



POLICY BRIEF

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Gaps and potential risks in the implementation

of regulations on labour contracts, employee insurance, and occupational safety in micro and small-sized timber enterprises in the context of VPA/FLEGT implementation

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Key message

The scope of this policy brief covers small and micro-sized timber enterprises in certain provinces and is based on an overview of survey and research reports conducted by the organizations of the VNGO-FLEGT network. The VPA/FLEGT Agreement sets out labour compliance requirements for timber organizations/enterprises that are specified in Vietnamese legal documents. However, small and micro-sized timber enterprises are not fully complying with these regulations, which have negative impacts not only on their employees, especially female employees, but also on timber enterprises themselves. This situation is fundamentally due to several reasons. Firstly, there is a lack of strict supervision of labour law enforcement. Secondly, employees' knowledge and awareness of labour laws are limited. Thirdly, due to economic difficulties, employees accept working in unsafe conditions. Lastly, because timber enterprises' labour needs fluctuate, they find it difficult to maintain a consistent workforce. These reasons cause some businesses to circumvent labour laws. To address these issues, specific regulations for temporarily contracted employees should be introduced for seasonal workers with contract terms of less than three months for micro and small-sized timber enterprises; awareness on corporate social responsibility in the timber industry should be raised; employees' knowledge and awareness of legal regulations on labour and occupational safety should be enhanced; and the supervision of labour and occupational safety legislation and its implementation should be strengthened.

Introduction

The Voluntary Partnership Agreement between the Government of Vietnam and the European Union (EU) on forest law enforcement, forest governance, and trade (VPA/FLEGT) was signed in November 2018, and after ratification came into force in June 2019. In addition to generating economic, social and environmental benefits, the agreement focuses on ensuring the safety of vulnerable people. Employees working for timber enterprises, especially those with short-term contracts, low-skilled workers, and labourers with no vocational training and lack of knowledge about occupational safety are considered vulnerable groups, in which females make up a substantial proportion.

The vulnerable group of short-term, low-skilled workers accounts for a relatively large proportion in small and micro-sized timber enterprises², especially wood processing establishments. In 2019, Vietnam had about 5,400 wood processing enterprises, of which micro and small-sized enterprises accounted for 93% [1]. Of the 500,000 workers working in the wood processing industry, up to 40-45% are short-term unskilled labourers [1]. Female workers make up a relatively high proportion of the short-term labour force, at roughly 30-48% [2] [3].

The VPA/FLEGT sets out requirements for ensuring the rights of labourers in the wood industry. Meanwhile, micro and small-sized enterprises in the wood industry in Vietnam are facing a number of obstacles in the implementation of labour laws. This policy brief sheds light on several issues in the actual implementation of regulations on labour

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contracts, workers' insurance, and occupational safety in micro and small-sized timber enterprises. It also outlines several recommendations to help businesses overcome these obstacles so they can meet the requirements of the VPA/FLEGT and be eligible to participate in the legal timber supply chain.

This policy brief has been developed based on an overview of five surveys conducted by the organisations of the VNGO-FLEGT network as well as several other published reports and articles. Also, two consultation workshops were held with the participation of representatives from 17 non-state organisations, two universities, and two international organisations. Lastly, a field trip to two timber enterprises was conducted to observe the actual production activities of workers.

Requirements of VPA/FLEGT and Vietnam labour legislation

The Vietnam Timber Legality Definition section in Annex II of the VPA/FLEGT specifies the requirements on labour law compliance for timber organizations/enterprises. These requirements are also well-defined in Vietnam's legal documents as follows:

- A labour contract should be made between the enterprise and the employee (specified in Articles 13, 14, 20, 24, and 25 of the Labour Code 2019).
- Employees have the right to join the trade union of the enterprise (specified in Article 5 of the Law on Trade Unions 2012).
- Regulations on occupational safety and hygiene should be obeyed (specified in Articles 132, 134, 137, 142, 16, 32, 55, 67, 108, and 118 of the Labour Code 2019).
- Social insurance should be provided for employees working under labour contracts of one month or more (specified in Articles 2 and 21 of the Law on Social Insurance 2014).
- Health insurance should be provided for employees working under labour contracts of three months or more (specified in Article 12 of the Law on Health Insurance 2008 and Article 1 of the Law on Amendments to some Articles of the Law on Health Insurance 2014).
- Unemployment insurance should be provided for employees working under labour contracts of three months or more (Article 52 of the Employment Law 2013).

Timber enterprises and employees are not always fully compliant with regulations on labour contracts under the labour law

Timber enterprises fail to sign written contracts with employees: According to the Labour Code, for unskilled workers working for less than one month, verbal agreements between the employer and the employee are permitted. But if the working period is longer than one month, the employer and the employee must enter into a written agreement. However, a study by SRD and the VNGO-FLEGT network in 2018 revealed that only 15 of 36 surveyed enterprises (accounting for 41.6%) signed contracts with their employees as per the regulations.

Timber enterprises have not fully complied with regulations on the use of labour under labour contracts:

Many timber enterprises sign contracts with workers but do not fully comply with the provisions of the contract. They violate working hours, contractual terms, and requirements for health checks and occupational hygiene, etc. A survey conducted by CRD and the VNGO-FLEGT network of 90 timber enterprises in Quang Tri and Dong Nai provinces in 2018 found that only 61% of the surveyed enterprises fully complied with regulations on the use of labour [2]. Notably, an article in the Dong Nai newspaper reported that during inspections by the provincial Department of Labour, War Invalids and Social Affairs from December 2018 to June 2019 at 30 timber enterprises, 70% were found to have committed violations and were administratively sanctioned for non-compliance regarding overtime work and for failing to organise periodic health checks for their employees [4]. The inspections also found other violations related to labour contracts between the timber enterprises and their employees; even when enterprises had signed labour contracts with their employees, the contents were inadequate or the contracts were verbal not written contracts.

This problem originates from both timber enterprises and their employees. With regards to enterprises, the survey on 36 enterprises conducted by SRD and the VNGO-FLEGT network in 2018 indicated that micro and small-sized timber enterprises often use large numbers of seasonal workers because their labour demands are subject to seasonal variations and they want to reduce the costs of regular wages. The survey also pointed out that as the businesses want

²According to Article 6, Decree No. 39/2018/ND-CP dated March 11, 2018, a micro-sized enterprise is a business that has an average annual number of employees participating in social insurance of 10 or less and its annual total revenue does not exceed VND 3 billion or its total capital does not exceed VND 3 billion. For small enterprises, the criteria are 100 employees, VND 50 billion, and VND 20 billion, respectively.

to dodge obligations to cover employee insurance, they choose either to enter into illegitimate contracts with insufficient terms or not to sign written contracts at all. Notably, enterprises do not prioritise signing long-term contracts with female employees because in addition to insurance obligations, they have to bear the risk of a labour shortage if female employees take maternity leave [5]. In a practical observation at two wood processing enterprises in Binh Dinh in December 2020, one with 30-35% seasonal workers and the other with 70%, both said that if they sign a labour contract with a female employee of reproductive age, they would encounter a labour shortage when the employee took maternity leave.

On the employees' side, most seasonal employees at timber enterprises come from rural and remote areas, have a low level of education, and normally receive insufficient training when entering the workforce; therefore, their understanding of labour laws and employee rights and benefits is limited. As a consequence, they are not able to negotiate equally with their employers to claim their statutory benefits [6].

Timber businesses have not fully met their obligations regarding workers' insurance

According to the law, employees must participate in social insurance if they have a contract of one month or more and participate in health insurance and unemployment insurance if they have a contract of three months or more. The employees' social insurance premiums must be covered at 21.5% and 10.5% by the employer and employee, respectively. However, in reality, a number of businesses have not fulfilled this obligation. The results of a survey conducted by SRD and the VNGO-FLEGT network in 2018 showed that only 16.7% of the surveyed enterprises paid social insurance premiums for employees with contracts of one month or more, 19.4% covered health insurance for workers with contracts of three months or more, and 22.2% provided unemployment insurance for employees with contracts of three months or more [5].

Enterprises only pay social insurance for core staff, such as executives. A survey carried out in 2014 by CRD and VNGO-FLEGT showed that wood production establishments in Quang Tri province only paid social insurance premiums for 10% of the total employees who are mainly managers, technicians, and accountants [6]. Besides, timber enterprises did not provide benefits to workers at the time agreed in the contract; for example, social insurance premiums.

Many businesses made agreements with employees to add the cost of insurance premiums to their salaries instead of paying insurance. However, there were instances when employers did not pay as agreed [4].

The fundamental reasons for inadequate compliance with insurance regulations: To cut costs and maximise profits, timber enterprises have "circumvented the law" by using temporary (less than three months) labour contracts so they are not obliged to make social insurance payments for their employees [5]. The law strictly stipulates that consecutive labour contracts must have a longer term than the previous one to ensure that the employer fulfills their obligation to pay insurance premiums for their employees. However, enterprises tend to misunderstand or intentionally misinterpret this rule, inferring that they can sign consecutive short-term contracts and avoid paying insurance premiums.

Wood processing enterprises mainly produce goods according to orders and are subject to irregular workloads. Therefore, they mobilise unskilled labourers according to the season and depending on their needs. Enterprises do not guarantee regular work so they cannot sign long-term contracts with unskilled workers. From the other perspective, unskilled workers do not have career orientation to engage with enterprises and lack the commitment to stay at enterprises over the long term. Therefore, enterprises are not willing to sign long-term contracts and undertake the liability of paying insurance premiums for these employees [4] [7].

Employees have a very limited understanding of their rights under the law and are not fully aware of the importance of insurance. They want to receive as high a salary as possible without paying deductions for insurance premiums. In this case, the enterprise agrees with the employee to add insurance expenses in their salary. Accordingly, employees do not participate in insurance schemes [7].

Timber enterprises have not fully complied with regulations on labour safety:

Most micro and small-sized timber enterprises still rely on old technology and outdated machinery and equipment [4]. This has a major impact on the working environment of employees, such as increased noise, smoke, dust, and even occupational accidents.

Meanwhile, in most of these businesses, labour

safety regulations have not been strictly followed or have only been applied for formality purposes. Enterprises have developed action plans for occupational safety and hygiene but have rarely executed them and little attention has been paid to occupational safety issues. Workers have not been equipped or provided with sufficient protective equipment, such as shoes, hats, clothes, glasses, gloves, and masks [5]. There are cases where workers are well equipped with protective equipment but fail to use it while working, partly because the enterprise has not taken supervisory measures [4]. In addition, timber businesses have not organised periodic health checks or have only done so inadequately. They have not established health records for their employees as required and have not arranged health workers to provide on-site care for employees [4].

Limitations of monitoring and enforcing labour regulations in timber enterprises

The absence of a monitoring mechanism (or the application of a loose one) is one of the reasons for the inadequate compliance of regulations on

occupational safety and health are considered to have met the requirements on occupational safety and health. However, in reality, these enterprises do not conform with the regulations on environmental protection due to a lack of capacity and equipment [5].

An article in the Dong Nai newspaper in 2019 pointed out that because the number of inspectors is limited and the penalties for violations are low, there is little deterrent [4]. Moreover, as mentioned above, all the surveys share a common finding: a very high proportion of enterprises violate or do not fully comply with labour regulations. This also implies that monitoring and enforcement remains questionable in some localities.

Impacts on employees and timber enterprises from non-compliance with regulations on labour contracts, insurance, and occupational safety

Impacts on employees: When employees do not have their social insurance premiums paid, the immediate consequence is that they lose the payments their employers should have made. In the



Figure 1: Employees using rudimentary labor protection equipment during wood processing at an enterprise in Binh Dinh province (Photo: Ngo Tung Duc)

employee insurance and occupational safety in micro and small-sized timber enterprises.

A practical observation at two timber enterprises in Binh Dinh in 2020 also disclosed that businesses prepare documents regarding benefits for their employees just to meet the inspection requirements of the functional authorities; they do not take measures to implement their obligations as outlined in the documents. This issue was also reflected in the survey report conducted by SRD and the VNGO-FLEGT network in 2018 [5]. Enterprises that have had an environmental impact assessment report approved or have developed an action plan for

long term, without social insurance, employees will not receive insurance payments upon retirement or if they lose their work ability.

Employees themselves are often unwilling to pay for health insurance because of low awareness or economic difficulties. If enterprises do not pay health insurance, employees will not be able to participate in health insurance schemes. Without health insurance, they are not entitled to periodic medical examinations. Meanwhile, employees in wood processing enterprises often encounter risks of impaired health due to hazardous and unsafe working conditions [4]. In addition, workers who do

not have health insurance may leave their families to face the consequences. For instance, if they are sick and require long-term treatment at hospital, it will be a financial burden for their families.

Regarding non-compliance with safety regulations, employees may not receive training on occupational safety, and may not be equipped with adequate labour protections. This means employees are more at risk of occupational accidents. Once a mishap occurs, it is hard to estimate all the losses that employees and their families have to bear.

As for female workers, enterprises are concerned about recruiting and retaining female workers in the long term because in addition to obligations regarding insurance costs, they have to bear the risk of a labour shortage if the female workers take maternity leave. This hinders the chances of female employees taking

works effectively, enterprises' violations will be more easily detected and therefore more penalties will be imposed. Also, such violations will affect the reputation and image of the enterprise.

Once an accident occurs due to a lack of occupational safety measures, the enterprise must meet their obligation to compensate the worker for any damages incurred. In many cases, the employee is unable to continue working and the enterprise's workforce is impacted. An unsafe working environment combined with limited or no healthcare due to lack of health insurance will affect employees' health and lead to lower productivity and competitiveness [4]. Moreover, enterprises' inadequate compliance with labour regulations will discourage employees from giving their best to the business, hindering its productivity and product quality.

Box 1: Consequences of insufficient occupational safety in wood processing enterprises

The study "Assessment of working conditions in some wood processing establishments in the Central region using the VNNIOSH-2017 method" indicated that in some sectors, such as plywood making or bar joining, employees working in certain positions encounter high levels of toxicity (categories 5 and 6) due to the use of numerous chemicals during production. Workers on timber sawing machines or operating woodworking systems suffer more hazardous working conditions due to the impacts of noise, vibration, and dust. Unsafe working environments and harsh working conditions cause employees' health to deteriorate rapidly, leaving long-term consequences for families and society [8].

In Hai Phong, Kha Lam woodcraft village (Kien An district) alone has more than 80 wood production and processing enterprises. Almost every year, workers leave their jobs due to accidents at work. Most accidents are normally handled "internally" between employees and employers, leading to the conclusion that risks to occupational safety have not been paid their due attention [9].

up important roles in enterprises; therefore, female employees have to change jobs often so they are not able to harmonise work and family life. They also bear a higher risk of being fired since they only have temporary, short-term jobs [3].

Impacts on enterprises: First of all, it is easy to see that if an enterprise violates or does not fully comply with the labour law, they will naturally be handled according to the law. When the monitoring system

In addition, if enterprises violate labour regulations, they are considered to have failed to meet one of criteria for classification of enterprises and will be classified into Category II (Article 12, Decree 102³). In that case, the enterprises will face disadvantages in exporting their timber products because they shall go through more administrative procedures such as verification of timber origin, documentary checks and physical checks on timber shipments (Article 9, Decree 102).

³Decree No 102/2020/NĐ-CP regulating the Timber Legality Assurance System of Viet Nam dated 01 September, 2020.

Conclusions and recommendations

Vietnam's legal provisions on labour contracts, labour insurance, and occupational safety are adequate and meet the requirements of the VPA/FLEGT on compliance with labour and insurance legislation. However, micro and small-sized timber enterprises have not fully complied with these regulations.

Such non-compliance not only imposes disadvantages on employees, especially female employees, but also negatively affects timber enterprises. For instance, temporary workers, most of whom are females, are not entitled to social, health or unemployment insurance, and are likely to face job instability; meanwhile, enterprises' productivity and competitiveness will remain low and they will face disadvantages in exporting their timber products to the EU market.

There are fundamental reasons why the labour laws have not been fully complied with in micro and small-sized timber enterprises: a strict supervision mechanism for labour law enforcement is not yet in place; employees have limited knowledge and awareness of labour laws; due to economic difficulties, employees accept working in unsafe conditions; and lastly, because timber enterprises' labour needs fluctuate, they find it difficult to maintain a consistent workforce. These reasons cause some businesses to circumvent labour laws.

Based on these reasons, several recommendations are proposed to promote enterprises' full compliance with legal regulations and with the requirements of the VPA/FLEGT on labour in the wood industry:

Firstly, the legal system should be strengthened with specific provisions concerning seasonal workers with contract terms of less than three months working in micro and small-sized timber enterprises. Small and micro-sized timber enterprises should be permitted to use seasonal labour at a certain percentage (around 40% according to an enterprise's actual situation)

and waive their obligations for paying social insurance. However, they must cover health insurance and accident insurance for their workers, and must also be responsible for raising awareness and calling for employees to participate in voluntary social insurance schemes.

Secondly, awareness of corporate social responsibility in the wood industry, especially in small and micro-sized enterprises, should be enhanced. Timber enterprises must be aware that serious implementation of and full compliance with the labour law is not only an obligation but critical to their survival in the context of VPA/FLEGT implementation. The strengthening of enterprises' awareness can be achieved via training, dissemination, and other communication activities. Government agencies at local levels, such as Department of Industry and Trade, Department of Labour, Invalids and Social Affairs, Forest Protection Department, and local social organisations should participate in the deployment and coordination of these activities.

Thirdly, timber enterprises should be obligated to promote knowledge and awareness on the labour law and occupational safety legislation amongst their employees as a compulsory legal responsibility. At the same time, businesses need to pay attention to and invest in ensuring a safe working environment for employees, not only by providing appropriate facilities but also during the maintenance and operation of these facilities.

Fourthly, the supervision of labour and occupational safety legislation and its implementation in timber enterprises should be reinforced. In addition to state regulators that perform regulatory oversight functions, non-state organisations, such as social organisations and NGOs need to be involved as third-party watchdogs.

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