

Fair Labor Association: Independent External Factory Assessment

Assessment Date :

07 Nov 2022



Factory Information

FLA Affiliates	Maxport Limited
Country	Vietnam
Number of Workers	0

Understanding this Report

Companies that join the FLA agree to uphold the FLA Workplace Code of Conduct throughout their entire supply chain. The Code of Conduct is based on International Labour Organization (ILO) standards, and defines labor standards that aim to achieve decent and humane working conditions.

FLA Code Element

Number of Violations

Compensation (C)	2
Employment Relationship (ER)	6
Freedom Of Association And Collective Bargaining (FOA)	1
Harassment Or Abuse (H/A)	1
Health, Safety And Environment (HSE)	8
Hours Of Work (HOW)	3
Nondiscrimination (ND)	2

Assessment Information

Assessor	Openview - Vietnam
Assessment Date	07 Nov 2022
Assessment Purpose	

ASSESSMENT RESULTS

Compensation (C)

Benchmark ID	C.21.2
Benchmark Details	All benefits shall be calculated correctly
Finding Details	<p>The compliance bonus regulation (Article 1, Clause a) indicate that workers are provided 100% of the compliance bonus if they work at least from full 13 working days in a month; 50% if workers work at least from full one working day to less than 13 working days in a month and no bonus if workers do not work at least one full day. The requirement of the compliance bonus does not include other criteria. However, the practice is not following the established policy, in one sample, a selected leader in the cutting section has worked 26.41 working days in December 2021 but the factory does not provide VND200,000 based on the company rule for the compliance bonus. It is explained that this sample selected leader received three minutes of "Violation Minutes of factory rule" which is not a requirement to consider an employee for a bonus as per the factory established policy.</p>
Recommendation for Immediate Action	Complete the policy for bonus and follow the established policy to pay workers.
Compliance Classifications	Immediate Action Required
Local Law	Vietnam labor code 2019, Article 94
Benchmark ID	C.18.1
Benchmark Details	Employers shall not use hidden or multiple payroll records in order to hide overtime, to falsely demonstrate hourly wages, or for any other fraudulent reason.

Finding Details	1. There are Inconsistencies found between payrolls of a sampled worker. During the document review and relevant interview, it is noted that there are three payrolls provided for one selected security employee in April 2022 and the information is inconsistent between those payrolls. For instance, the first provided payroll of one worker shows net salary is VND7,982,742. The second and third provided payroll shows net salary of this selected sample worker is VND7,830,963. The “Luong Phat Sinh” columns are different between all three payrolls with the following details: the 1st payroll is VND1,162,192; the 2nd payroll is VND1,010,413 and the 3rd payroll is VND2,867,071. Another comparison with each of the 03 provided payrolls in April 2022 for 17 security employees noted that all amounts of the “Luong phat sinh” column of the 3rd payroll are different with 1st and 2nd payroll, the deviation ranges from VND1,000,000 to VND2,000,000.
Recommendation for Immediate Action	(1) Ensure to review and pay all worker correctly and keep consistent payment records.
Compliance Classifications	Immediate Action Required
Local Law	

Employment Relationship (ER)

Benchmark ID	ER.1.2
Benchmark Details	Employers shall assign responsibility for the administration of human resources to a clearly defined and adequately qualified staff member or staff members and ensure workers at all levels receive communication and training about existing policies and procedures or any revisions.
Finding Details	The ongoing training for workers does not cover FLA’s Code elements such as: Employment Relationship, Non-discrimination, Harassment or Abuse, Forced labor, Child labor, Freedom of Association and Collective Bargaining, Hours of work, Compensation. The factory management explained that the plan for this training will be carried out and completed in December 2022.

Recommendation for Immediate Action	
Compliance Classifications	Sustainable Improvement Required
Local Law	
Benchmark ID	ER.5.1
Benchmark Details	Employers shall ensure that all supervisors are trained in national laws, workplace regulations, and the FLA Code, workplace grievance systems, and the appropriate practices to ensure compliance.
Finding Details	The training for supervisors does not cover FLA's Code elements such as: Employment Relationship, Non-discrimination, Harassment or Abuse, Forced labor, Child labor, Freedom of Association and Collective Bargaining, Health, safety and Environment, Hours of work, and Compensation. The factory management explains that the plan for this training will be carried out and completed within December 2022.
Recommendation for Immediate Action	
Compliance Classifications	Sustainable Improvement Required
Local Law	
Benchmark ID	ER.1.1
Benchmark Details	Employers shall have in place written policies and practices and maintain proper and accurate records governing all aspects of employment from recruitment, hiring and probation, including written terms and conditions of employment, job descriptions, administration of compensation, and working hours for all positions, through to retrenchment and termination processes.

Finding Details	(1) The factory has developed a procedure to discipline workers, supervisors and managers who violate the factory internal labor rules. However, there is no regulation on how to discipline workers, supervisors, and managers who engage in any violations with regard to the forced labor policy. The violations that apply the disciplinary practices in the approved factory rules do not include any contents related to forced labor. (2) The factory has developed a procedure to discipline workers, supervisors and managers who violate the factory internal labor rules. However, there is no regulation on how to discipline workers, supervisors, and managers who engage in any violations regarding the child labor policy. The violations that apply the disciplinary practices in the approved factory rules do not include any contents related to child labor.
Recommendation for Immediate Action	
Compliance Classifications	Sustainable Improvement Required
Local Law	
Benchmark ID	ER.18.1
Benchmark Details	Employers shall have written disciplinary rules, procedures and practices that embody a system of progressive discipline (e.g. a system of maintaining discipline through the application of escalating disciplinary action moving from verbal warnings to written warnings to suspension and finally to termination).
Finding Details	The factory practices for labor disciplinary are not following the established procedure on January 3, 2022: (1) The contents, times, and location of the disciplinary meeting are notified to the relevant parties only one day instead of at least five working days in advance as per legal requirements and the factory's procedure. (2) The workers who violate the factory internal rules are required to fill the self-criticism letters (letters acknowledging the discipline and requiring workers signature) instead of the report to clarify their violations as per the factory's procedure.
Recommendation for Immediate Action	(1) Ensure to strictly follow local law to handle the labor disciplinary. (2) Stop using the self-criticism letters for workers who violate the factory internal labor rules.

Compliance Classifications	Immediate Action Required
Local Law	Decree No. 145/2020/ND-CP, Article 70.
Benchmark ID	ER.6.1
Benchmark Details	Employers shall have written policies and procedures and implement practices that encourage ongoing training of all categories of workers with the goal of raising or broadening skills in order to advance in their careers within the factory or beyond.
Finding Details	The factory has not developed the written policies and procedures on personnel development that encourage ongoing training with the goal of raising or broadening workers' skills so they can advance in their careers.
Recommendation for Immediate Action	
Compliance Classifications	Sustainable Improvement Required
Local Law	
Benchmark ID	ER.19.1
Benchmark Details	Employers shall maintain on file all documentation needed to demonstrate compliance with the FLA Workplace Code and required laws.
Finding Details	The factory informs workers of the probation evaluation upon the expiry of the probationary period. However, there is no detailed guidance in place on how the probationary evaluation result is satisfied or not. This issue occurs with the inspection workers only. These evaluation results are currently based on the supervisors'/managers' decision.
Recommendation for Immediate Action	(1) Review and update the policy and procedure on probation evaluation (2) Strictly follow the updated policy and procedure on probation evaluation.

Compliance Classifications	Immediate Action Required
Local Law	Vietnam Labor Code No. 45/2019/QH14, Article 27.

Freedom Of Association And Collective Bargaining (FOA)

Benchmark ID	FOA.1.1
Benchmark Details	Employers shall comply with all national laws, regulations and procedures concerning freedom of association and collective bargaining. national laws, rules, and procedures protecting the rights of workers to organize and bargain collectively. Where local laws and FLA standards differ, the employer is expected to follow the highest applicable standard.
Finding Details	FLA Comment: Vietnam has not ratified ILO Convention 87. Under Vietnamese law, all unions are required to affiliate with a single trade union, the Vietnam General Confederation of Labor (VGCL), which is affiliated with the Communist Party. With respect to such union monopolies, the ILO Committee on Freedom of Association has stated that "the rights of workers to establish organizations of their own choosing implies... the effective possibility of forming... [trade unions] independent both of those which exist already and of any political party." Vietnam's legal framework is therefore not compatible with the ILO Principles on Freedom of Association and, as such, all factories in Vietnam fail to comply with the FLA Code standard on Freedom of Association. [FOA.2, FOA.10]
Recommendation for Immediate Action	Nil
Compliance Classifications	Sustainable Improvement Required
Local Law	Nil

Harassment Or Abuse (H/A)

Benchmark ID	H/A.8.3
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Benchmark Details	Employers, shall develop, implement and monitor policy and procedures for eliminating the risk of violence, harassment, and abuse in the workplace. Policies and procedures shall include a clear statement that violence, harassment, and abuse will not be tolerated, procedures for the investigation of allegations, and measures to protect any complainants, victims, and witnesses.
Finding Details	The factory has developed a procedure to discipline any workers, supervisors and managers who violate the factory internal labor rules. However, there is no regulation on how to discipline the workers, supervisors, and managers who engage in any violations regarding harassment and abuse policy. The violations that apply discipline in the approved factory rules does not include any contents related to harassment and abuse.
Recommendation for Immediate Action	
Compliance Classifications	Sustainable Improvement Required
Local Law	

Health, Safety And Environment (HSE)

Benchmark ID	HSE.5.1
Benchmark Details	All applicable, legally required or recommended elements of safe evacuation shall be complied with, including all of the following elements: posting evacuation plans; the installation and maintenance of fire alarms; the installation and maintenance of emergency lighting; ensuring aisles/exits are not blocked and that workers are not blocked within their workstations; employee education and training; and evacuation procedures and fire drills.
Finding Details	(1) The factory does not equip exit signs or emergency lights at motorbike parking lot which is about 4,483 square meters. (2) The factory does not post evacuation maps at the motorbike parking lot which is about 4,483 square meters.

Recommendation for Immediate Action	(1) Install exit signs, emergency lights at the motorbikes parking lot. (2) Post evacuation maps at the motorbike parking lot.
Compliance Classifications	Immediate Action Required
Local Law	1. TCVN 3890:2009, Clause 10.1.4 2. Decree No. 136/2020/NĐ-CP, Article 5; Circular No. 149/2020/TT-BCA, Article 5
Benchmark ID	HSE.9.1
Benchmark Details	All chemicals and hazardous substances shall be properly labeled and stored in secure and ventilated areas and disposed of in a safe and legal manner, in accordance with applicable laws and international standards.
Finding Details	There is neither label of content, nor label of main hazards for diesel tank at fire pumps station.
Recommendation for Immediate Action	Ensure to provide labels of chemical content in local language and post label of main hazards for all chemicals.
Compliance Classifications	Immediate Action Required
Local Law	Law No. 06/2007/QH12, Art. 4, Art. 27; QCVN 05:2020/BCT, Clause 7.2
Benchmark ID	HSE.14.1
Benchmark Details	All production machinery, equipment and tools shall be properly guarded and regularly maintained.
Finding Details	(1) There is no convex mirror at blunt ends of intersection roads within factory premises to help workers proactively check vehicles on other sides of the roads. In addition, there are no warning signs for forklift hazards, no designated forklift traveling routes at the materials warehouse and finished goods warehouse. (2) There is no safety fence to prevent unauthorized entry for the LPG storage area. (3) The factory does not have LPG (liquid petroleum gas) detectors for LPG storage area, and LPG stove area.

Recommendation for Immediate Action	(1) Install convex mirrors at blunt ends of intersection roads within factory premises, post forklift warning sign, and clearly mark forklift traveling routes at materials warehouse and finished goods warehouse. (2) Ensure to install safety fence to prevent unauthorized entry for LPG storage area. (3) Install LPG detectors for LPG cylinders at LPG storage area, and LPG stove area.
Compliance Classifications	Immediate Action Required
Local Law	1. Law No. 84/2015/QH13. Occupational safety and hygiene. Article 16 2. Law No. 84/2015/QH13. Occupational safety and hygiene. Article 16 3. Nil
Benchmark ID	HSE.6.1
Benchmark Details	All safety and medical equipment (e.g. fire fighting equipment, first aid kits) shall be available in sufficient numbers throughout the workplace, maintained and stocked as prescribed, and easily accessible to workers.
Finding Details	The factory has eyewash but does not have the emergency showers at the chemicals storage warehouse.
Recommendation for Immediate Action	Ensure to install emergency shower, and safety eyewash within 10 meters from the chemical using areas as required by law.
Compliance Classifications	Immediate Action Required
Local Law	Law No. 06/2007/QH12, Art. 29, Art. 37; QCVN 05:2020/BCT, Clause 5.9, Clause 7.2
Benchmark ID	HSE.4.1
Benchmark Details	Employers shall at all times be in possession of all legally required and valid permits and certificates related to health, safety, and environmental issues, such as: Purchase and storage of chemicals; Fire safety inspections; Machinery inspections; Waste disposal; Environmental licenses/permits; Sanitation permits, including those required for canteens; and Vehicle inspection and driver permits for all employer provided transportation.

Finding Details	There is no safety inspection certificate for three observed pressure vessels (100-200 liters, working pressure 10 bars) at fire pumps station and water pump station.
Recommendation for Immediate Action	Ensure to conduct periodic safety inspection and maintain inspection certificate for all strict OHS machines, equipment (pressure vessels).
Compliance Classifications	Immediate Action Required
Local Law	Circular No. 36/2019/TT-BLDTBXH
Benchmark ID	HSE.10.1
Benchmark Details	Material Safety Data Sheets (MSDS) for all chemicals and hazardous substances used in the workplace must be available at the usage and storage sites of the chemicals and hazardous substances, in the local language and the language spoken by workers, if different from the local language.
Finding Details	The facility does not post SDS (Safety Data Sheet) for diesel at fire pumps station.
Recommendation for Immediate Action	Ensure to post SDS in the workplace for all chemicals.
Compliance Classifications	Immediate Action Required
Local Law	Law No. 06/2007/QH12, Art. 29; Decree No. 113/2017/ND-CP, Art. 24
Benchmark ID	HSE.30.2.6
Benchmark Details	The health, safety, and environmental policies shall contain the framework for a comprehensive health, safety, and environmental management system including a HS&E risk assessment within which the following are clear and regularly tested and reviewed:protections to workers who allege health, safety, and environmental violations;

Finding Details	The OHS (occupational health and safety) risk assessment does not cover laser hazard from laser pointer of auto-cutting machine. In addition, there is no risk assessment for onsite contractors such as construction, solar installation and maintenance contractors.
Recommendation for Immediate Action	Conduct OHS risk assessment and cover all laser hazards from laser pointer of auto-cutting machine and onsite contractors.
Compliance Classifications	Immediate Action Required
Local Law	Circular No. 07/2016/TT-BLDTBXH, Art. 3; Circular No. 07/2016/TT-BLDTBXH, Art. 3
Benchmark ID	HSE.14.2
Benchmark Details	Workers shall receive training in the proper use and safe operation of machinery, equipment and tools they use.
Finding Details	The factory has only one competent forklift operator which is not sufficient for the job demand and arrangement in practice.
Recommendation for Immediate Action	Provide training on vocational degree and occupational health and safety to at least two forklift operators for backup.
Compliance Classifications	Immediate Action Required
Local Law	Decree No. 44/2016/ND-CP, Article 17; Decree No. 140/2018/ND-CP, Article 1

Hours Of Work (HOW)

Benchmark ID	HOW.22.2
Benchmark Details	Accurate time records shall be maintained by employers, including overtime, breaks, and leave.

Finding Details	Workers start work from 7:30 daily, one randomly selected worker clocked in at 09:03 on November 02, 2022, indicating that this worker takes 1.5 hours of unpaid leave. However, the factory deducts 02 hours for unpaid leave. This time-in at 09:03 and the time-out at 17:48 are recorded in the timekeeping system. Further investigation noted that the timekeeping system could not accurately count the working hour for the worker. The HR responsible person explains that the system could not count exactly and HR staff wrongly input for this worker time records.
Recommendation for Immediate Action	(1) Ensure that working hour system record all workers' working hour accurately and completely for an accurate payment.
Compliance Classifications	Immediate Action Required
Local Law	Vietnam labor code 2019, Article 94.
Benchmark ID	HOW.1.1
Benchmark Details	Employers shall comply with all national laws, regulations and procedures concerning hours of work, public holidays and leave.
Finding Details	The monitoring mechanism is not effective to ensure workers who are less than seven months pregnant and doing highly laborious, toxic, or dangerous work, to inform their pregnancy status to the factory on time in order to reduce one working hour per day with full payment as per law. One sample selected worker in the sewing section only notified her pregnancy status to the factory on August 1, 2022 when she was already more than 20 weeks pregnant.
Recommendation for Immediate Action	(1) Develop effective mechanism and train workers, so that workers are able to report their pregnancy on time. (2) Train all relevant leaders, supervisors on related laws and factory policy to monitor. (3) Monitor effectively and reduce working hours for pregnant workers as per law.
Compliance Classifications	Immediate Action Required
Local Law	Vietnam Labor Code No. 45/2019/QH14, Article 137, Point 2 and Decree No. 145/2020/NĐ-CP, Article 80, Point 4.

Benchmark ID	HOW.22.1
Benchmark Details	Employers shall have in place policies for managing all working hour, overtime, and leave records in normal and exceptional circumstances.
Finding Details	The factory has developed a working hour policy. However, the policy is not included with exceptional circumstances such as stoppage of work during Covid-19, exchanging workdays, and other possible abnormal circumstances if any.
Recommendation for Immediate Action	
Compliance Classifications	Sustainable Improvement Required
Local Law	

Nondiscrimination (ND)

Benchmark ID	ND.4
Benchmark Details	Employers may not request the disclosure of any personal, non-job related information during the application, recruitment, or hiring process, including but not limited to gender, race, religion, disability, sexual orientation, nationality, political opinion, social group, ethnic origin, or marital status.
Finding Details	New workers are required to fill out the personal information form named “Phiếu nhân sự” during the recruitment process. The form requires workers to declare their marriage status which is not a job-related information.
Recommendation for Immediate Action	Remove all information which is not related to the job requirement and ensure no discrimination during the hiring and recruitment.
Compliance Classifications	Immediate Action Required
Local Law	

Benchmark ID	ND.3
Benchmark Details	Recruitment and employment policies and practices, including job advertisements, job descriptions, application and interview questions and job performance/evaluation policies and practices shall be free from any type of discriminatory bias.
Finding Details	There is a risk of discrimination noted from the factory recruitment notices on Facebook. These notices indicate that the factory prefers hiring one female for the cleaner position, one male for the glass cleaning worker position, and one male for the gardening worker position (notice on September 14, 2022); as well as hiring one female for the cleaner position and two males for material warehouse worker positions (notice on October 18, 2022).
Recommendation for Immediate Action	(1) Remove the content of age discrimination from the recruitment notice (2) Ensure that there is no discrimination applied in the employment practice.
Compliance Classifications	Immediate Action Required
Local Law	Vietnam Labor Code No. 45/2019/QH14, Article 8.

