II. PROCEDURES FOR SETTLEMENT OF LABOUR DISPUTES

1. Types of labour disputes

Disputes over labour rights and interests may arise from a relation between the employer and the employee. These disputes are collectively termed labour disputes. In accordance with Article 157 of the Labour Code adopted by the National Assembly on 23 June 1994 (hereinafter referred to as the Labour Code), a labour dispute may be defined as "a dispute over rights and interests relating to employment, wages, incomes and other working conditions, the performance of labour contracts, labour collective agreements and apprenticeship".

Subject to Clause 2 of Article 157 of the Labour Code, there are two types of labour disputes namely, individual labour disputes and collective labour disputes.

Since the adoption of the 1994 Labour Code, most of labour disputes have arisen in form of individual labour disputes. Although to date, sufficient and accurate statistics of individual labour disputes are yet to be available, this type of disputes is known to arise from different causes.

However, the number of individual labour disputes that has been registered by the court helps to tell the true story of current situation of this type of disputes. According to year-end reports of the People's Supreme Court in 1997, 1998, 1999 and 2000, people's courts at all levels have registered 406 cases in 1997, 495 cases in 1998, 422 cases in 1999 and 547 cases in 2000.

In 2000 alone, of the total number of nearly 18,000 labour disputes that arose, only 547 cases were registered and 472 cases were resolved by the courts. In practice, a large majority of labour disputes were centred on the exercise of rights and performance of obligations by relevant parties including notably disputes over late payment of wages, unilateral termination of labour contracts or dismissals. Only a few of disputes over payment of damages to the employers were handled by the courts. It is noteworthy that disputes over unilateral termination of labour contracts account for 60-70% of the total number of labour disputes reported in recent years.

Inspite of their small number, strikes tended to be on the rise. According to insufficient statistics, between 1995 and October 2000[9], some 351 strikes have taken place in all economic sectors throughout the country. By the type of enterprises where strikes have taken place, strikes may be classified as follows:

[9] Report on the survey of strikes in enterprises during 1995-October 2000, "Report on solutions for the grass-root trade unions to legally play their representative role in staging lawful strikes", Vietnam General Federation of Labour, 2000.

Year	Number of strikes	State owned enterprises		Foreign invested enterprises		Non-state enterprises	
		Number	%	Number	%	Number	%
1995	60	11	18.3	28	46.7	21	35.0
1996	52	6	11.5	32	61.6	14	26.9
1997	48	10	20.8	24	50.0	14	29.2
1998	62	11	17.7	30	48.4	21	33.2
1999	63	4	6.4	38	60.3	21	33.3
10/2000	66	15	22.7	34	51.1	17	25.8
Total	351	57	16.2	186	53	108	30.8

Thus, strikes took place in all types of enterprises most of which were reported to occur in foreign invested enterprises (53%).

A large majority of strikes were concentrated on request for handling such issues as wages, bonuses, probationary period, working hours, holidays, improvement of working conditions and respect to human dignity of the employees.

2. Causes of labour disputes

Over the past years, labour disputes tended to be on the rise and have a growing impacts on various areas of the social life. Some labour disputes have resulted to strikes due to improper handling. Exceptionally, a number of strikes have taken place on a large scale e.g. the 9-days long strike in Thai Binh Rubber Enterprise or the strike in Dong Nai province that involved over 1,000 employees.

The practice of labour dispute settlement in Vietnam has highlighted the following main reasons of this type of disputes:

Firstly, subjective reasons that arise from disputing parties themselves.

On the part of the employees, these reasons include violations of labour laws concerning dismissals, termination of labour contracts, wages, working conditions and so on. A considerable number of labour disputes arose from disrespect or maltreatment of employees by business owners, especially in FDI sector.

Many enterprises are reported to maintain harsh working disciplines, high intensity, unsafe working conditions, unsecured occupational hygiene, excessive overtime, underpayment of employee benefits such as low wages, discrimination

against female workers, outstanding wages, reducing salaries, non-compliance with labour safety requirement, avoidance to enter into written labour contracts, non-arrangement of shift breaks, or non-payment of severance allowance etc. It is one of the reasons leading to the occurrence of labour disputes and strikes.

On the part of the employees, poor understanding of laws, excessive demands that are beyond the employer's capacity, and unjustified claims that fall into other areas of public administration are seen as major problems causing labour disputes.

Secondly, there are also other reasons such as limited issuance, dissemination and education of laws, poor performance of labour dispute arbitration institutions etc.

Furthermore, trade union's participation in resolving labour disputes (through grass-root labour conciliation councils, labour arbitration councils or the courts) and protecting labour interests is still ineffective. The number of labour disputes where trade unions participated in dispute settlement is still modest. For example, in Dong Nai province alone, of the 160 labour disputes that have been registered by the labour court, trade unions only participated in over 40 cases as the defender of the employee's rights and interests at their request.[10]

Most of strikes were unlawful due to non-compliance with statutory procedures. It is mainly resulted from poor understanding of legal provisions relating to strikes by the employees. In addition, there may also be other reasons such as the absence of grass-root labour conciliation councils, trade unions or the fact that the strikes were not led by trade unions.

According to a strike survey of enterprises during 1995-2000 conducted by the Vietnam General Federation of Labour, some 20.3% of the interviewed employees considered that the illegality of their strikes originated from the absence of trade unions, 20.3% - lack of trade union's role in organising the strikes, and 17.93% - unavailability of the grass root labour conciliation councils. In the meantime, employers cited the following reasons as those that resulted to unlawful strikes: absence of trade unions (8.1%), unavailability of grass-root labour conciliation councils (18%), lack of trade union participation in organising the strikes (18%). In the view of trade union activists at grass root levels, reasons of unlawful strikes include the absence of trade unions (2.5%), unavailability of grass-root labour conciliation councils (23%), and lack of trade union participation in organising the strikes (12%).[11]

3. Labour dispute settlement organisations

Once a labour dispute arises, the following options may be available to the parties concerned:

[10] Training materials on "Trade unions' participation in resolving labour disputes and strikes", Vietnam General Federation of Labour, 2000.

[11] Analytical report on the survey results of strikes in enterprises during 1995-2000, Vietnam General Federation of Labour, October 2000.

Firstly, the disputing parties may conduct negotiations and conciliation to neutralise any disagreement immediately upon its occurrence. Even when such an agreement has been handled by a competent body, the parties concerned may still continue negotiations to resolve their disputes. In general, such an ADR option is always encouraged by the laws of Vietnam any point of time during a labour dispute settlement process. If, however, such a solution is not fruitful, the labour dispute may be settled subject to the following procedures:

Secondly, resolving labour disputes by filing complaints and/or denunciations with one of the following bodies:

+ People's committees at all levels: In accordance with Article 17 of Decree No. 41/CP of the Government dated 06 July 1995 making detailed provisions and guidance on the implementation of a number of Articles of the Labour Code concerning labour disciplines and material responsibilities, people's committees at all levels are entitled to resolve complaints from workers who are disciplined, suspended from their jobs or requested to pay damages for material losses they are accused to cause. The local labour agency is obliged to assist the relevant people's committee in resolving these complaints. Pending the final result of the handling of their complaints, the complainant are still required to comply with these aforesaid disciplinary actions.

  In fact, however, disputing parties have rarely take this option to bring their dispute to the people's committees due to its low efficiency and cumbersome procedures. On the other hand, most of the provincial people's committees have transferred complaints lodged with them by the employees to labour inspection bureau for its handling.

+ Labour inspection bureau: In accordance with Article 186 of the Labour Code, labour inspection bureau is entitled to deal with complaints and denunciations of the employees as regard violations of the labour laws, and issue decisions to handle the violations or request other competent bodies to handle the cases.

According to findings of a survey conducted by the Ministry of Labour, War Invalids and Social Affairs (MoLISA) within the VIE/97/003 Project, by November 1999, there was a total of 312 labour inspectors throughout the country of which 47 inspectors are based in the MoLISA and the remaining 265 inspectors are working in 61 provinces. As a result of such a small number of labour inspectors, their performance could not be as effective as desired. Consequently, the efficiency of labour dispute settlement by labour inspectors is questionable.

Thirdly, disputing parties may choose to resolve their disputes through judiciary channels and subject to statutory procedures as may be applicable to individual and collective labour disputes.

Under these procedures, disputing parties should first file a request for conciliation with a grass-root labour conciliation council or a conciliator of a district labour agency (in case where such a grass-root labour conciliation council is not available). If the requested conciliation is proven unsuccessful, of the parties to an individual labour dispute may bring an action [against the other party] to the court.

In respect of collective labour disputes, after the unsuccessful conciliation efforts at grass-root level, the parties concerned may request a provincial labour arbitration council to resolve their dispute only. If the disputing parties still disagree with a dispute resolution decision given by the provincial labour arbitration council, they then may initiate a lawsuit to the court. In addition, the labour collective may also choose to go on strike. Thus a labour dispute may, depending on its nature be resolved through three channels including: grass-root labour conciliation councils or conciliators of district labour agencies, provincial labour arbitration councils and people's courts.

3.1 Labour conciliation at grass-root level

As a first step of the whole process of labour dispute settlement, conciliation may be undertaken by either a grass-root labour conciliation council or a conciliator of the district labour agency. Conciliation at grass root level is a compulsory procedure of labour dispute settlement prescribed by the Labour Code in respect of both individuals and collective labour disputes. There are also three exceptions where a party concerned to an individual labour dispute may immediately bring a lawsuit against the other party, namely disputes over dismissals, termination of labour contracts and payment of damages to the employers (clause 2 of Article 166 of the Labour Code).

- Jurisdiction and organisation:

Under the Labour Code, the grass-root labour conciliation councils are designed to act as a labour dispute settlement organisation which is set up in establishments employing 10 labourers or more. These bodies are equally represented by the employer and employee. The number of members of a grass-root labour conciliation council will be mutually decided by the employee and employer but should not be less than 4 members. Each council will have a two-year term of office during which, every six months representatives of each party (i.e. the employer or employee) will serve as a chairperson and a secretary of the council on a rotational basis. The grass-root labour conciliation council will operate in the principle of mutual agreement and unanimousity (Article 163 of the Labour Code). Thus grass-root labour conciliation councils are seen as a collective and equal mechanism through which both the employer and employee may exercise their rights.

Labour conciliators are expected to be of full capacity, qualification and reputation in conducting conciliation. Conciliators are to be appointed by district labour agencies and are provided with working facilities to enable their performance of the assigned duties. The conciliators are responsible for conducting conciliation of individual labour disputes in enterprises employing 10 workers and less, disputes between domestic workers and the employer, or dispute over the implementation of apprentice contracts and vocational training fees (Article 165.1 of the Labour Code).

- Grass-root conciliation costs:

As representatives of the employees during the conciliation of labour disputes, members of the grass-root labour conciliation councils participate in activities that are relevant to the fulfillment of their duties and therefore, their wages are paid in

full for the time they work in that capacity. Conciliators of district labour agencies are paid by the State to undertake conciliation within the limits of their duties. Disputing parties are not required to pay costs relating to their request for a grass-root conciliation of their dispute. On its part, the employer is obliged to create adequate conditions that are needed for the performance of the grass-root labour conciliation council or conciliator of the district labour agency (such as providing office space or equipment for conciliation).

In addition, disputing parties are expected to pay legal fees from their own pockets if they hire lawyers to defend their interests. After a successful conciliation, the losing party is not required to pay such legal fees that are born by the winning party. In practice, lawyers are rarely hired to participate in conciliation process except where the legal knowledge of the parties is low and one of the disputing party has a previous relation with the lawyer.

- A grass-root conciliation is normally undertaken in the three following steps:

- *Step 1*: Registering the request and making necessary preparation for the conciliation (including reviewing and gathering relevant documents and evidence etc). A proposed conciliation plan is prepared by a competent conciliation body at this stage.

- *Step 2*: Conducting the conciliation within 7 days from the date on which the request for conciliation is filed. The grass-root labour conciliation council or conciliator will conduct the conciliation in the presence of all relevant parties. During the conciliation, the disputing parties may present their views and proposals as well as seek defence by a third party. The grass-root labour conciliation council (or conciliator) will analyse and assess the facts, indicate the wrongdoings and rightdoings for the parties concerned to conciliate by themselves or propose a conciliation plan for their consideration (clauses 1 and 2 of Article 164 of the Labour Code). Furthermore, the disputing parties may also:

- *Step 3*: prepare a conciliation minutes.
  If the parties concerned agreed on the proposed conciliation plan or successfully conciliated by themselves, a minutes of successful conciliation would be prepared. Otherwise, a minutes of unsuccessful conciliation would be prepared and signed by the chairperson and secretary of the grass-root labour conciliation council (or the conciliator). The later should also specify views and opinions of the disputing parties. A copy of the minutes of unsuccessful conciliation will be sent to the disputing parties within 3 days from the date of unsuccessful conciliation (clauses 2 and 3 of Article 164 of the Labour Code). The parties may then be entitled to handle their disputes under other statutory procedures. In particular, parties to individual labour disputes may initiate a lawsuit to the court within 3 days from the date on which the minutes of unsuccessful conciliation is prepared (clause 3 of Article 164 of the Labour Code). Correspondingly, parties to a collective labour dispute may in this case request a provincial labour arbitration council to resolve their dispute.

Broadly speaking, the current provisions on grass-root settlement of labour disputes are proven appropriate and helpful in dealing with a significant number of labour disputes. However, there remain shortcomings and constraints during the labour dispute settlement at grass root level.

According to insufficient statistics, grass-root labour conciliation councils have been formed in nearly 60% of SOEs and 20% of non-State enterprises[12]. This undesired situation is resulted from improper and inadequate understanding of the employer and grass-root trade unions about the need and importance of grass-root labour conciliation councils. Furthermore, the absence of grass-root labour conciliation councils is also due to the fact that trade unions were still not established in many enterprises. In this context, labour disputes in establishments employing less than 10 workers but having no grass-root labour conciliation council were actually unsolved. Since these disputes are not under the jurisdiction of conciliators, grass-root conciliation became unfeasible and the disputes (in respect of collective labour disputes) were not referred to the court or provincial labour arbitration councils for settlement neither. In a number of enterprises where grass-root labour conciliation councils have been set up, their performance was ineffective as most trade union activists have participated in grass-root labour conciliation councils on a part-time basis. On the other hand, due to poor legal understanding, these labour representatives could not effectively protect the interests of employees nor propose convincing solutions to conciliation.

3.2 Provincial labour arbitration councils

Provincial labour arbitration councils are established under the Labour Code and Circular No. 02/LDTB-XH of the MoLISA dated 08 January 1997.

- *In respect of their jurisdiction*, provincial labour arbitration councils have competence to handle collective labour disputes which were not successfully conciliated at the grass-root level and upon the request of one of the disputing parties.

- *In respect of their organisational structure*, provincial labour arbitration councils include full time and part-time members namely, a representative of the provincial federation of labour, a representative of employers (to be nominated by a legitimate association of employers), an official of the provincial Department of Labour, War Invalid and Social Affairs (who serves as a full time secretary of the councils), one or more other members being lawyers, managers, and social activists with adequate knowledge of labour and social issues and high reputation in the local community who are nominated by the provincial Fatherland Front. Additionally, the provincial Department of Labour, War Invalids and Social Affairs, provincial Federation of Labour and employers' association may nominate one substitute member to replace their official member who is absent or required to be changed by the disputing parties.

Provincial labour arbitration councils are established under a decision of the Director of the Department of Labour, War Invalids and Social Affairs. The council has its head office inside the principal office of the Department of Labour, War Invalids and

[12] Training materials on "Trade unions' participation in resolving labour disputes and strikes", Vietnam General Federation of Labour, 2000.

Social Affairs, its own seal and operating budget provided by the State as part of the annual budget allocated to the Department of Labour, War Invalids and Social Affairs. The Department of Labour, War Invalids and Social Affairs is responsible for securing necessary conditions for the operations of the provincial labour arbitration council (section II of Circular No. 02/LDTBXH-TT dated 08 January 1997). Lawyers costs are born by the party hiring lawyers as in the case of grass-root conciliation.

In general, provincial labour arbitration council is a mixed mechanism consisting of social and sovereign characteristics. More importantly, these bodies have the right to make decisions on the settlement of labour disputes at their sole discretion.

- As regard dispute settlement procedures, provincial labour arbitration councils will carry out conciliation and settlement of labour disputes within 10 days from the date of their receipt of a request from parties concerned through the following steps:

- *Step 1*: Registering the cases (e.g. receiving requests and supporting documents). At the request of one of the disputing party, the provincial labour arbitration council will obtain relevant files and documents from the grass-root labour conciliation council. In so doing, it may also request the parties concerned to submit [additional] documents and evidence that are needed for the dispute settlement.

- *Step 2*: Preparing and conducting conciliation. The provincial labour arbitration council will conduct conciliation in the presence of authorised representatives from the disputing parties (clause 1 of Article 171 of the Labour Code). In case one of the parties concerned is absent from the conciliation without any reason, the provincial labour arbitration council will postpone the dispute settlement process. If one of the disputing parties is absent for the second time (as determined under subpoena serviced) without a justified reasons, the provincial labour arbitration council will continue to proceed with its settlement of the dispute.

  During the dispute settlement, the provincial labour arbitration council may propose a conciliation solution for the parties to consider. If such a solution is agreed by the parties concerned, a minutes of successful conciliation will be prepared and signed by the chairperson of the council and the disputing parties. In case of unsuccessful conciliation, the provincial labour arbitration council will move to the third step.

- *Step 3*: Making a decision on the dispute settlement

  In case of unsuccessful conciliation, the provincial labour arbitration council will issue a decision on dispute settlement (instead of preparing a minutes of unsuccessful conciliation) and give a prompt notice of its decision to the disputing parties. The decision will automatically take effect if it is not responded by the parties concerned (clause 3 of Article 173 of the Labour Code).

  In case of its disagreement with the decision made by the provincial labour arbitration council, the employer may request a competent court to reconsider the decision while if the labour collective disagrees with the decision of the

provincial labour arbitration council, it may request the court's settlement or stage a strike (Article 172 of the Labour Code).

To date, provincial labour arbitration councils have been established in all 61 provinces throughout the country. However, their activities are still far from being desired. Even in some cases, provincial labour arbitration councils have denied to handle collective labour disputes. For example, the Hanoi labour arbitration council is reported to have declined to deal with a collective labour dispute in the ABB transformer manufacturing joint venture company. By contrast, in certain cases, provincial labour arbitration councils have registered for settlement of cases which fall outside the scope of their jurisdiction. For instance, when VietSolighter – a Ho Chi Minh-based joint venture was dissolved under a decision of the Ministry of Planning and Investment, a number of workers of the Cua Cam Port Enterprise (Hai Phong) which is the local partner of the joint venture have initiated a lawsuit to demand full payment of severance benefits by the board of liquidation. Under these circumstances, the registration and handling of the case by the Ho Chi Minh labour arbitration council was improper as it went beyond its assigned mandate.

3.3 Roadmap of a labour dispute settlement from the occurrence of the dispute to the end of the dispute settlement

In respect of individual labour disputes (Articles 164, 165 and 166 of the Labour Code): *See* Chart No.1 regarding procedures for settlement of individual labour disputes.

Disputing parties are entitled to file a petition to the grass-root labour conciliation council or conciliator of the district labour agency (in the absence of a grass-root labour conciliation council) for the settlement of their dispute within 6 months from the date of its occurrence. In respect of disputes over dismissals, termination of labour contracts or payment of damages to the employer, the parties concerned may immediately bring a lawsuit to the court within one year from the occurrence of the dispute without recourse to grass-root conciliation.

Within 7 days from the date of its receipt of the petition for settlement of a labour dispute, the grass-root labour conciliation council or conciliator must hold a conciliation meeting. The meeting should be held in the presence of the disputing parties or their authorised representatives. In case of a successful conciliation, the grass-root labour conciliation council or the conciliator will prepare a minutes of successful conciliation which is signed by the disputing parties and the conciliator. Parties concerned are bound to realise commitments stated in the minutes. If the disputing parties fail to reach an agreement on the settlement of their dispute, the grass-root labour conciliation council or the conciliator will prepare a minutes of unsuccessful conciliation. Within 6 months from the date on which the minutes of unsuccessful conciliation is prepared, the parties concerned may take an action to the court.

In respect of collective labour disputes (Articles 170, 171 and 172 of the Labour Code): *See* Chart No.2 regarding procedures for settlement of collective labour disputes.

Collective labour disputes are also first handled by grass-root labour conciliation councils or a conciliator of the district labour agency (where such a grass-root labour conciliation council is absent). Unlike individual labour disputes, however, the Labour Code does not fix any time limit for a grass-root settlement of collective labour disputes. Procedures for a grass-root conciliation of collective labour disputes are similar to those applicable to individual labour disputes.

Within 7 days from the date of its receipt of the petition for settlement of a labour dispute, the grass-root labour conciliation council or conciliator must hold a conciliation meeting. In case of a successful conciliation, a minutes of successful conciliation will be prepared. Parties concerned are bound to realise commitments stated in the minutes. If the disputing parties fail to reach an agreement on the settlement of their dispute, the grass-root labour conciliation council or the conciliator will prepare a minutes of unsuccessful conciliation. The parties concerned may then file a petition to the provincial labour arbitration council requesting for its settlement of their dispute. There is again no specific provision under the Labour Code as regard the time limit within which such a petition should be handled.

Within 10 days from the date of its receipt of the petition, the provincial labour arbitration council must hold a meeting to resolve the collective labour dispute with the participation of authorised representatives of the disputing parties. Also in this meeting, if the dispute may be ended through conciliation, a minutes of successful conciliation will be prepared by the provincial labour arbitration council that has a binding effect of the parties concerned. In case of unsuccessful conciliation, the provincial labour arbitration council will issue a decision on its settlement of the dispute. Within 3 months from the date on which the provincial labour arbitration council issues such a decision, the parties concerned may take an action to the court if they disagree with the decision and the labour collective may choose to stage a strike.

4. Choice of dispute settlement channels by the parties concerned

As described above in Section 1.2, the employer and the employee may, as parties to a dispute, choose one of the three following channels to resolve their disputes:

- *First*, conduct negotiation by themselves or through mediation by a third party who is highly reputed before referring their dispute to a competent body.

- *Second*, requesting for the dispute to be handled through administrative channels by filing a petition wit people's committees at all levels or with the labour inspection agencies.

- *Third*, requesting for the dispute to be handled through judiciary channels.

In Vietnam's context, when a disagreement or contention arises from a labour relation and through the whole process of dispute settlement, self-negotiation and conciliation (i.e. the first solution) is widely recognise as optimal solutions. In fact, a large majority of conflicts and disagreement have been resolved through mutual negotiations. This is due to various reasons including:

- Cultural tradition of the Vietnamese which has placed a special emphasis on "a peaceful resolution of disputes".

- Since the country' economy in general and agricultural production in particular is still under-developed, most labour disputes are of individual character. It is this factor together with employment pressure that make employees almost unable to negotiate but accept offers given by the employer as part of a dispute settlement package, although in many cases, their legitimate interests are not always properly protected.

- Many contentions and conflicts are of spontaneous nature but the demands raised by the employees are not excessive. Therefore, the employees may easily accept concessions made by the employer without recourse to other dispute settlement alternatives in efforts to obtain a "sympathy" from their employer.

Nevertheless, some labour disputes have been resolved through administrative channels. Most of labour disputes that are referred to the people's committees or labour inspection bureaus are initiated by the employees, although the number of labour disputes handled by these bodies is insignificant. In fact, only when their enterprises are visited by inspectors, the employees could make complaints or denunciations regarding labour safety and occupational hygiene. It is because of too complex and ineffective procedures to be followed in making such complaints or denunciations.

In this context, the courts have emerged as a popular channel of labour disputes settlement. Despite psychological hesitation to litigate, the settlement of labour disputes through judiciary system is proven highly flexible and effective especially in conciliation. Since conciliation is always prioritised during all stages of labour dispute settlement by the courts, up to nearly 70% of labour disputes that are referred to the courts are ended in conciliation. On the other hand, one of the outstanding advantages of judiciary settlement of labour disputes is its equality and equitability. In other words, legitimate rights and interests of the parties concerned are protected by the courts. Furthermore, decisions or judgements which are rendered by the courts to resolve the disputes are enforceable and bound by the parties concerned. Finally, the costs which may be incurred in relation to the judiciary settlement of labour disputes are inconsiderable; disputing parties are not required to pay any fee for grass-root conciliation.

5. Case studies

5.1 Labour dispute over unilateral termination of labour contracts

For example: A dispute arose between Sai Gon Transport joint venture enterprise (located in Binh Thanh District, HCM City) and Ms. Ha Thi Thuy – a staff of the Project Management Unit of Sai Gon Passenger Transport Company who is authorised to represent the Vietnamese party in the management of the joint venture enterprise over wage payment after the unilateral termination of labour contract by the joint venture[13].

Upon the occurrence of the dispute, parties concerned have requested the labour inspection bureau of the HCMC Department of Labour, War Invalids and Social Affairs to handle. In other words, the parties have made a proper choice of an administrative body to resolve their dispute. In a conciliation meeting held by the labour inspection bureau, the disputing parties have reached an agreement on wage payment and hence the bureau has prepared a working minutes No. 298/BBLV dated 17 November 1995. Ms Thuy then disagreed with the said agreement and decided to take action to the court. Such a choice is made in entire compliance with the relevant provisions whereby the disputing parties may choose to settle their dispute by negotiations through administrative channels but may at the same time request for the dispute to be resolved under judiciary procedures. In case of disputes over unilateral termination of labour contracts, it is not obligatory to undertake a grass-root conciliation.

After its registration of the case, the HCMC Court ruled that the aforesaid working minutes No. 298/BBLV dated 17 November 1995 was treated as a minutes of successful conciliation and decided to suspend the settlement of the case. This is in fact a wrongful argument by the court since the working minutes should under no circumstance constitute a minutes of successful conciliation prescribed by the Labour Code. To be qualified as such, a minutes of successful conciliation could only be prepared by one of the four following entities, namely grass-root labour conciliation council, conciliator of the district labour agency, provincial labour arbitration council (in respect of collective labour disputes) and the court.

5.2 Labour disputes over payment of compensation for working accidents

For example: There is a dispute between Mr. Tran Xuan Tien – a field engineer who entered into a labour contract with indefinite term and the Civil Engineering Company No. 4 – a member of the Hanoi-based General Transport Construction Corporation No.8.

On 24 July 1998, during his on-site supervision and monitoring, Mr. Tien accidentally fell from the third floor of a building due to a collapse of the scaffolding. As a result, the Company has paid hospital fee for the time he was hopitalised to receive medical treatment of the broken leg (1 month). However, Mr. Tien disagreed with the Company on such a payment arguing he was out of work for 3 months. He requested

[13] Judgement No.04/UBTP-LD dated 11 September 1997 of the People's Supreme Court.

the Company to make additional payment of compensation for his working accident but the Company declined to meet his demand. 5 months later, Mr. Tien referred his dispute to the grass-root labour conciliation council for its settlement. After 4 days from the date of his submission, the grass-root labour conciliation council held a conciliation meeting without the participation of employer's representative. At the end of the meeting, a minutes of unsuccessful conciliation was prepared. Consequently, Mr. Tien brought an action to Hanoi People's Court asking his Company to pay compensation for the working accident he suffered. The Court has surprisingly registered and handled the case under first instance procedures on the grounds that the legitimate interests of employee are contravened and compensation offered by the Company was unreasonable.

In practice, the court registration of the case was proven inappropriate since:

> Under Section IV of Circular No. 10/LDTB-XH/TT dated 25 March 1997, if one of the disputing parties fails to be present in the first conciliation meeting, the grass-root labour conciliation council must postpone the meeting (if the 7-day limit for conciliation has not yet expired), summon the parties concerned to the conciliation for a second time and re-hold the conciliation meeting. Only when the 7-day limit has expired but one of the disputing parties was still absent, the grass-root labour conciliation council could prepare a minutes of unsuccessful conciliation.

In the above described case, although the time limit for conciliation has not yet expired (i.e. there were still 3 days more) but the grass-root labour conciliation council proceeded with its preparation of the minutes of unsuccessful conciliation. As a result, the court has made a wrong decision in registering the case as the dispute in question has not yet undergone a grass-root conciliation as required by the law. Therefore, the Court of Appeal of the People's Supreme Court has overruled the first instance judgement of the Hanoi People's Court and returned the petition to Mr. Tien for his requesting the Company to re-start its handling of the dispute under statutory procedures./.

CHART ILLUSTRATING THE PROCEDURES FOR SETTLEMENT OF INDIVIDUAL LABOUR DISPUTES
(Articles 164, 165 and 166 of the Labour Code)

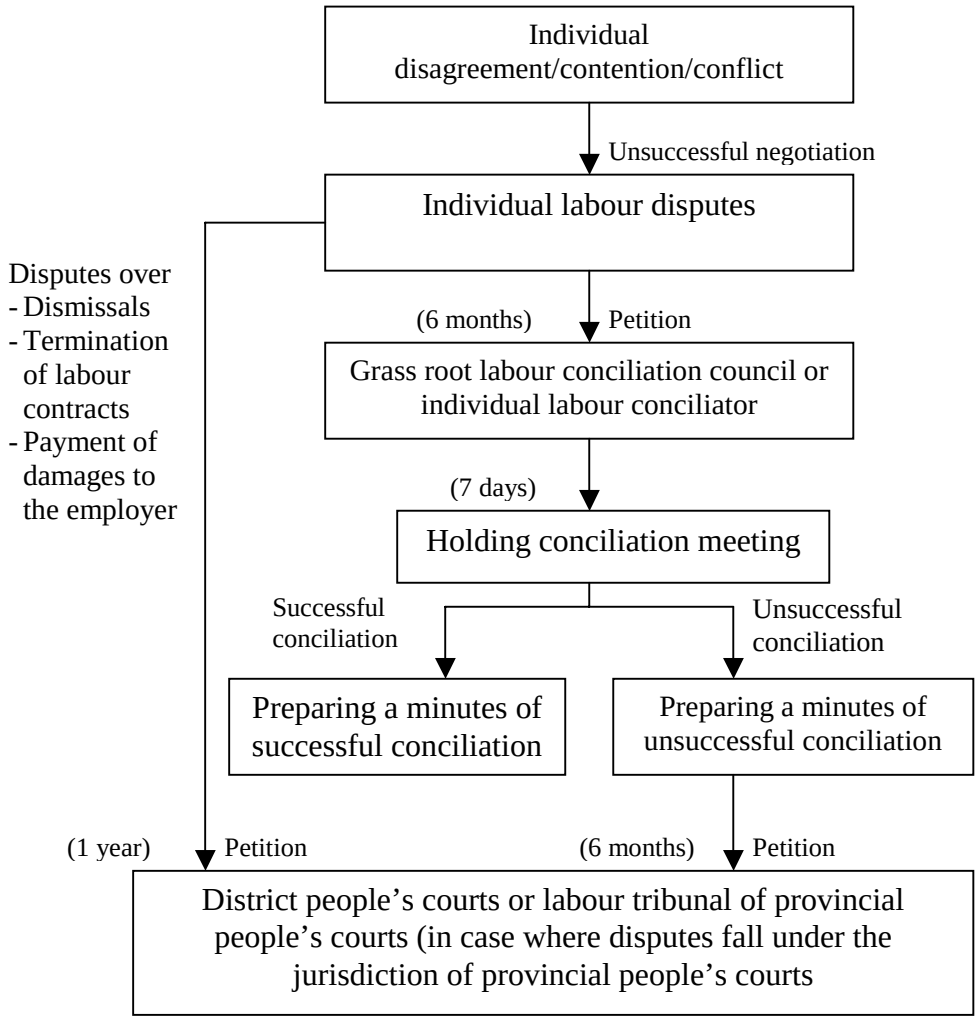

CHART ILLUSTRATING THE PROCEDURES FOR SETTLEMENT OF COLLECTIVE LABOUR DISPUTES
(Articles 170, 171 and 172 of the Labour Code)

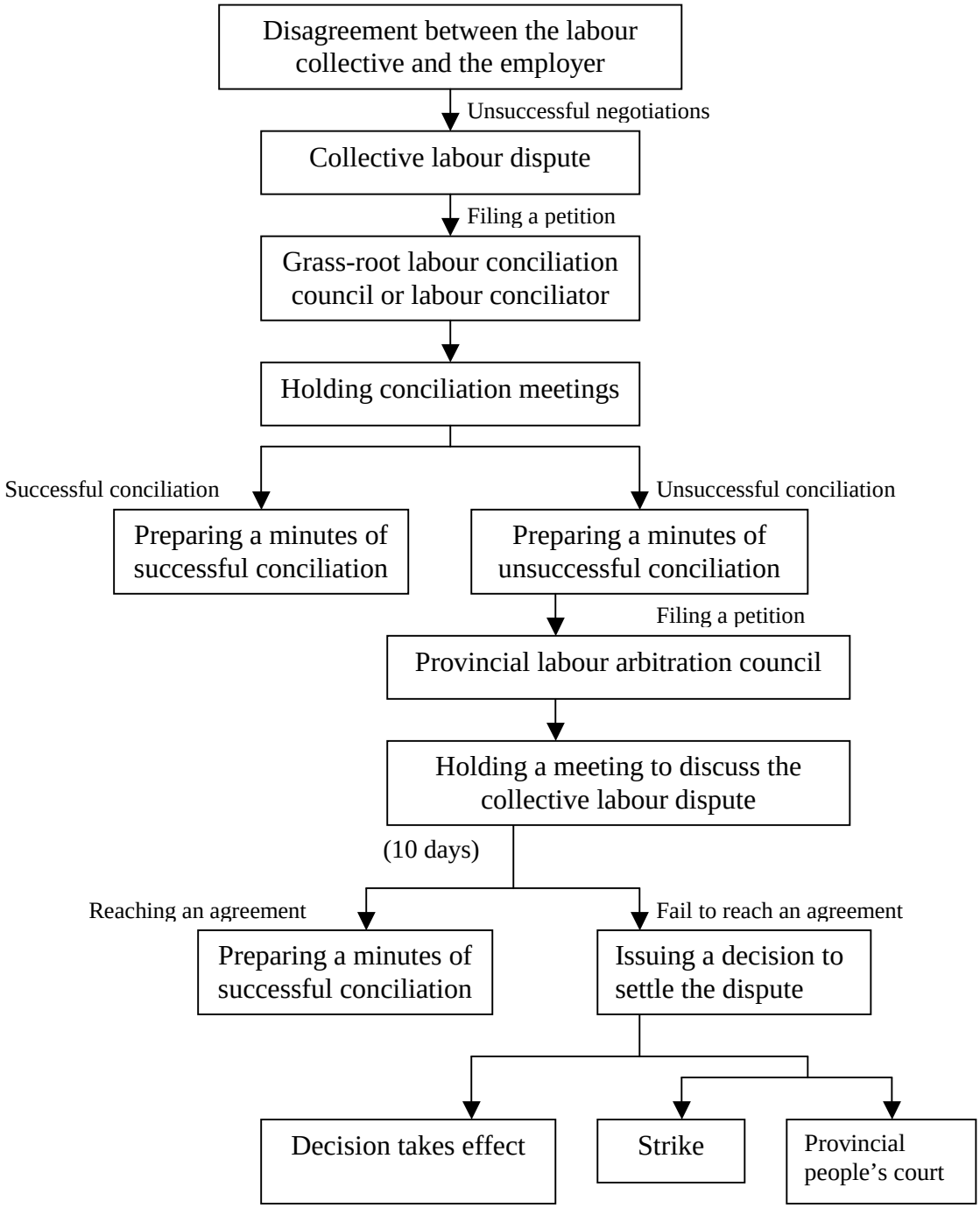

CHART ILLSUTARTING THE ORGANISATION STRUCTURE AND JURISDICTION OF THE COURT SYSTEM IN VIETNAM UNDER THE EXISTING LAWS AND REGULATIONS