**Legal procedural and notable for labour retrenchment of enterprises**

**under labour laws of Vietnam**

When applying the retrenchment toward the redundant employees (“**Retrenchment**”), an enterprise must strictly comply with the legal procedural steps hereunder. For your more information, from **ADK Vietnam Lawyers**’ practical experience in similar cases, it may take a range of approximately from 2,5 and a half to 03 months for an enterprise to complete in full the required legal procedural steps for the Retrenchment.

 **Step 1: The enterprise’s owner shall issue a decision on approving for the Retrenchment**

 The owner will issue a decision or resolution on approving the Retrenchment.

 Considering the regulations of the Law on Enterprises on authority of the equity members and owner, the right to decide on organizational structure of the enterprise falls under the power of the enterprise’s equity members or owner.

 The content of the owner’s decision or resolution should be detailed and expressly mention the good cause for the Retrenchment and approve for the Retrenchment and the labour contract termination of the redundant employees. In addition, the decision or resolution should also be enclosed with a list of employees in the enterprise whose jobs are affected by the labour restructuring. Of note, such list will also be enclosed and approved in the resolution or decision of the Members’ Council or the President of the enterprise and the General Director of the enterprise as mentioned in Steps 2 and 3 below; therefore the enterprise should prepare this list with a strict carefulness and include in this list all of the employees in the enterprise whose jobs could be affected by the labour restructuring for avoidance of supplementation of any employee to this list in the consequent procedural steps.

 **Step 2: The Members’ Council or the President of the enterprise (depending on the organizational structure according to the enterprise’s Charter) shall convene a meeting (in case of the Members’ Council) and issue a decision or resolution on the Retrenchment**

 As mentioned above, based on the owner’s approval on the Retrenchment, the Members’ Council or the President of the enterprise will hold a meeting (in case of the Members’ Council) and pass a resolution or decision approving the Retrenchment and delegating the execution of the Retrenchment to the General Director cum legal representative of the enterprise. This document must be hand-signed by the Chairman of the Members’ Council or the President of the enterprise and affixed with the enterprise’s seal.

 Similarly, this resolution or decision must expressly mention the specific good cause for the Retrenchment and be enclosed with the list of employees in the enterprise whose jobs are affected by the labour restructuring. For purpose of consistence, the list enclosed therein should be exactly similar to one enclosed with the approval of the owner in Step 1.

 **Step 3: The General Director cum legal representative of the enterprise to issue a decision on carrying out the Retrenchment**

 Pursuant to the Law on Enterprises, the General Director or Director (subject to the organizational structure under the enterprise’s Charter) of the enterprise is responsible for organizing the execution of the resolution or decision of the Members’ Council or the President of the enterprise. Accordingly, based on the resolution or decision issued in Step 2 above, the General Director as recorded in the latest enterprise registration certificate of the enterprise will issue a decision on execution of the Retrenchment.

Of note, the prevailing labour law of Vietnam is silent as to whether the General Director of the enterprise can authorize any subordinate in the enterprise (HR Director for instance) to sign and issue this decision on his/her behalf. In order to minimize any potential legal risk for the enterprise, it is strongly recommended the General Director of the enterprise being the person directly signing and issuing the decision on the Retrenchment.

Similarly, the decision of the General Director must expressly mention the specific good cause for the Retrenchment and be enclosed with the list of the enterprise’s employees whose jobs are affected by the labour restructuring. The list should be exactly similar to the one enclosed with the resolutions or decisions of the owner and the Members’ Council or the President of the enterprise in Steps 1 and 2 above.

**Step 4**: **The enterprise to formulate list of employees who will undergo re-training for further employment and carry out the training, if any**

In accordance with the Labour Code, if there is any vacant position within the enterprise at the time of the Retrenchment, the enterprise must re-train the redundant employees for assigning them to such positions. In addition, since the Labour Code does not either stipulate or imply the application of same level principle when re-training and assigning the redundant employees to vacant positions, it should be understood that as long as there is a vacant position in the enterprise at whatsoever level (even managerial level), the enterprise must re-train all of the redundant employees for such positions.

 The list of the redundant employees to undergo re-training for further employment herein must be signed by the legal representative of the enterprise and issued together with the training program as mentioned below. Of note, since this list is an integral part of the labour usage plan of the enterprise, it must also be signed by all of the members of the Executive Committee of the Grassroots Trade Union (“**ECGTU**”).

 Until now, the labour law of Vietnam has not yet had any guidelines on the training programs, evaluation criteria and training duration for re-training and appraising the training result of the redundant employees. However, for the purpose of avoiding any potential legal risk, it is highly recommended the enterprise publicly issuing training program(s), evaluation criteria and training duration (from 02 - 04 days or a reasonable duration for the vacant positions) to all the redundant employees and inform them in advance as to the grounds for determining as to whether the employees are qualified for the vacant positions. Based on the training criteria, training duration and the training results and if the redundant employees do not meet all the required conditions, there is less legal risk for the enterprise to terminate their labour contracts.

 Otherwise, in case the enterprise does not have either any vacant position in the enterprise or intention to re-train any talent among the redundant employees for further employment, the enterprise may not be required to organize the training. However, for securing the enterprise from any challenge by the redundant employees at later stages, it is recommended the enterprise stopping posting or listing advertisements for any recruitment on recruitment websites and newspapers (if any), and requests recruitment agencies not to contact candidates under the enterprise’s name till a sufficient period of time passing the completion of the Retrenchment. This arrangement may help the enterprise avoid a situation where the redundant employees argue that the enterprise still has new/vacant jobs but does not re-train them.

 **Step 5: The enterprise to formulate the labour usage plan with participation of the ECGTU**

Pursuant to the Labour Code, the labour usage plan must contain at least the following main particulars: (i) a list and the number of employees to continuously be employed, and to undergo re-training for further employment; (ii) a list and the number of employees to retire; (iii) a list and the number of employees to be transferred to work part-time and to have their labour contracts terminated; and (iv) measures and financial funding for ensuring implementation of the labour usage plan.

 Based on the appraisal of the training result and after assigning suitable employees to vacant position(s) (if any) in Step 4, the enterprise will finalize the remaining redundant employees and formulate another list and content of the labour usage plan. The formulation and issuance of the labour usage plan must have the participation of the Grassroots Trade Union (“**GTU**”). All of the redundant employees in these lists must have been mentioned in the list of the employees whose jobs are affected by the labour restructuring as discussed in Steps 1, 2 and 3 above.

 It is expected that the redundant employees may soon be aware of these lists and disagree with the enterprise at this stage. For limiting legal risks and smooth the tense situation, the enterprise may consider carrying out the following actions:

 - To organize a training session on labour law for the redundant employees so that they may be aware of the right of the enterprise to retrench them and their rights and benefits due to the labour restructuring;

 - To engage an external human resource consultancy service provider to further assist in the career path tendency strategy of the redundant employees;

 - To organize an internal team of the enterprise or engage an external media crisis management service provider to control comments, opinions on social networks and media with respect to the Retrenchment of the enterprise; and

 - To organize a town hall meeting with the redundant employees to officially announce the list of the employees to be retrenched and answer any enquiry in relation to their benefits and compensation after the Retrenchment. The participants of this meeting should include the legal representative of the enterprise, all members of the ECGTU, lawyers of the enterprise (if any) and all of the redundant employees. The meeting should be organized on a weekly day during normal working hours and the invitation to the redundant employees should be made in advance for a reasonable period.

 **Step 6**: **The enterprise to consult with the ECGTU about the Retrenchment before notifying the local labour management authority**

 In case there are still two or more redundant employees refusing to mutually terminate the labour contracts and the enterprise has to continue the Retrenchment process, the enterprise must consult with the ECGTU, through a meeting among parties about the Retrenchment and the termination of the labour contracts of the redundant employees.

 It is silent under the relevant labour laws of Vietnam as to whether any or all members of the ECGTU must give opinion in favour of the Retrenchment or not. However, to facilitate the Retrenchment and influence the view of the local labour management authorities on the same, the enterprise should get a favourable opinion of the ECGTU about the Retrenchment, where possible.

 **Step 7: The enterprise to notify the local labour management authority of the Retrenchment**

In case the number of the redundant employees to be retrenched due to the labour restructuring is 02 or more, the enterprise must give a 30 calendar days’ written notice about the Retrenchment to the local labour authority before issuing a decision on termination of the labour contracts of the redundant employees. By law, this written notice needs to have the following contents: (i) name and address of the enterprise and the legal representative of the enterprise; (ii) the detailed information of the redundant employees to be retrenched; (iii) reasons for the Retrenchment, termination date of the labour contracts; and (iv) financial funding for payment of retrenchment allowance.

 Of note, the labour law does not have any detailed guideline on which local labour management authorities that the employer must notify in case the employer has offices and working places in various provinces. In our opinion, to avoid any legal risk to the enterprise, the notice on the Retrenchment should be sent to the local labour management authorities both where the head office of the enterprise is located and where the redundant employees actually work.

 The enterprise is allowed to proceed with the next steps after 30 calendar days counting from the receipt of the notice of the enterprise by the relevant local labour management authorities, provided that they have no objection or enquiry to the Retrenchment by the enterprise. It is likely that some authorities may have response in favour of the enterprise’s Retrenchment before the end of the 30 calendar days’ period. However, the enterprise is recommended to strictly comply with the 30 calendar days’ advance notice period and not to issue any decision terminating the labour contracts with the redundant employees due to the Retrenchment until the end of this period.

 **Step 8**: **The enterprise to notify the redundant employees of the Retrenchment before termination of the labour contracts**

The legal representative of the enterprise will officially announce implementation of the Retrenchment in a meeting with the participation of the redundant employees and concurrently serve written advance notices on termination of the labour contracts to the redundant employees.

 **Step 9: The enterprise to issue the decision(s) on termination of labour contracts with the redundant employees**

The legal representative of the enterprise will issue a decision on termination of the labour contract with each of the redundant employees.

 Please note that the enterprise is still responsible for its decision on the retrenchment of the redundant employees even in case where the local labour management authorities have no objection to the Retrenchment at Step 7 above.

 **Step 10**: **The enterprise to settle payment and other obligations for the redundant employees**

In case of the termination of the labour contracts with the redundant employees, the enterprise must settle all the payment obligations and other obligations for the redundant employees within 30 calendar days from the termination date of the labour contracts, which may include some or all of the following amounts: (i) unpaid salary up to the termination date of the labour contracts; (ii) a lump sum equivalent to unused annual leave (if any); (iii) retrenchment allowance; and (iv) other payable amounts (such as year-end bonus).

 During the process of the Retrenchment, the enterprise is recommended to note the followings:

 - The enterprise is advised not to retrench: (1) female employees during the period of their pregnancy, maternity leave or fostering any child under 12 months old; (2) any employee is sick or has a labour accident or occupational disease and is being treated or nursed under the decision of a competent health establishment, except the case specified in Article 38.1 (b) of the Labour Code; and (3) any employee is on annual leave, personal leave or any other types of leave as permitted by the enterprise. Instead, the enterprise should consider negotiating and convincing them to enter into mutual agreements to terminate their labour contracts; and

 - To terminate a labour contract with any redundant employee being a non-specialized member of the ECGTU, the enterprise must reach an agreement in writing with the ECGTU on the same, or shall report to the local labour State management agency in advance at least 30 days before the termination.

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