic, plus there is a lack of solidarity from the grassroots level as in the example of multi-employer bargaining in Hai Phong.

In brief, it can be seen that sectoral CBAs are not the result of genuine bargaining between workers' representatives and employers, instead it is only the formalization in writing of a sectoral-level document on the real working conditions which are currently available in participating enterprises. Workers are neither actually involved in the bargaining process nor directly benefit from such sectoral CBAs. At the same time, participating enterprises do not benefit either, although they do not need to incur additional costs when participating in the bargaining process.

Given the current industrial structure of Viet Nam, the sectoral bargaining structure needs to be adjusted to better

suit the actual needs of both enterprises and workers. In Chapter 4 we will make some recommendations for collective bargaining to become genuine.

3.3. Multi-employer collective bargaining

Multi - employer bargaining - e.g. bargaining with a group of employers, sectoral bargaining - is more common in countries where the system of trade unions and workers' representatives are structured by sector and employers - mostly private, are organised into associations that have mandate to carry out collective bargaining such as Germany, Norway, Belgium and France. In countries where the IR system is predominant at enterprise level, multi-employer bargaining is less likely due to shortcomings in the structure of workers' and employers' representative organizations. The VGCL system includes both sectoral unions and local unions. Central and local sectoral unions consist mostly unions of SOEs or state-governed equitized enterprises. After Doi Moi (Reform), as the number of private and FDI enterprises increased rapidly, GTUs established at non-state enterprises operated mainly under local FOLs and unions of industrial parks instead of under sectoral unions. For example, Viet Nam's garment industry there are over 8000 enterprises and 2.5 million workers (FPTS 2017). However, there are only over 100 GTUs under the union of the central garment sector with over 150,000 workers. The majority of GTUs of garment enterprises are registered with various local FOLs throughout the country.

Some localities have been forming concentrated industrial clusters, for example clusters for producing garment

and footwear in HCMC, Long An, Binh Duong and Dong Nai, clusters for producing wooden furniture in Binh Duong and Binh Dinh, clusters for manufacturing telephones and electronic products in Hai Phong, Bac Ninh. Enterprises in the same industry, even producing the same products, selling to the same group of customers, are normally concentrated in the same industrial park or in the same area. In many cases, they share nationality or membership of the same business association. These enterprises encounter the same labour-related issues such as: difficulties in recruiting workers, leading to competition for wages; high turnover rate; strikes (once a strike happens in one enterprise, it is easy to spread to other enterprises). These industrial clusters, therefore, have gathered the necessary conditions for conducting collective bargaining with multi employers in order to create equal working conditions for IR stabilization.

Since 2015, VGCL, with the technical assistance from ILO, has piloted multi-employer CBAs in the industrial clusters with the above-mentioned characteristics. In the 2014-2016 period, 5 groups of enterprises were selected to conduct collective bargaining, but only 3 of them moved ahead to the signing of multi-employer CBAs, namely: the group of 4 tourism enterprises in Da Nang; the group of 5 electronics enterprises in Trang Due Industrial Park (Hai Phong); and the group of 4 garment enterprises in District 12 (HCMC). A total of 6,800 workers are covered by the first three multi-employer CBAs. In the first pilots, immediate upper-level unions (i.e. unions of industrial parks and district FOLs) took all steps of bargaining and signed the CBAs with employers together with GTUs in the

groups. Da Nang was the only place where the employers' representative (Danang Tourism Association) played an active representative role in the bargaining process.

Based on experience gained from the first pilots, VGCL and partners such as ILO, CNV International continued to expand multi-employer collective bargaining in the period of 2016-19. By December 2019, there are a total of 7 more multi-employer CBAs having been signed (see Table 2), of which the ones for Da Nang and Hai Phong are renewed with greater coverage. The other agreements, e.g. that of garment enterprises in Van Lam district (Hung Yen), of wood processing enterprises in Binh Duong and Dong Nai, of tourism enterprises in Ha Long (Quang Ninh), of garment enterprises in Linh Trung Industrial Park (HCMC) and of private kindergartens in Quang Nam are all new agreements. A total of 99 enterprises and over 14,600 workers are covered by these CBAs.

Although each locality apply different bargaining methods, in brief the bargaining process includes the following five steps:

(i) Preparation: the bargaining team of the union side will select the enterprises appropriate for the bargaining, the inclusion criteria usually include: the same industry, located in the same area (same industrial park, district or city), with similar characteristics of the workforce (e.g. many unskilled workers). The upper-level union will survey working conditions and demands of workers in the selected enterprises. This will be done with or without the participation of GTUs. Some upper-level unions also organize training and preparatory meetings with

GTU Chairpersons of the selected enterprises.

(ii) Development of bargaining options: After consulting workers and surveying the situation of the selected enterprises, the upper-level union will choose the issues and demands mostly shared by the enterprises to develop multi-employer bargaining options. The upper level union can have two different approaches: in most cases, the upper level union chooses the low option, that is, the terms to be bargained are lower than those currently applied by selected enterprises ; only in a few cases, the union chooses the medium option, that is , the terms are close to the average of the group. The low option allows the union to bargain more easily, takes less time and is easy to convince more employers to sign the CBA. The medium option is much more difficult as it impacts the costs of businesses, especially SMEs in the group. However, if successful, this option brings higher benefits to workers and enhance the reputation of the union.

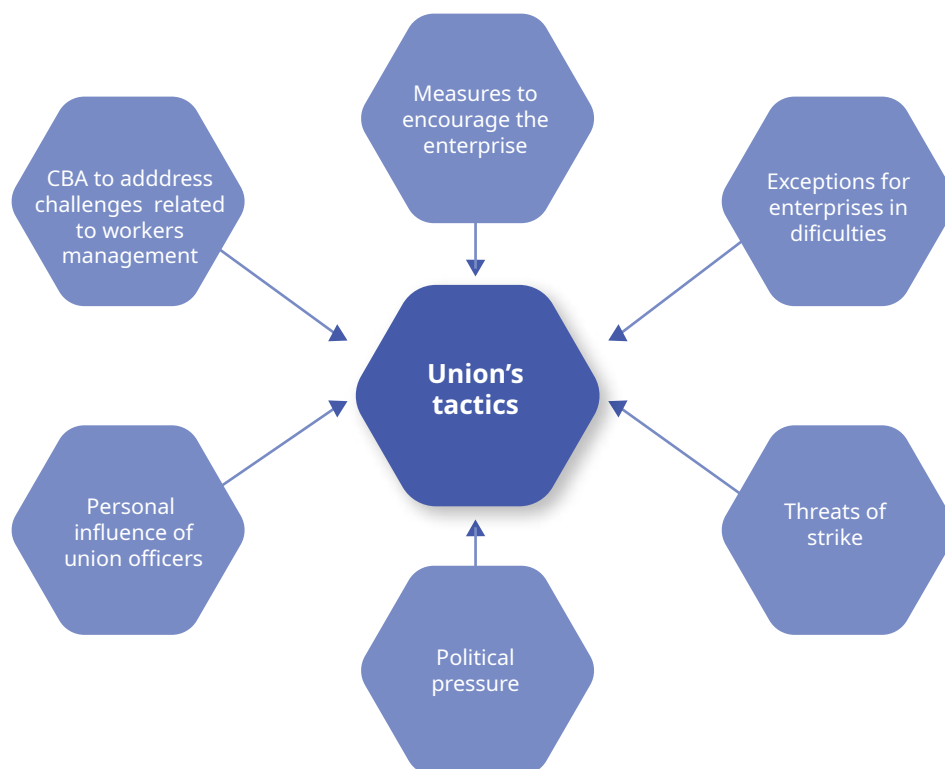
(iii) Bargaining at each enterprise: in countries with a tradition of sectoral collective bargaining, when starting the bargaining, the two parties usually set up respective collective bargaining committees with representatives of the employer (usually business association or employers' representative organization) and representatives of the sectoral union. The bargaining mainly takes place at the venue of the collective bargaining committee. In the case of Viet Nam, due to the lack of workers' representatives in many localities and sectors, it is usually upper-level trade unions that initiate to bargain with each employer. This is the most difficult and time-consuming step.

Upper-level trade unions will employ a

variety of tactics to bargain with the employer (see Figure 1), including convincing by arguments and through personal influence of union officers, as

well as pressuring through threats of strike (See Boxes 1 and 2 on the multi-employer collective bargaining processes in Hai Phong and Binh Duong).

Figure 15: Union's tactics in multi-employer collective bargaining



(iv) Multi-employer collective bargaining: In parallel with bargaining at each enterprise, upper level unions bargain with representatives of groups of employers, for example, the Korean Business Association in Trang Due Industrial Zone in the case of electronic enterprise group in Hai Phong, the Binh Duong Furniture Association (BIFA) in the case of the wood processing enterprise group in Binh Duong, or the Taiwan Business Association in Dong Nai in the case of the wood processing enterprise group in Dong Nai. Success in bargaining with business associations plays a decisive role in expanding the coverage of multi -

employer collective bargaining agreements because business associations can persuade more members to join the agreements. Specifically, the engagement of BIFA has helped attract 16 businesses instead of the initial group of 5 participating enterprises, or the involvement of the Korean Business Association in Trang Due Industrial Zone has increased the number of enterprises joining in the agreement from 13 to 20.²⁹

(ii) Signing Agreements: Once an participating grassroots trade unions, and the representative of the enterprise

²⁹ In-depth interview with the Chairperson of the Hai Phong Economic Zone and the representative of the BIFA, September 2019

group, if authorized, normally the president of the business association. Second option is that all the businesses, including representatives of the grassroots trade unions and the employers, sign the agreement. agreement is reached in collective

bargaining between the union representatives and the employers and their associations, the agreement will be signed. The signing may be conducted between the representative of the upper - level trade union, authorized by the

► **Box 2: Multi-employer Collective Bargaining of electronics enterprises in Trang Due Industrial Zone in Hai Phong**

In 2016, the of Hai Phong Economic Zone Trade Union (EZTU) successfully signed an agreement of a group of five Korean electronic enterprises in Trang Due Industrial Zone, including enterprises where a GTU is yet to be established. In 2018, the trade union of the EZ was preparing to renew the multi-employer agreement. Hai Phong EZTU selected 21 Korean enterprises in Trang Due Industrial Zone including enterprises that had not established their own trade unions to survey. The EZTU held meeting with the Chairpersons of the grassroots trade unions of enterprises and agreed to select four groups of issues for bargaining including: (i) wages; (ii) bonuses for Tet; (iii) working hours; and (iv) allowances. In order to approach the non-unionised enterprises, the EZTU worked with with the EZ Management Board to organize a number of meetings on the implementation of the labour law and required the participating enterprises to submit a report on the situation of labour law compliance. Based on the reports of the enterprises, the EZTU consolidated the information and developed a draft agreement with a number of important terms such as: (i) increase the basic salary each year by 5 per cent; (ii) workers are entitled to 2 Saturdays off per month; (iii) increase the value of mid-shift meal to 21,000 VND / person / day. The EZ trade union also set up a Zalo group with the Chairpersons of the grassroots trade unions of Enterprises in Trang Due Industrial Park to keep exchanging information and sharing experiences.

After sending the draft agreement to the enterprises, the Chairperson of Hai Phong EZTU started to bargain directly with each enterprise. This process was challenging and delayed because many business owners just sent HR staff to meetings with the EZTU and repudiated direct bargaining with the union. After a period of negotiation, 13 businesses agreed to join the agreement, but the some large enterprises started to react. All Korean businesses in Trang Due Industrial Zone are members of the Korean Business Association, so they have regular liaison. A number of large enterprises who did not agree with the terms of the agreement established a discussion group, holding the view that this agreement was not suitable for enterprises. Small enterprises became aware of the reaction and began to signal to withdraw from the agreement if the larger enterprises in the Association did not support signing the agreement. About a week before the signing of the agreement, EZTU received a messages from a number of Chairpersons of grassroots trade unions that if it failed to convince large enterprises, then maybe only 5 enterprises would sign the agreement.

Overview process of multi - employer collective bargaining in Trang Due - Hai Phong in 2019



The EZTU Chairperson then started negotiating with one of the largest enterprises in the Industrial Park, of which the CEO was the Chairman of the Korean Business Association in Trang Due Industrial Park at the time. The company said that joining a multi-employer agreement is not a mandatory requirement in the law and did not want to join. The EZTU Chairperson demanded and convinced the CEOs that even when it did not join, it should not entice others into withdrawal. The Board of Directors disagreed. The EZTU Chairperson responded by indicating that: 'If the enterprise hinders multi-employer collective bargaining, we will organize strikes for workers'. The enterprise became softer and accepted bargaining but the process was still quite challenging: the business did not agree to increase 5 per cent salary annually for all workers, instead, only workers with satisfactory performance would be entitled to wage increase. The EZTU Chairperson agreed but still required a growth of 2-3 per cent per year for others. Regarding the two Saturdays off, the enterprise insisted on using the term 'be encouraged' instead of 'be required'. The EZTU Chairperson agreed but demanded that if the workers work all the four Saturdays, then they should be paid for extra time of 150 per cent of basic salary for the two other Saturdays. The enterprise agreed with this request as well as the amount at VND 21.000 for mid-shift meal.

The agreement was finalized and sent back to businesses. In the meantime, the Korean business group also discussed the agreement internally. Exactly one day before the signing ceremony, the CEOs of the three largest enterprises in the group met with EZTU Chairperson to discuss the agreement for the final time. At this time, only 07 businesses were certain to join the agreement. After the meeting, with the persuasion of the group of large enterprises and the Chairman of the Korean Business Association, within one afternoon, 12 additional enterprises announced to join the agreement. A total of 20 enterprises joined the multi-employer agreement, all of whom had not signed collective bargaining agreements at the enterprise level.

The Chairman of the Korean Business Association in Trang Due Industrial Zone stated: *'Signing multi-employer agreements is very difficult because different enterprises have different characteristics, some enterprises are automatic, some are semi-automatic, some have abundant financial resources, small enterprises are facing many difficulties. The advantage here is that all businesses have the same nationality. Therefore, we have to bargain in detail on the terms with EZTU on behalf of the member enterprises. With this agreement, enterprises will mitigate comparison or competition with each other in terms of wages, employment is more stable and the workplace change among workers is reduced'.*

► **Box 3: Multi-employer Collective Bargaining of wood processing enterprises in Binh Duong**

Binh Duong can be considered as the hub of wood processing industry with approximately 1,000 wood processing companies, employing over 90,000 workers.³⁰ More than 80 per cent of furniture enterprises are Vietnamese private enterprises, of which the largest enterprises are members of the Binh Duong Furniture Association (BIFA). In the period of 2016-18, the furniture export industry prospered but businesses also faced fierce competition for workers. Furniture industry is also a sector with many potential risks in terms of working conditions and occupational safety.

During 2014-16, Binh Duong FoL piloted a multi-employer agreement of four FDI wood processing enterprises but they failed. Therefore, in 2017, the ILO/NIRF project in collaboration with Binh Duong FoL turned to pilot a multi-employer agreement among domestic furniture enterprises. Initially, Binh Duong Federation of Labour selected 18 enterprises in Tan Uyen and Thuan An towns for survey. The survey was conducted by the team of the provincial FoL by convening workers, Chairpersons of trade unions, employers' representatives to the offices of the trade unions or the canteens of enterprises to distribute the questionnaires. Based on the survey results, Binh Duong FoL decided to select a group of 08 enterprises in Tan Uyen town to pilot. With the experience of unsuccessful pilot, the FoL did not rush to bargaining immediately, instead, they organized a dialogue between the employer and workers in each enterprise. Through the dialogues, the provincial FoL collected opinions of the workers and synthesized them into a number of general terms such as: (i) the minimum value for mid-shift meal is VND18,000; (ii) at least 1 month basic salary for Tet bonuses; (iii) Workers returning to work as scheduled after Tet would receive VND 200,000 per person. Then the provincial FoL organized a joint dialogue between the upper level trade union, the grassroots trade unions and the Boards of Directors of all the 8 enterprises. However, the two rounds of dialogues with the group of enterprises were unsuccessful because only three out of eight enterprises sent representatives of employers to the dialogues. The process of dialogue and bargaining did not smoothly progress.

At this time, the President of Binh Duong FoL had direct meeting with the BIFA leaders, with his personal reputation, persuaded the BIFA to participate in the bargaining process. In return, the BIFA wanted the provincial FoL to assist them in resolving a number of issues such as usury among workers, training in labour law, persuading workers to retain workers from job-hopping. With the engagement of the BIFA, the bargaining process started to move in earnest with 6 meetings between representatives of the provincial FoL and Tan Uyen town's and the BIFA leaders within 2 months. In this process, the BIFA requested to reduce the minimum value for mid-shift meal to VND 17,000 and agreed to 1-month basic salary bonus for Tet. However, the lucky money for the workers who return to work after Tet will be decided by the enterprises themselves. Binh Duong Labour Federation had to accept these terms with the expectation that the bargaining would be finalized soon and there would be more businesses to join the agreement. With the above bargaining results, the BIFA persuaded 16 member enterprises with almost 10,000 workers (of whom 42 per cent were female) to sign the multi-employer agreement with the term of 1 year.

Commenting on the results of multi-employer collective bargaining, the Vice President of Binh Duong FoL said: 'The unions are not satisfied with the results of the bargaining because the achievements in terms of conditions are still limited. However, our priority in this pilot is to sign the Binh Duong's first multi-employer agreement and to engage the businesses'. The BIFA vice president said that the benefits of the multi-employer agreement are beyond the terms of the agreement: 'This is the first time we have had direct dialogues with the FoL on labour issues. We also signed with a Memorandum of Understanding on cooperative activities between the BIFA and Binh Duong FoL. The participating businesses have done more than the terms of the agreement already, but signing this agreement will enhance the credibility with foreign customers'.

³⁰ According to the 'Industry mapping' survey of the ILO Viet Nam in 2017

A number of signed multi-employer agreements have not really brought significant direct benefits to workers. The terms mainly focus on the matters of allowance, working time and rest time, and mid-shift meals while the commitments on wages are still limited. If we compare the bargaining process of Binh Duong and Hai Phong, we can see the reasons for this situation. Although in both cases, the trade unions had difficulty bargaining with businesses, the EZTU of Hai Phong created greater bargaining power. Specifically, the EZTU of Hai Phong received the support, though not publicly, from the network of grassroots trade

union Chairpersons. If bargaining is at risk of failure due to the non-cooperation of the enterprises, the EZTU was able to apply the 'strike threat' to pressure the business representatives to come back to the bargaining table. Meanwhile, the bargaining team of the trade unions in Binh Duong did not really utilise their bargaining power. As a result, the benefits that the agreement in Trang Due - Hai Phong brought to workers are higher than before signing the agreement while the workers in the group of Binh Duong furniture enterprises almost did not enjoy the higher benefits from the agreement³¹.

Figure 16: Impact of multi-employer agreements on enterprises



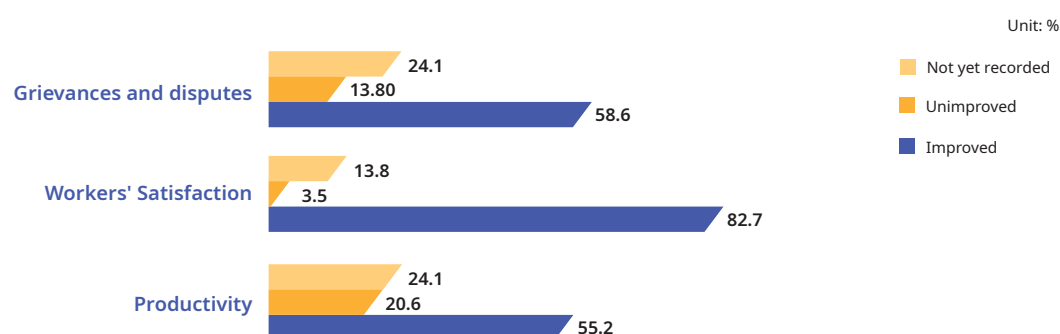
Source: Survey of the group of enterprises joining the Multi-employer agreement in Binh Duong, Da Nang, Hai Phong, 2019

Thus, compared to enterprise-level agreements, what are the benefits that multi-employers agreements bring to the parties involved? According to the survey of the ILO/NIRF Project on 39 enterprises joining multi-employer agreements in Hai Phong, Da Nang and Binh Duong in 2019, the most important benefits of multi-employer agreements include contribution to labour stability (64.5 per cent) and worker attraction (54.8 per cent)

(See Figure 16). Up to 74 per cent of enterprises said they would continue to join in the next phase of multi-employer agreements. For grassroots trade unions, multi-employer agreements significantly improved workers' satisfaction (82.7 per cent) and showed certain positive impact on improving labour productivity and reducing labour complaints and disputes (see Figure 17).

³¹ Negotiating groups in Binh Duong FoL suffered from heavier pressure because they had previously tried to hold a multi-employer negotiating session, but they had not succeeded.

Figure 17: Assessment of the Grassroots Trade Unions on the impacts of Multi-employer agreements on Industrial Relations



Source: Survey of the group of enterprises joining the Multi-employer agreement in Binh Duong, Da Nang, Hai Phong, 2019

For the upper level trade unions, the multi-employer agreements for the first time open up real opportunities for dialogues with local (non-state) business associations, such as in the case of Binh Duong and Hai Phong. This has become an important foundation to build industrial relations systems at the upper level, which was quite vague in the previous period.

It can be seen that the multi-employer agreements started to lay the foundation for genuine bargaining between the upper level trade unions and enterprise groups/ business associations. However, in order to bring greater benefits to workers, trade unions need to improve their bargaining power. The final part of the Chapter 3 will outline six lessons learnt from the pilot of multi-employer agreements to strengthen the bargaining power of trade unions.

3.4. Orientation for genuine collective bargaining

In the period 2005-2012, workers often launched spontaneous strikes to pressure employers to achieve greater benefits in the workplace. This is a form of 'collective bargaining by riots' as named by the famous English labour historian Eric Hobsbawm (Hobsbawm 1960). Since 2013, however, when strikes fell below 200 cases a year, the bargaining mechanism has changed. This study shows that genuine collective bargaining between workers and employers has begun to emerge and is on the rise at the enterprise and enterprise group levels. Based on the analysis of case studies, it can be seen that bargaining can occur when necessary and sufficient conditions are met as follows:

► **Necessary condition:**

- Sectors with a high concentration of labour-intensive industries (such as manufacturing and services sectors)
- Most of workers are low-skilled or unskilled, without personal bargaining power with employers but they have great collective connection
- There is labour competition between enterprises in the same sector

► **Sufficient conditions:**

- The trade union staff (grassroots and upper level) are active, attached to the grassroots level and able to mobilize sufficient bargaining power
- The system of trade unions from the upper level to grassroots level and workers can develop the genuine links through supportive activities, information sharing, and coordination in activities
- Workers are involved in the bargaining process

Although the Labour Code provides all wage workers with the right to participate in collective bargaining through the trade union, not all workers have the need for collective bargaining. For example, the highly skilled workers or managers have sufficient bargaining power to bargain with the employers themselves. On the contrary, unions should not spread their resources to conduct collective bargaining in every single enterprise (regardless of the existence of a trade union). Experience

from other countries shows that trade unions often focus on collective bargaining in pioneering businesses or industries (such as Korea's automobile manufacturing, railway and public transportation in the UK ect.), which creates spillover effect to other businesses or industries. The conditions required for collective bargaining help identify factors to determine the groups of sectors and localities that have a high need for collective bargaining and are likely to succeed that unions should focus on promoting.

However, the most important condition to determine if collective bargaining would be successful or not is the collective bargaining power of workers and trade unions. Collective bargaining power also determines the level of benefits that an agreement can bring to workers. In order to develop bargaining power, the study shows a number of lessons learnt as follows:

1. Strengthening the link between the upper level trade unions, grassroots trade unions and workers: the support of workers is the foundation for collective bargaining, at enterprise level or above enterprise level. On the other hand, grassroots unions will face many difficulties in bargaining if there is a lack of support and advice from the upper level trade unions.

2. Consultation with workers in the bargaining process: the fact that workers are consulted and informed about the bargaining process significantly

contributes to strengthening the power for trade unions and putting pressure on the employers. Many trade unions believe that it is only necessary to consult with workers when the bargaining process has completed, but that leaves the workers excluded from the bargaining and the unions also loses an important source of support when bargaining with the employers.

3. Guidance on wages and working conditions: as seen in the case of Hai Phong and Ho Chi Minh City, trade unions have to gather information themselves about wages, mid-shift meal, and allowances in order to build a basis for bargaining by the grassroots trade unions. This information should be gathered in a systematic, scientific and neutral way. For example, the National Wages Council of Singapore often provides annual salary guidelines which provide information on average wages, wages in the case of productivity growth and inflation so that employers and workers can use them as basis for adjustment of wages in bargaining.

4. Regular dialogues between trade unions and employers: Dialogues constitutes the basis for bargaining. Through dialogues, the parties strengthen their mutual understanding and trust. This is a good condition for bargaining.

5. Putting pressure on employers when needed: strikes are the most important tool of trade unions when bargaining. However, Vietnamese trade unions have never organized a strike. Without this important tool, the bargaining process is no longer a process of equal negotiation between the two parties; instead, it is a process of asking for and giving between unions and employers. The case of Hai Phong Economic Zone Trade Union shows that even though no strike was organized, just a 'threat of strike' could also effectively save the bargaining. In the long run, if a union wants to promote genuine bargaining, the effective use of the 'strike' tool should be considered.

POLICY RECOMMENDATIONS

Chapter

4



Chapter 4

Policy recommendations

In the period of 2016-18, Viet Nam achieved many socio - economic achievements: high economic growth rates, controlled inflation, continuously expanding FDI and private sector, and continuous growth in the number of waged workers. The growth rate of wages is still higher than that of labour productivity, and living standards for over 80 per cent workers have improved compared to that 5 years ago. However, the socio-economic situation also poses many challenges to industrial relations: the share of unskilled and low skill workers makes up the majority of the labour force, the gaps between training and the needs of the market are still significant, workers wages, especially that of the low skill group, are still much lower than the living wage level.

Various aspects of the industrial relations are more stable than the previous 5-year period. The trade union participation rate increased slightly; more social dialogues at enterprise level, enterprise group level and national level; the number of signed collective bargaining agreement increased continuously over the years; and the number of strikes fell sharply to just more than 100 cases in 2018. However, it can be seen that challenges existing in the industrial relation systems of Viet Nam have not really addressed. Most of social dialogues are just formalism-oriented; no strike follows the

law and the trend of strikes is strongly shifting to strikes for benefits; individual labour disputes have been on the rise, mostly around wage issues - this is mainly due to the lack of genuine collective bargaining between workers and the employers. In addition, when labour disputes occur, the number of labour mediators is inadequate to meet all the requirements in reality.

In the period 2016-18, there were many initiatives to promote genuine collective bargaining. The evaluation in Chapter 3 shows that the pilot sectoral collective bargaining (focusing on state-owned enterprises and equitized enterprises and state-owned corporations) has not been effective because it has not been really suitable with the current industry structure and the organizational structure of trade unions. Strengthening the support of upper level trade unions to grassroots trade unions in collective bargaining process in Hai Phong and Ho Chi Minh City has achieved initial results, especially thanks to the labour market pressure. In particular, the pilot multi-employer bargaining shows a direction which is relatively relevant for the characteristics of Viet Nam's industrial concentration, as well as the organizational structure of trade unions and business associations. Pilots in Hai Phong and Binh Duong show the genuine bargaining process between the upper

level trade unions and the local business association representatives. Benefits brought to workers are still limited but they are the results of genuine bargaining.

With changes in the coming period when Viet Nam integrates deeply into the world economy through new generation trade agreements, the Labour Law 2019 with new regulations on industrial relations takes effect, Viet Nam's industrial relations in Viet Nam have opportunities to improve, towards harmonious, stable and sustainable development. Towards that end, the following recommendations are proposed in this National Industrial Relations Report 2019:

It is recommended that a complete set of IR indicators be developed. For policy makers to understand the development of industrial relations and to facilitate evidence-based policy-making, it is necessary to have a set of IR indicators that both meet the requirements of Viet Nam while also being compatible with international IR indicators. However, currently the data sources for calculating the indicators are neither completed nor collected on a regular and systematic basis. Therefore, there should be uniform regulations at the central and local levels on the criteria and contents, methods of collection, and publication of the data, as well as the dissemination mechanism among tripartite partners.

Annual wage should also be considered. An important tool to support collective bargaining is wage recommendations. For example, in Singapore, the National Wages Council provides annual wage recommendations, which outline some basic changes in the growth rate of average wages, basic living standards in different regions, inflation level, labour productivity growth rate etc, which form the basis for providing recommendations about the wage growth rates for enterprises (different from the minimum wages). In Viet Nam, the National Wages Council can provide reference wage recommendations for workers and employers to use them as a basis for wage negotiations.

It is necessary to have higher number of and more capable labour mediators. There is currently a lack of mediators with practical experience, especially in collective labour disputes. Therefore, it is crucial that the establishment of labour mediation institutions in different regions of the country be taken into consideration. In addition to conciliation, the experienced regional mediators can directly provide training and nurture young mediators and provide technical assistance when needed.

Social dialogues should be strengthened, especially at the level of groups of enterprises by industry and region. Currently, industrial clusters are being formed in which enterprises of the same industry, even the same nationality normally concentrate in the same industrial zone or a locality. It is necessary to promote social dialogues between trade unions and representatives of local labour management agencies with these groups of enterprises in order to stabilize industrial relations and to serve as a foundation towards multi-employer collective bargaining.

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