Better Work Vietnam
Thematic Synthesis Report on Compensation

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Executive Summary

The latest sample covers 207 factories assessed once between October 2014 and October 2015. Based on findings from these assessments, this thematic report examines in closer detail some of the more salient issues related to the Compensation cluster, providing further insights into the key drivers of non-compliance and the obstacles faced when trying to advocate for improvements at the factory level. Where relevant and useful, these explanations are supported by short case studies informed by Better Work Enterprise Advisors' observations at the factory level in Vietnam.

In the second part of the report, we examine trends from a smaller sample of factories that have been assessed four times, once each year since the inception of the programme These findings provide an indicative picture of how compliance has evolved over time and points to areas of suggested priority in the coming years to address areas experiencing consistently low and/or decreasing compliance.

Key findings

- **More than eight out of ten factories failed to meet legal requirements on paid leave**, which refers primarily to the accuracy and timeliness of payments for leave entitlements, including public holidays, annual and maternity leave. At the question level, non-compliance is concentrated on the late settlement of sick and maternity leave claims (75 percent of factories are non-compliant), and the incorrect payment of annual leave (37 percent of factories are non-compliant).

- **Half of factories are non-compliant for the Compliance Point Wage Information, Use and Deductions,** mostly due to the continuing prevalence of multiple or inaccurate payrolls ("double book-keeping"), which affects almost 50 percent of factories.

- **More than 60 percent of factories are non-compliant on at least one aspect of overtime pay.** A key driver of non-compliance is the use of an inaccurate formula for calculating overtime pay, which ends up underpaying workers in certain months.

- **Almost four in ten factories (38 percent) fail to comply with laws on social security and other benefits**, the biggest problem being the timely and correct payment to social, health and unemployment insurance funds. Just over a quarter of factories don't collect and forward worker contributions to social insurance funds on time, while 12 percent don't pay the employer contribution to social insurance to uncovered workers (e.g. temporary workers).

- **Smaller shares of factories are found non-compliant in the areas of premium pay (25 percent non-compliance) and minimum and piece rate wages (27 percent non-compliance).** Almost all factories, meanwhile, comply with laws concerning methods of payment, i.e. direct payment to the worker in cash or via bank transfer.

- **Analysing trends in data for factories assessed four times between 2010 and 2013, shows a mixed picture in terms of compliance progress over time.** While improvements are noted in terms of the proportions of factories keeping accurate payrolls and settlement of maternity and sick leave claims (albeit with still high overall non-compliance in both areas), the data also highlights declining compliance in key aspects of social insurance payments, annual leave, and overtime pay.

- **Various explanations are posited for these trends.** Progress in terms of (growing) payroll integrity and accuracy is consistent with Better Work's recent drive to promote transparency across the payment spectrum, and to work with buyers to ensure that committed factories are given time to make improvements before facing sanctions. The rising shares of factories now complying with the law on leave settlements reflects growing awareness of the law, even though actual compliance rates suggest that many factories still find it difficult to meet the legal requirements.

- **Cases of declining compliance require further investigation, although it is possible to identify certain key dynamics that may be in play.** For example, there is strong anecdotal evidence to suggest that rising non-compliance on social insurance payments is linked to external economic factors, which include recent rises in labour costs amid growing competition and largely stagnant unit prices, which have weakened the financial position of many factories. Meanwhile, rising non-compliance with rules on ordinary overtime is likely linked to the stronger recent focus BWV has adopted to identify violations among *non-production workers* such as canteen staff and security guards, whose rights at work are often compromised. Non-compliance on annual leave payments is rising, but further analysis is required to understand why this is the case.

Section I: Methodology and Context

Methodology

Better Work carries out factory assessments to measure compliance with core international labour standards and the national labour law. It is structured according to 8 thematic areas, called clusters: four of which pertain to international core labour standards, and four of which pertain to working conditions as defined by the national labour law (see Table 1 below). Assessment reports are shared with factories and subscribing buyers, and are used as an input to the advisory process, during which factories develop and implement a plan and roadmap for improvement.

Table 1: Better Work Assessment Clusters

Cluster	
Core Labour Standards (International)	**Working Conditions (National Labour Law)**
Child Labour	Compensation
Forced Labour	Contracts and Human Resources
Discrimination	Occupational Safety and Health
Freedom of Association and Collective Bargaining	Working Time

Better Work Vietnam releases aggregate industry-level compliance data once a year in the form of its Synthesis Reports. While factory reports are designed to indicate specific areas of improvement for businesses, synthesis reports shine a light on the macro-level state of the industry, and are designed to stimulate and assist policy discussions on the shape and future direction the garment sector in Vietnam.

In addition to the Synthesis Reports, Better Work also releases an annual **Thematic Report**, based on aggregate compliance data, providing more detailed analysis and discussion on a specific area within the assessment. Previous thematic reports have focused on occupational safety and health and fire safety; this latest edition focuses on *Compensation*, which has 7 main groups of questions.

Questions in the Better Work Vietnam assessment are grouped by similarity, under headings known as *compliance points (39 in total)*. As illustrated in Annex A, compliance points fall under the aforementioned eight *clusters*. In the compensation cluster, which is the focus of this report, there are 7 compliance points and 34 individual questions (see Annex A).

The following discussion examines non-compliance rates both at the compliance point level (i.e. the share of factories non-compliant on *at least one question* in the compliance point) and individual question level (i.e. the share of factories non-compliant on a specific question).

Context

In 2013, Vietnam enacted a new Labour Code and Trade Union law as part of its ongoing efforts to modernize labour market governance in line with both international standards and the evolving needs of a market economy. These laws represent an important step forward, offering new and improved protections in a range of areas, including non-discrimination and gender equality, the prohibition of forced labour and child labour, as well as the right to organize. They also provide for a more favourable environment for workers to negotiate their own terms and conditions of employment through collective bargaining.

To assist in the more formidable task of ensuring effective implementation of these laws, the Government has in 2015 also issued several decrees and circulars that provide specific guidance on how the law should be interpreted and applied. A case in point is Decree 05 and Circular 23[1], which together provide further direction on various articles in the Labour Code, including employment contracts, collective bargaining (and related agreements), wages, labour disciplinary regulations and settlement of labour disputes.

The Government has also proven responsive to industry concerns in cases where laws are shown to be difficult to implement in practice. A case in point is the upcoming changes to the law on the settlement of sick and maternity leave claims, which for a variety of reasons (explained later in this report) have been a major driver of non-compliance in the area of compensation in recent years.

Turning to the specific theme of this report, compensation, there are a number of areas in which compliance remains lax and problematic for large numbers of factories. As the following section will demonstrate, these include aspects of paid leave, overtime wages and wage information and use. The causes of non-compliance vary but often stem from either a weak understanding of the law or a conscious decision by factories to remain out of compliance –either because they perceive that this is comparably more beneficial to their business (than compliance), or they consider the law to be unrealistic or inapplicable.

The focus of this report will be on aspects of compensation that have either high or increasing non-compliance rates, and are thus identified as priorities for further attention and action. In addition, the report will also attempt to elaborate on some of the likely causes for non-compliance, including conscious neglect, internal production weaknesses, external supply chain dynamics and difficulties in the interpretation and implementation of the law.

[1] Decree 05/2015/ND-CP and Circular 23/2015/TT-BLDTBXH

Section II: Findings

Overview of Compliance

Many factories struggle to comply with legal requirements pertaining to compensation, although in reality the bulk of the problems are limited to a few key areas, namely overtime wages, wage information, use and deductions, and paid leave. Moreover, within these areas, the major drivers of non-compliance are often found in a few specific questions, the identification of which serves as a useful guide for Better Work in pinpointing areas for greater advisory focus with affected firms.

Data presented in this section is drawn from a sample of 207 factories assessed by Better Work Vietnam in the period October 2014 to October 2015. Compliance findings are thus reflective of an aggregate picture at a point in time rather than a longer term trend. Section III examines compliance rates over time across a smaller subset of compensation issues, using a separate sample to the one examined here.

As highlighted in Chart 1 (below), non-compliance rates in the compensation cluster vary widely, from just 0.5 percent on payment methods to almost 80 percent in the area of paid leave. In the case of the latter, for example, this means that almost 80 percent of factories were found to be non-compliant on *at least one question* in the Paid Leave compliance point.

Similarly high rates of non-compliance are also evident on overtime wages (62.8 percent) and wage information, use and deductions (50.2 percent), while comparably smaller but still significant shares of factories failed to comply with laws regulating payments of social security (38.2 percent), minimum wages (27.1 percent), and premium pay (25.1 percent). The findings of these compliance points, together with their component questions, are discussed in greater detail below.

Chart 1: Non-Compliance Rates, by Compliance Point (%)

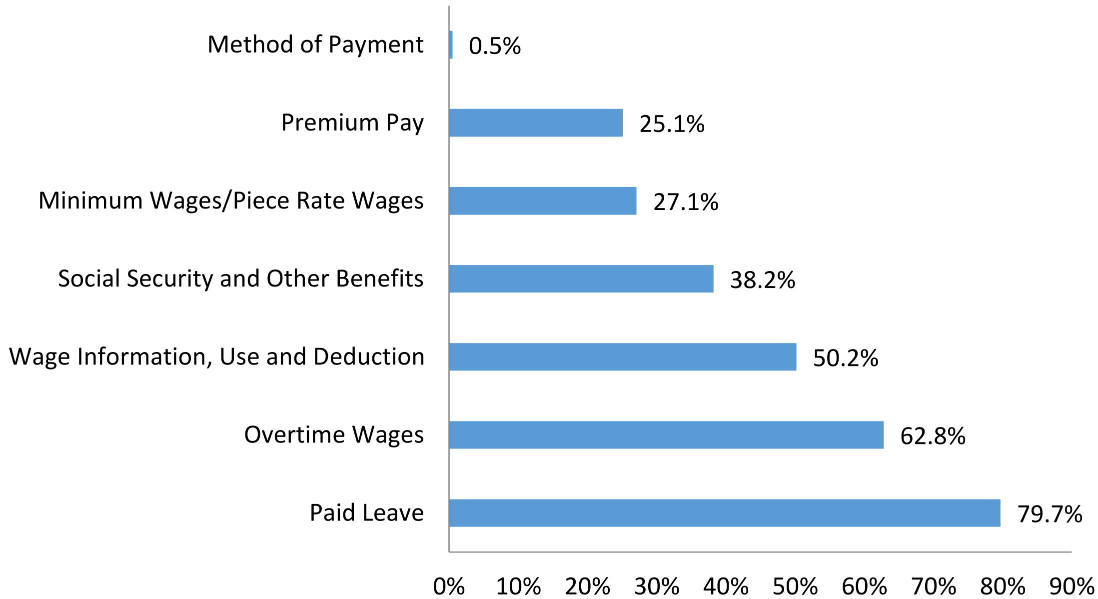
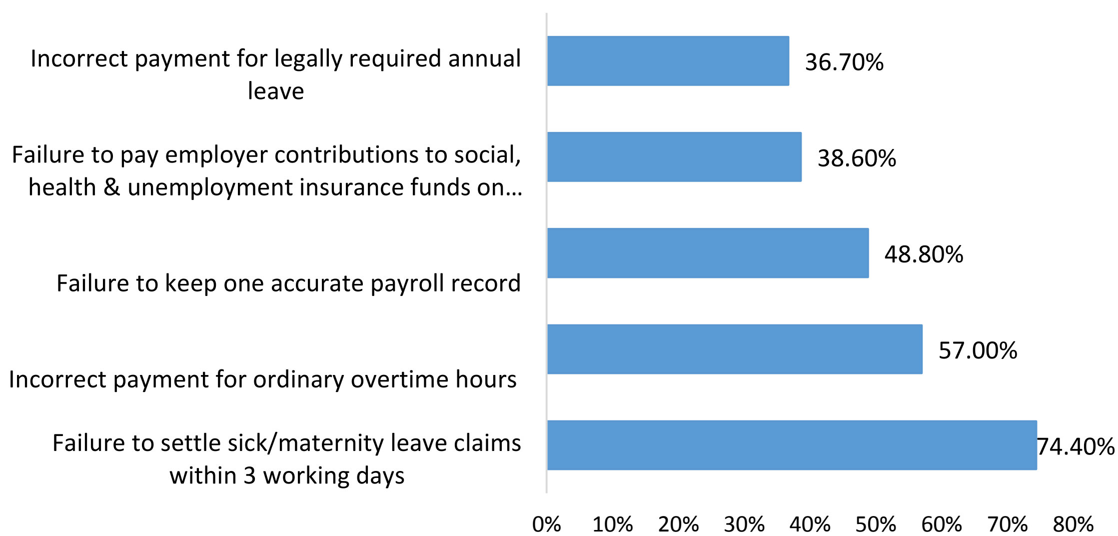


Chart 2: Top 5 Non-Compliance Questions (% of factories that are NC) [2]



[2] See Annex B for the full data table underlying this chart.

Paid Leave

In Focus 1: Paid Leave

Question	*# of NC factories*	*% of factories NC*
Do entitled workers receive full average monthly wages and maternity allowance of two month's minimum wage?	3	1.4%
Do pregnant workers receive correct payment when they take time off for prenatal care?	3	1.4%
Do workers receive correct payment during sick leave and other types of leave that are covered by social insurance?	11	5.3%
Does the employer pay women workers for 30 minutes rest per day during their periods?	16	7.7%
Does the employer pay workers correctly for legally required annual leave?	76	36.7%
Does the employer pay workers correctly for personal leave?	5	2.4%
Does the employer pay workers during work stoppages caused by the employer or by force majeure?	14	6.8%
Does the employer pay workers for legally mandated paid public holidays?	11	5.3%
Does the employer pay workers for one hour breastfeeding break per day?	8	3.9%
Does the employer provide 1 hour of paid time off to elderly workers in their last year of work before retirement?	4	1.9%
Does the employer settle claims for sick leave and maternity leave within 3 working days?	154	74.4%

Almost eight out of ten factories (79.7 percent) fail to meet legal requirements on paid leave, which covers questions pertaining to payments for statutory leave entitlements, breastfeeding and menstruation breaks among female workers, paid time off for elderly workers, work stoppages, and the timely settlement of sick and maternity leave claims (In Focus 1, above). Specifically, when the data is disaggregated to the question level, it is clear that the single biggest concentration of non-compliant factories is on the latter, with almost three quarters of factories (74.4 percent) unable to settle maternity and/or sick leave claims within 3 days.

There are three common reasons why factories struggle to comply with this legal requirement. Firstly, owing to the typically high value of the cumulative claims (particularly for maternity leave, which is equal to 6 months' salary), many factories are unwilling or unable to provide cash advances to workers while waiting to be reimbursed by the Social Insurance Agency (which usually takes longer than the 3 days they have to make payment to the workers). Also, factory staff are also often wary of making mistakes in reviewing claims documents (including identifying false claims), thus prefer to allow the Social Insurance Agency to approve the claim before making payment to the worker. Finally, many large factories argue that 3 working days is an unrealistic period for the scores of claims they have to settle at any one time.

As noted in Section I, the issue of maternity and sick leave claims will be subject to legal changes in 2016, under which enterprises will no longer be responsible for settlement of claims, but only of filing them to the Social Insurance Agency (SSA). Accordingly, as long as factories file worker claims to the Social Insurance Agency within 10 working days of receiving them, then they will be compliant with the law. In this sense, the legal changes should make it easier for factories to ensure compliance in this area.

Incorrect payment for annual leave is a problem for over a third of factories (36.7 percent), a fact that typically stems from a process issue, namely the failure to round up decimals of 0.5 or higher for accrued annual leave days payable (i.e. 3.5 days should be rounded up to 4). Whilst many factories are aware of this requirement, in practice it remains widely ignored.

Smaller shares of factories are also non-compliant for failure to pay (properly) for other worker entitlements, such as menstruation breaks (7.7 percent), work stoppages caused by the employer or force majeure (6.8 percent), paid public holidays (5.3%), and sick leave and other leave covered by social insurance (5.3%). In most cases, non-compliance in these areas reflect oversights or mistakes in the calculation of entitlements rather than outright non-payment, which suggests the problem is more one of knowledge and understanding –of laws and how to implement them in full at the enterprise level- than of deliberate negligence by factories (although this remains true of a small number of enterprises).

Overtime Wages

In Focus 2: Overtime Wages

Question	*# of NC factories*	*% of NC factories*
Does the employer pay workers correctly for all ordinary overtime hours worked?	118	57.0%
Does the employer pay workers correctly for all overtime hours worked at night?	27	13.0%
Does the employer pay workers correctly for all overtime hours worked on public holidays?	35	16.9%
Does the employer pay workers correctly for all overtime hours worked on weekly rest days?	67	32.4%

Almost two-thirds of factories (62.8 percent) are non-compliant in at least one aspect of overtime wage payments (see Chart 2). The major factor driving this is the use of incorrect -and unlawful- salary calculation formulas, which leads to incorrect payment of overtime wages. Particularly evident in this regard is the 57 percent of factories (118 out of 207) that did not pay workers correctly for all ordinary overtime hours worked.[3]

According to the Vietnamese Labour Law, enterprises must calculate the hourly overtime rate based on the monthly basic salary divided by normal working days in a month (determined by the employer to apply to all employees). However, in practice in the garment industry, this is widely ignored in favour of

[3] Smaller percentages failed to pay correctly for overtime at night and on public holidays (13% and 16.9%, respectively), largely because overtime on these days is less frequent than on regular working days.

a simpler, standardized formula of 26 days a month, which is applied regardless of the actual number of days worked in a given month. The result of this is that for months comprising fewer than 26 normal working days (like for example, February 2015 with 24 days or November 2015 with 25 days), overtime payments are lower than the legal requirement. Before March 2015, the law specified that factories calculate salaries based on normal working days, but not more than 26 days per month. However, under Decree 05 (enacted March 2015), this upper limit has been removed, so factories can now use 27 days in some months, which is the maximum possible (the maximum length of any given month is 31 days, minus 4 Sunday rest days).

Although switching to a flexible salary formula is both desirable and ostensibly straightforward to implement, a significant proportion of factories still consistently fail to comply. One reason for this is a lack of commitment on the part of top management, which also stems in some cases from the fact certain buyers do not consider it severe enough an issue to compel their suppliers to make changes. Another is a general lack of awareness about the requirements of the law, which Better Work finds to be common among new factories joining the programme. In other cases, factories cite so-called practical constraints to compliance, such as the inflexibility of payment software or the costs of modifying it, as

Case Study 1: Incorrect salary calculations

Factory X is a local affiliate of a multinational garment manufacturer. In its most recent assessment it was found non-compliant on several points relating to its use of a fixed 26-day salary calculation formula, which underpays workers in months with fewer than 26 actual working days.

The factory knows that it needs to modify the formula to reflect actual working days. However, the payroll software installed in their factory was developed and sourced overseas by the head office, and thus changes to formulas and formats cannot be done locally.

Payroll staff have explained that they must provide a detailed justification, including explanation of the law, to headquarters managers and await approval before the payroll system can be modified. The factory remains reluctant to do this and the issue remains unresolved.

Case Study 2: Moving to compliance on salary systems

Factory Y joined BWV in June 2015. Since setting up in Vietnam, the factory had followed the standard industry practice for calculating salaries, using a fixed 26 day per month formula.

However, this practice underpays workers in certain months when actual working days are fewer than 26, and results in non-compliance with the law. It was not until the first Better Work assessment that the factory became aware of this requirement.

Following discussions with their BW advisor, the management vowed to rectify the situation and convened a meeting of relevant departments (HR and production) together with the trade union. With good systems of communication, the factory was quickly able to reach consensus over the changes, which were made by adjusting the calculation formula in the MS Excel-based payment system.

Although this was a quick and easy change to make, ensuring workers understood and accepted the changes was a bigger challenge.

well as overly-complex approval processes (for changing the formula) with overseas head offices (see Case Study 1).

Smaller numbers of factories also made incorrect payments for overtime at night (27 factories) and on public holidays (35 factories), which reflects in particular the difficulties some factories still face in understanding how various types of overtime should be calculated by law. In addition, some factories continue to overlook the fact that night shift work between the hours of 00:00 and 06:00 on public holidays is considered overtime on a public holiday, as well as underpaying temporary workers for their overtime on these days.

Wage Information, Use and Deductions

In Focus 3: Wage Information, Use and Deductions

Question	*# of NC factories*	*% of NC factories*
Does the employer comply with national laws regarding wage deductions?	3	1.4%
Does the employer keep only one accurate payroll record?	101	48.8%
Does the employer properly inform workers about wage payments and deductions?	9	4.3%

Half of factories (50.2 percent) were found non-compliant in terms of wage information, use and deductions –mostly due to the still persistent practice of keeping multiple or inaccurate payrolls. One hundred and one factories (48.8 percent) lacked single accurate payrolls, which reflects a number of common practices including separating overtime and weekend work from the main payroll and keeping separate records for certain types of workers. The most common motivation for this is to conceal excessive overtime, which in the context of legal limits on daily, monthly and yearly overtime, remains one of the leading area of non-compliance in the industry at large. While Better Work has seen some progress in compliance in this area in recent years (it urges factories to be transparent, and requests buyers to consider favourably enterprises that are both honest and committed to improvement), duplicate payrolls remain commonplace, with factories often justifying them on the grounds of practicality (e.g. separating payrolls for weekend work is simpler and easier to track).

The vast majority of factories actually comply with the law when they make wage deductions, both in terms of the deductions themselves and the process for informing workers of such. Similarly, the requirement that factories provide adequate information to workers about their wage payments (in the form of clear and detailed wage statements for example) is on the whole well observed across Better Work factories.

Case Study 3: Multiple Payrolls and persistent non-compliance

For several years, Factory Z had an internal policy to limit overtime for production workers to 1 hour per day, well within the legal daily limit of 4 hours. However, after a Better Work assessment, it was revealed that the demands of daily production were typically pushing overtime well beyond 1 hour and often beyond 4 hours per day.

Meanwhile, for two years the factory was non-compliant for having multiple payroll records: one payroll for regular hours and other for overtime. The Better Work advisor urged the management to pursue a transparent practice and include all actual working hours to a single payroll, however the management argued repeatedly that it is not yet ready to change the system.

Since the latest assessment, the factory has reaffirmed the policy of 1 hour OT per day and called for all relevant staff to cut their overtime to 1 hour per day to comply. It remains non-compliant for both overtime limits and multiple payrolls.

Social Security

Non-compliance in the area of social security and other benefits is mostly concentrated on two issues, namely the on time collection and submission of worker contributions to social insurance (26.1 percent of factories are non-compliant), and the on time payment of concomitant employer contributions to these funds (38.6 percent are non-compliant). In both cases, non-compliance often stems from the fact factories fall into arrears with these payments, missing the monthly payment deadlines set by the Social Insurance Agency for consecutive months. Factories are reminded of this commitment by the Social Insurance Agency, but many still argue that cash flow difficulties prevent them from settling arrears on time.

A less common problem, but one for which more than one in ten factories are still non-compliant, is the failure to pay workers who are not covered by compulsory social insurance the employer's contribution for social, health and unemployment insurance (a total of 22 percent of the worker's monthly wage). This refers particularly to temporary workers with labour contracts of less than 3 months, who remain in too many cases marginalized in terms of their right to social protection relative to regular permanent employees.

In Focus 4: Social Security and Other Benefits

Question	***# of NC factories***	***% of NC factories***
Does the employer collect and forward workers' contributions to social insurance funds on time?	54	26.1%
Does the employer comply with requirements when workers have occupational accidents and diseases?	11	5.3%
Does the employer pay the legally required employer contributions to social, health and unemployment insurance funds on time?	80	38.6%
Does the employer pay workers who are not covered by compulsory social insurance the employer's contribution for social, health and unemployment insurance?	24	11.6%

Minimum Wages

Payment of minimum wages is an area of generally low non-compliance across Better Work factories in Vietnam. The principal concern in this regard is with the payment of the 7 percent skills bonus for workers that have received vocational training: 26 factories out of 207 (12.6 percent) fail to comply with this requirement (In Focus 5, below), which often stems either from the exclusion of certain workers from the entitlement (especially temporary workers) or a slight –but nevertheless unlawful-miscalculation of the entitlement when calculated in conjunction with the 5 percent premium pay for workers doing hazardous or dangerous work (which underpays workers slightly).[4]

Ten percent of factories are also non-compliant on minimum wage payments for regular full time workers, which is linked to the aforementioned issue of incorrect salary calculation formulas. Specifically, if a factory divides the monthly salary for minimum wage workers by a fixed 26 days (208 hours) and then multiplies by actual days worked, it will be paying below the minimum wage in months with fewer than 24 working days.

Similarly, use of the same fixed salary calculation formula is also the main driver of non-compliance on the question concerning payment for piece rate workers (9.2 percent of factories non-compliant). Specifically, this relates to months when these workers have to be compensated because their piece rate pay is lower than the statutory minimum wage –a procedure which is required by law, and on which compliance rates are generally high. However, where such instances arise, many factories revert to paying piece rate workers by a monthly salary (for the months in question) based on the aforementioned 26-day (fixed) calculation formula, which results in underpayment for workers in months when the actual working days are fewer than 26. Moreover, in other cases, factories have been found to have incorporated overtime payments as part of the “top-up” compensation for piece rate workers. The premise of the law here is that when their monthly salary falls below the minimum wage, piece rate workers should not have to work overtime simply to reach that minimum wage level, hence overtime should not be considered in the calculation.

In Focus 5: Minimum Wages

Question	***# of NC factories***	***% of factories NC***
Does the employer pay at least 7% higher than the applicable legal minimum wage for ordinary hours of work to workers who have received vocational training?	26	12.6%
Does the employer pay at least 85% of the wage paid to other workers for the same job for ordinary hours of work to probationary workers?	1	0.5%
Does the employer pay at least the applicable legal minimum wage for ordinary hours of work to regular full time workers who perform the simple work under normal conditions?	21	10.1%
Does the employer pay at least the applicable legal minimum wage for ordinary hours of work to temporary workers?	11	5.3%

[4] Specifically, workers entitled to both the 7% and 5% bonuses should have their salaries calculated using the multiplier of 1.1235 (1.05 x 1.07 = 1.1235) instead of 1.12.

Does the employer pay piece rate workers correctly for ordinary hours of work?	19	9.2%

Premium Pay

Almost a fifth of factories (19.8 percent) don't pay in full the required premium pay for workers who conduct hazardous and dangerous work, as defined by MOLISA –all of whom should be paid at least 5 percent higher than the wage applicable to normal conditions.[5] Non-compliance in this regard typically stems from inconsistencies between what the factory considers as dangerous or hazardous work and what the law defines: many factories for example exclude certain jobs like mechanics and those doing folding and Quality Control, which are by law still eligible for the 5 percent premium pay.

A minority of factories -8.7 percent of the current sample- failed to pay workers correctly for ordinary hours worked at night, which most commonly refers to payments for security guards (who are typically the only ones contracted to work their normal hours at night). Instead of being paid 130 percent of their normal wage for these hours, many factories continue to pay security guards an inferior lump sum.

In Focus 6: Premium Pay

Question	*# of NC factories*	*% of factories NC*
Does the employer pay at least 5% higher than the normal applicable wage level for workers who perform hazardous and dangerous work	41	19.8%
Does the employer pay workers correctly for regular working hours worked at night?	18	8.7%

Method of Payment

In the current sample, all factories were compliant with laws requiring them to pay workers directly in cash or by bank transfers, and only one factory was found to have not paid wages on time and/or compensation for late payment (In Focus 7). Withholding payment to workers is rarely practiced in Better Work factories, and when it is, it can often be linked to cases of financial distress and insolvency.

In Focus 7: Method of Payment

Question	*# of NC factories*	*% of factories NC*
Does the employer pay wages on time and pay interest in case of late payment?	1	0.5%

[5] Hazardous and dangerous works in the garment industry are cutting; sewing; QC; folding; packing; operating printing machines; carrying fabric, fiber or chemicals; operating washing machines; operating form finisher machines; industrial cleaning and cleaning floors in printing or dyeing building, experimenting, analyzing chemicals.

Compliance Trends

Compliance findings in the preceding section are drawn from the most recent random sample of Better Work factories, covering the period October 2014 to October 2015. As such they reflect the compliance situation at an aggregate level and at a point in time, i.e. a snapshot, based on a single assessment in each factory.

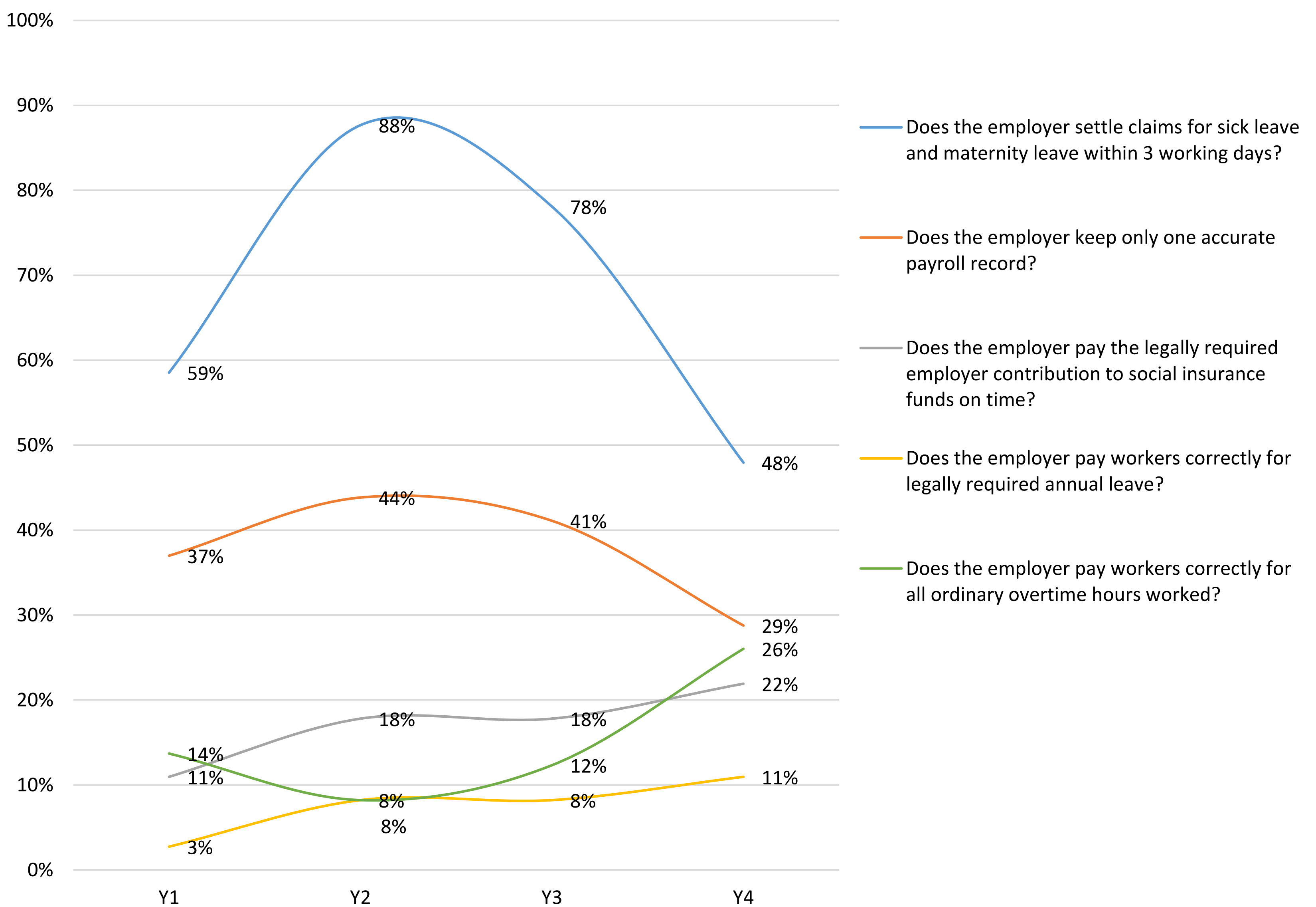
To examine in closer detail the evolution of compliance performance over time, it is instructive to look at trend data. Since 2009, Better Work has been tracking compliance at yearly intervals in a fixed sample of factories. The findings to date serve to highlight emerging trends in compliance across the full range of Better Work assessment criteria. In doing so they provide insights into the areas where labour standards and working conditions are improving and where they remain poor or worsening.

At the outset, it should be noted that owing largely to differences in sample size and composition, non-compliance rates in the trend data often differ –to varying degrees- from the equivalent rates in the snapshot data. Specifically, while the trend data uses a fixed group of factories, the snapshot data (which uses a comparably larger random sample) captures significant numbers of *new* factories coming into the programme in the last 12 months –factories which in general have lower rates of compliance than more established Better Work factories (i.e. those in later cycles).[6] At the time of the fourth assessment in the trend dataset (Y4), factories in that sample had had at least four years to make improvements, thus would be expected to have better overall compliance records.

Error! Reference source not found. in Annex B presents non-compliance rates *over time* for the compensation questions already identified in the aggregate (snapshot) data as being of most concern. These include questions on settlement of statutory leave, payroll records, social insurance contributions and premium pay.

[6] Factories enroll with Better Work Vietnam in 12—month "cycles", during which they receive assessment and advisory services, together with optional training.

Chart 3: Trends in Non-Compliance (%)



Settlement of sick and maternity leave payments

Trend data on the settlement of sick and maternity leave payments shows an **overall decline in non-compliance**, from 59 percent in year 1 to 48 percent in year 4. This is an encouraging development, and one which corresponds with Better Work's general observation that factories are increasingly cognisant of the legal requirements in this area. At the same time, it remains a concern that even after four years, almost half of these factories remain unable or unwilling to comply with the law. Moreover, as the aforementioned *snapshot* data illustrates, this problem appears to be even more acute among the wider population of Better Work factories. When examining this sample, which includes a large cohort of newer factories with typically weaker compliance (compared with established factories), the non-compliance rate is 74.4 percent.

In 2016, legal changes that will allow factories to settle maternity and sick leave claims *after* the approval of the Social Insurance Agency are likely to boost factories' ability to comply with the law. As this change will bring the law more closely into alignment with what is already happening across much of the industry (i.e. factories settling leave claims *after* Social Security Agency approval), Better Work expects to see *falling* non-compliance rates in this area in the coming years.

Inaccurate or multiple payroll records

The share of factories failing to keep a single accurate payroll record (i.e. keeping "double books") has fallen 8 percentage points to 29 percent in year 4. This indicates growing awareness of the need for transparency in payroll accounting among factories as they become more established in the Better Work programme. However, it remains concerning that almost three in ten factories (still) keep multiple or inaccurate payrolls, which undermine the integrity of payment systems and can mask other violations of the law, particularly in terms of overtime pay for workers outside the regular working week.

Payment of employer contributions to social insurance

Between year 1 and year 4, **the share of factories failing to ensure timely payment of the employer contributions to workers' social insurance doubled** from 11 percent to 22 percent. Although this cannot be verified without further analysis, there is anecdotal evidence to suggest that growing numbers of firms are failing to comply due to a general downtown in the economic environment in which they operate. In recent years, for example, growth in unit order prices for garment products has been outstripped by rises in labour costs and social insurance contributions, leading some to fall into arrears which become harder to repay every month.[7]

Annual leave payments

Starting from a low base of 3 percent in year 1, **the proportion of factories that failed to pay workers correctly for statutory annual leave rose significantly** over the observation period to 11 percent in year 4. Although as discussed earlier this appears to be largely driven by a procedural error in the rounding up of leave days (e.g. a decimal of 0.5 and above rounds up to a full day), the fact that non-compliance is not just static but worsening warrants further investigation. This may be suggestive that factories are increasingly ignoring the requirement, which is usually more likely if the issue is not prioritized as a concern by buyers.

[7] Between 2010 and 2014, the minimum wage increased more than threefold, from VND 730,000 to VND 2,700,000, while the proportion that employers have to pay for social insurance increased from 16 percent to 18 percent.

Among the broader sample of factories captured in the snapshot data, non-compliance is still higher at 36.7 percent, thus underscoring it as a still significant challenge in the industry.

Payment for ordinary overtime hours

Over the four year observation period, **the share of factories that failed to pay their workers correctly for ordinary overtime rose by 12 percentage points to 26 percent** –a notable deterioration in compliance. As already noted in this report, the main source of non-compliance is the use of a fixed 26 day salary calculation formula, which results in underpayment for overtime in months with fewer than 26 working days. However, in terms of the actual *change* in the non-compliance rate over time, this is likely due to the stronger focus Better Work has attached in recent years to the investigation of non-production workers such as canteen staff, security guards, and mechanics, whose rights at work are often less well respected than those of production workers (who make up the bulk of the factory workforce). By focusing more heavily on the conditions of these workers, Better Work has revealed a growing number of inconsistencies in the scope of payment.

Conclusion

The latest snapshot compliance data highlights wide variance in non-compliance across the compensation cluster, from just 0.5 percent on issues of payment methods to almost 80 percent in the area of paid leave. Similarly high rates of non-compliance are also evident on overtime wages (62.8 percent) and wage information, use and deductions (50.2 percent), while comparably smaller but still significant shares of factories failed to comply with laws regulating payments of social security (38.2 percent), minimum wages (27.1 percent), and premium pay (25.1 percent).

At the same time, while this report focuses primarily on issues of high non-compliance, the wider context in this cluster is often far more positive. Examples of this include the 99.5 percent of factories that pay wages on time; the 90 percent that pay at least the minimum wage for regular full time workers; and the nearly 95 percent that ensure that temporary workers are paid at least the minimum wage for their (ordinary) hours. These issues help to contextualize the broader situation with regard to compensation, and hence are vital considerations for any holistic and balanced assessment of compliance and working conditions in the sector.

As might be expected, compensation is usually a key interest and concern for garment workers, who despite the complications involved in interpreting the law, are often acutely aware at least of their basic rights and entitlements to leave, salary and overtime pay. Previous experience in Vietnam has also shown that confusion and discontent over compensation can also lead to various forms of industrial unrest, including strikes. Therefore, in this respect, the extent to which a factory performs well in the area of compensation can and often does have significant implications for wider production and labour management dynamics.

Trend data taken from a smaller sample over a four year period (2010 to 2013) also reveals mixed progress across the compensation sphere, with rising shares of factories now compliant on payroll accuracy and sick and maternity leave payments, and declining compliance in key aspects of social insurance payments, leave payments, and overtime pay.

Many aspects of non-compliance stem at least in part from difficulties in understanding and applying the law, thus underscoring the need for continued (and improved) legal education and awareness-raising efforts across the industry. A case in point is the recently enacted Decree 5 and Circular 23, the requirements of which are still poorly understood by many factories, particularly in the areas of salary and overtime pay calculations.[8]

Compliance data also suggests a growing problem of factories failing to pay on time or accurately for *non-ordinary* working hours; an issue which Better Work observes is linked to a general lack of clear information and guidance on the law in a number of factories. Better Work Vietnam has a key role to play in working with the Ministry of Labour to ensure simple, clear and consistent guidance is made available to all factories, as well as practical advice and coaching to help them translate knowledge into real changes to procedures and systems.

[8] In addition to this, under the requirements of Decree 05 and Circular 23 enterprises are also now required to add *salary-based allowances* to the basic salary formula used to calculate overtime payment and contributions to social insurance fund. This change is likely to increase labour costs for factories, which, in turn, may result in rising non-compliance in the coming years.

There is also evidence of disparities in working conditions between the majority production workforce and other groups of workers. In too many cases, non-compliance on specific compensation questions are driven by a small number of cases affecting non-production workers, such as security guards being denied full leave entitlements, or temporary workers not being paid the employer's contribution to social insurance (in addition to their salary). To address this, Better Work has extended its oversight of these groups at the assessment stage, and will also pursue more proactive advocacy and awareness raising through its advisory process, to ensure factories are aware of their legal responsibilities to *all* workers, not just those directly involved in production.

A number of non-compliance issues are –in most cases- relatively straightforward to rectify, yet many factories remain out of compliance for several years. A case in point is the continued use of a fixed 26-day salary calculation formula, which is usually not an intractable issue for most factories to modify. Better Work has observed examples, for instance, whereby firms have made the necessary adjustments to ensure compliance with relatively low investments of time and money. Going forward, wider development and dissemination of such examples would serve as a useful addition to the advisory toolkit used by Better Work to promote improvements in its factories.

Some compliance issues are symptomatic of systemic industry-wide challenges that will need concerted efforts from supply chain actors to address. For example, on the issue of multiple payrolls, there is a clear role for buyers in driving change, not just by promoting factory transparency (in conjunction with Better Work and other partners), but also by reviewing and adapting their own standards and ratings systems so that they do not create adverse incentives for factories to conceal overtime (which remains the primary motivation for factories to keep multiple payrolls) rather than disclose their situation and commit to making improvements.

As the leading industry powerbrokers, buyers can also play a role in incentivizing factories to address longstanding issues that may have until now been considered low priorities. Ensuring compliance with salary calculation formulas as the basis for fair payment of overtime in particular is a case in point in this regard. This should be matched with concerted efforts by national level actors, including Better Work, to educate factories on how these issues undermine working conditions and why addressing them makes good business sense.

Annex A

Compliance Points and Questions for the Compensation Cluster

Compliance Point	Question
Minimum Wages	Does the employer pay at least the legal minimum wage for ordinary hours of work to regular full time workers who perform the simple work under normal conditions?
	Does the employer pay piece rate workers correctly for ordinary hours of work?
	Does the employer pay apprentices the wage agreed to by the parties?
	Does the employer pay at least the applicable legal minimum wage for ordinary hours of work to temporary workers?
	Does the employer pay at least 85% of the wage paid to other workers for the same job for ordinary hours of work to probationary workers?
	Does the employer pay at least 7% higher than the applicable legal minimum wage for ordinary hours of work to workers who have received vocational training?
Overtime Wages	Does the employer pay workers correctly for all ordinary overtime hours worked?
	Does the employer pay workers correctly for all overtime hours worked at night?
	Does the employer pay workers correctly for all overtime hours worked on weekly rest days?
	Does the employer pay workers correctly for all overtime hours worked on public holidays?
Premium Pay	Does the employer pay workers correctly for regular working hours worked at night?
	Does the employer pay at least 5% higher than the normal applicable wage level for workers who perform hazardous and dangerous work?
Method of Payment	Does the employer pay wages directly to workers in cash or by bank transfer?
	Does the employer pay wages on time and pay interest in case of late payment?
Wage information, Use and Deductions	Does the employer comply with national laws regarding wage deductions?
	Does the employer keep only one accurate payroll record?
	Does the employer properly inform workers about wage payments and deductions?
Paid Leave	Does the employer pay workers for legally mandated paid public holidays?
	Does the employer pay workers correctly for legally required annual leave?
	Does the employer pay workers correctly for personal leave?
	Do workers receive correct payment during sick leave and other types of leave that are covered by social insurance?
	Does the employer pay workers during work stoppages caused by the employer or by *force majeure*?
	Do entitled workers receive full average monthly wages and maternity allowance of two month's minimum wage?
	Do pregnant workers receive correct payment when they take time off for prenatal care?
	Does the employer pay workers for one hour breastfeeding break per day?
	Does the employer pay women workers for 30 minutes rest per day during their periods?
	Does the employer provide 1 hour of paid time off to elderly workers in their last year of work before retirement?
	Does the employer pay for paternity leave when required?
	Does the employer settle claims for sick leave and maternity leave within 3 working days?
Social Security and other Benefits	Does the employer collect and forward workers' contributions to social insurance funds on time?
	Does the employer pay the legally required employer contributions to social, health and unemployment insurance funds on time?
	Does the employer pay workers who are not covered by compulsory social insurance the employer's contribution for social, health and unemployment insurance?
	Does the employer comply with requirements when workers have occupational accidents and diseases?

Annex B
Non Compliance Rates

Table 2: Non-Compliance Rates, by Compliance Point

Compliance Point	# of NC factories	% of factories NC
Method of Payment	1	0.5%
Minimum Wages/Piece Rate Wages	56	27.1%
Overtime Wages	130	62.8%
Paid Leave	165	79.7%
Premium Pay	52	25.1%
Social Security and Other Benefits	79	38.2%
Wage Information, Use and Deduction	104	50.2%

Table 3: Top 5 Questions with Highest NC Rates

1	Does the employer settle claims for sick leave and maternity leave within 3 working days? [Paid Leave]	154	74.4%
2	Does the employer pay workers correctly for all ordinary overtime hours worked? [Overtime Wages]	118	57.0%
3	Does the employer keep only one accurate payroll record? [Wage Information, Use & Deductions]	101	48.8%
4	Does the employer pay the legally required employer contributions to social, health and unemployment insurance funds on time?	80	38.6%
5	Does the employer pay workers correctly for legally required annual leave?	76	36.7%

Table 4: Non-Compliance Rates for Selected Compensation Questions (%)

Question[Compliance Point indicated in brackets]	Non-compliance rate, %				Snapshot NC rate, % (Oct '14 – Oct '15)
	Y1	Y2	Y3	Y4	
Does the employer settle claims for sick leave and maternity leave within 3 working days?	59%	88%	78%	48%	*74.4%*
Does the employer keep only one accurate payroll record?	37%	44%	41%	29%	*48.8%*
Does the employer pay the legally required employer contribution to social insurance funds on time?	11%	18%	18%	22%	*38.6%*
Does the employer pay workers correctly for legally required annual leave?	3%	8%	8%	11%	*36.7%*

Annex C

Factories Covered in this Report

3Q Vina Co. Ltd.
Protrade Garment Co. Ltd
United Sweethearts Garments (Vietnam) Co. Ltd
Shinsung Vina Co. Ltd.
NB Blue Co. Ltd.
Hansae Vietnam
Hansae TN Co. Ltd.
Tri Dat Garment Co. Ltd.
L&S Vina Co. Ltd.
Lotus Textile & Garment Co. Ltd.
King Star Garment
Saigon 3 Garment Joint Stock Company
Chutex International Co. Ltd.
Nobland Vietnam Company Limited
Domex (Vietnam) Co., Ltd.
Jiangsu Jing Meng Vietnam CO., LTD
T&T Co. Ltd.
Shillabags International Co.
Jung Kwang Vietnam
Tae Young Vina Co. Ltd.
Unipax Co. Ltd.
FTN Vietnam Co. Ltd.
All Super Enterprise
Green Vina Co. Ltd.
Avery Dennison RIS Vietnam Ltd.
Viet Hung JSC.
CCH TOP (VN) Co., LTD
Eclat Textile Co,. Ltd (Viet Nam)
KL Texwell Vina Co. Ltd.
COLLTEX GARMENT MFY CO LTD., (VN
Truong Vinh Trading Industrial Garment Co. Ltd.
Tong Cong Ty Co Phan May Viet Tien
Esquel Garment Manufacturing
Far Eastern Apparel (Vietnam) Ltd.
Nam Yang International Viet Nam Co. Ltd.
Viet Thinh Garment JSC
Thao Uyen
Epic Designers (VN) Ltd
Deuck Woo Viet Nam Co. Ltd
Namyang Song May Co. Ltd.
LEE & VINA CO. LTD.
NOBLAND VIETNAM CO. LTD.
HOA THANH TEXTILE AND GARMENT CO. LTD.
Deyork Vietnam Co. Ltd.
TTC GARMENT EMBROIDERY CO. LTD.
Colour Apparel (Vietnam) Garment Co. Ltd.
Quang Thai Garments Manufacture Co. Ltd.
Hai Duong Garment Stock Company No.2
Truong Son Garment JSC
DONG A TEXTILE GARMENT JOINT STOCK
VAN THANH TRADING SERVICE CO. LTD.
ACV
Wooyang Vina II Co., Ltd.
Global Garment Sourcing Vietnam Co. Ltd.
TNG JSC - Phu Binh 3 Garment Branch
Hannam Inc.
Manh Tien Embroidery Co. Ltd.
Apple Fashion Co. Ltd.
Flexcon Vietnam Joint Venture Company Limited
Eight March Textile Co. Ltd. Branch- Hai Phong
Hoa Binh Co. Ltd.
Nien Hsing (Ninh Binh) Garment Co. Ltd.
GG VIETNAM CO. LTD.
JME VINA CO. LTD.
Grande International Enterprise Corp Co. Ltd.
Highvina Apparel Inc.
Kovina Fashion Inc.
C&M VINA CO. LTD.
HAN SUNG VINA CO. , LTD
Rich Way Company limited
Vastco Garments Ltd.
Liem Trinh Co., Ltd.
DAUM & JUNG AN JSC
Jin Jia Enterprise or Cam Gia Co. Ltd.
DEMCO VINA
Branch of Garment 10 Corp JSC - Hung Ha
Minh Tri Co. Ltd.
Jea-Must Vietnam Company Limited
Vina Kyungseung Trading Co. Ltd.
Regent Garment Factory Ltd.

Dae Kwang Apparel Co. Ltd.
Yupoong Vietnam
Branch of Poong In Vina Co. Ltd.
Asia Garment Manufacturer Vietnam Co. Ltd.
Eland Vietnam- Cu Chi Factory
I.S Vietnam Co. Ltd.
K.J Vina Co. Ltd.
Nam Phuong Co. Ltd.
Langham Garment Co. Ltd.
Pungkook Saigon Two Corporation
Park Corporation (Vietnam) Ltd.
Sun Garment Textile Vietnam Co. Ltd.
A First Vina Co. Ltd.
Nahal Vina Co. Ltd.
Nam Ho Co. Ltd.
SIMONE ACCESSORIES
Viet My Export Garment Co. Ltd.
Thuan Phuong Embroideries
Sao In Garment Embroidery Imp/Exp Co. Ltd.
Kanaan Saigon Co., Ltd. (The 2nd factory)
Cuong Tai Co., Ltd.
Triple Garment Co., Ltd.
Texma Vina Co. Ltd.
Longway Vietnam Co. Ltd.
Yes Vietnam Co. Ltd.
Nha Be Garment Corporation- JSC
Phu Khang
Lam Thanh Co. Ltd.
Chi Dat Garment Co. Ltd.
Phuong Nam Garment Trading Import Export JSC
Tien Tien Garment - Workshop 4
Poong In Vina 4
Continent Packaging Corporation
Cerie Binh Duong Garment Co. Ltd
Great Super Enterprise
Simone Accessories Collection Vietnam TG Ltd.
J&D Vinako
Top One Garments MFG Co. Ltd.
Bando Vina Co. Ltd.
Saigon 2- Trung Lap Phu
Tan Uy Dat
Maxim Vietnam Company.LTD.,
Fashion Garment 2 Co. Ltd.- Tan Phu Branch
Poong In Vina 5 Co. Ltd.
King Ken Co. Ltd
SSV Export Garment Company
Dong Bang Vina Co. Ltd.
Kinh Bac Garment Joint Stock Company
Nien Hsing Garment (Vietnam) Co. Ltd.
P-My Tu Co. Ltd.
Mido Trade Co. Ltd. -Ninh Binh
Minh Anh
My Viet International Export Service
Dang Nguyen Embroideries Garments Co. Ltd.
Ha Dong Vietnam Co. Ltd.
Excel Tailoring Vietnam Co. Ltd.
Opus One Corporation
Esquel Garment Manufacturing - Hoa Binh
Peak Speed Printing Co. Ltd.
Indo-chine VN Company Limited
Hung Yen Garment Corporation Joint Stock Co.
Chau Giang - Hung Yen Joint Stock Company
Dusan Vina Co. Ltd.
Fullwealth International Garments Inc.,
Ha Phong Export Garment Joint Stock Company
Minh Tri Thai Binh Co. Ltd.
Vinh Tien Garment In-Ex Co. Ltd.
Hoa Sen Phu Tho Garment Co. Ltd.
Thien Nam Garment Co. Ltd.
Joon Saigon Co. Ltd.
Vietnam Rehong Garment Co. Ltd.
Oasis Garment Co. Ltd. (Vietnam)
Viet Tien Phu Co. Ltd.
P.I.T Vina Co. Ltd.
Upgain (VN) Manufacturing Co. Ltd.
Unique International (VN) Co. Ltd.
TNG - Viet Thai Garment Branch
Eland Vietnam Corp. Ltd. (Binh Duong Factory)
Smart Elegant International Vietnam Ltd.
Branch of Smart Elegant
Shinwon Ebenezer Vietnam Co. Ltd.
Eland Vietnam. - Trang Bang Factory
Pearl Vina Co. Ltd.
GG Vina Co. Ltd.
NB Nam Phuong Co. Ltd.
Thien Quang Sewing Clothing

Son Kha Co., Ltd.
TTG Co. Ltd.
Win Vina Co. Ltd.
Truong Capital Co. Ltd.
Puku Vietnam Co. Ltd.
Vina Gio Co. Ltd.
Mango Fashion Co. Ltd.
Chuan Mei Glove Co, Ltd.
Thien Chi Co. Ltd
ELAND VIET NAM CO., LTD – LONG AN BRAND
SAIGON PRIVATE
HANSAE TG
Emperor VN Co.Ltd.
Branch of Truong Vinh
Thuan Phuong.- Binh Chanh Branch
Cong Ty CP May Phuong Dong
Chinh Tuc Co. Ltd.
Grand Well Co. Ltd.
Pierich International Co. Ltd
YESUM VINA CO. LTD.
Hong Seng Thai-Vina Co. Ltd.
Cong ty TNHH Garnet Nam Dinh
Michelle Vietnam International Sewing Co. Ltd.
Seyang Corporation Vietnam
Viet Hong Factory
TNG - Song Cong 4 Garment Branch
Son Ha Garment JSC
Grace Sun Vietnam Garment Co. Ltd.
Hung Long Garment & Service JSC
Viet Trung Joint Stock Co.
Dap Cau Garment Corporation JSC
JC INT'L VINA CO. LTD.
Shinwon Ebenezer Ha Noi Co. Ltd.
Dou Power (Vietnam) Co. Ltd.
Tri Duc Company Limited
Kim Binh Garment Co. Ltd.
Tungtex Fashions (Vietnam) Limited
MJ Apparel Co. Ltd.
Viet Vuong Co. Ltd.
JIN JU PLUS VINA CO., LTD
NHATPHUONG PRINTING CO.,LTD