

THE GOVERNMENT

No. 115/2015/ND-CP

SOCIALIST REPUBLIC OF VIETNAM

Independence - Freedom - Happiness

Hanoi, November 11, 2015

DECREE

GUIDANCE ON THE LAW ON SOCIAL INSURANCE REGARDING COMPULSORY SOCIAL INSURANCE

Pursuant to the Law on Government organization dated December 25, 2001;

Pursuant to the Law on social insurance dated November 20, 2014;

Pursuant to Resolution No. 93/2015/QH13 dated June 22, 2015 of the National Assembly on implementation of policy on lump-sum payout of social insurance benefits to employees;

At the request of the Minister of Labor, War Invalids and Social Affairs,

The Government promulgates a Decree on guidance on the Law on social insurance regarding compulsory social insurance.

Chapter I

GENERAL PROVISIONS

Article 1. Scope

This Decree provides guidance on the Law on Social insurance in terms of compulsory social insurance applied to officials, civil servants and Vietnamese employees working under labor contracts.

Article 2. Regulated entities

1. Employees are Vietnamese citizens who participate in compulsory social insurance as prescribed in this Decree, including:

a) Persons working under indefinite-term labor contracts, definite-term labor contracts, seasonal labor contracts or contracts for given jobs with a term of between full of 3 months and under 12 months, including also labor contracts signed between employers and legal representatives of persons aged under 15 years in accordance with the labor law;

b) Persons working under labor contracts with a term of between full of 1 month and under 3 months;

- c) Officials and civil servants as prescribed in legislation on officials and civil servants;
- d) National defense workers, public security workers and persons doing other jobs in cipher organizations;
- dd) Salaried managers of enterprises and cooperatives;
- e) Part-time staffs in communes, wards and district-level towns (hereinafter referred to as communes);
- g) Persons on spouse benefit in overseas Vietnamese representative missions prescribed in Clause 4 Article 123 of the Law on Social insurance.

2. Vietnamese guest workers prescribed in the Law on Vietnamese guest workers participating compulsory social insurance as prescribed in this Decree shall apply the following contracts:

- a) The guest worker contracts concluded with enterprises providing guest worker services or with non-business organizations licensed to send workers abroad;
- b) The guest worker contracts concluded with contract-winning or -receiving enterprises or with outward-investing organizations or individuals that send workers abroad.
- c) The guest worker contracts in the form of skill-improvement internship contracts, concluded with enterprises sending workers abroad for internship to improve their skills;
- d) Individual contracts.

The persons prescribed in Clause 1 and Clause 2 of this Article hereinafter are referred to as employees.

3. Employees prescribed in this Decree shall participate in every type of compulsory social insurance, excluding employees prescribed in Points e and g of Clause 1 and Points a, c and d Clause 2 of this Article that only participate in the type of retirement and survivorship.

4. Employees prescribed in Points a and b Clause 1 of this Article that are domestic workers and employees prescribed in Clause 1 of this Article that receive the following pension salaries, monthly social insurance benefit and monthly benefit shall not be the participants of compulsory social insurance:

- a) The people on retirement pension;
- b) The people on monthly benefit prescribed in Decree No. 09/1998/ND-CP dated January 23, 1998 of the Government on amendments to Decree No. 50/CP dated July 26, 1995 of the Government on subsistence for officials of communes;
- c) The people on monthly benefit for working capacity loss;

d) The people on monthly benefit prescribed in Decision No. 91/2000/QD-TTg dated August 4, 2000 of the Prime Minister on benefit for people above the working age upon the expiration of monthly benefit for working capacity loss (hereinafter referred to as Decision No. 91/2000/QD-TTg); Decision No. 613/QD-TTg dated May 6, 2010 of the Prime Minister on monthly benefit for people having 15 year- or 20 year- working experience upon the expiration of monthly benefit for working capacity loss (hereinafter referred to as 613/QD-TTg);

dd) The soldiers, police officers and the people working in cipher organizations on monthly benefit prescribed in Decision No. 142/2008/QD-TTg dated October 27, 2008 of the Prime Minister on policies applied to soldiers fought in Resistance War against the American Empire to Save the Nation with under-20 year experience in the army that was demobilized; Decision No. 38/2010/QD-TTg dated May 6, 2010 of the Prime Minister on amendments to Decision No. 142/2008/QD-TTg dated October 27, 2008 of the Prime Minister on policies applied to soldiers fought in Resistance War against the American Empire to Save the Nation with under-20 year experience in the army that was demobilized; Decision No. 53/2010/QD-TTg dated August 20, 2010 of the Prime Minister on policies applied to officials and Peoples' Public Security soldiers fought in Resistance War against the American Empire to Save the Nation with under-20 year experience in the Public Security that was demobilized; and Decision No. 62/2011/QD-TTg dated November 9, 2011 of the Prime Minister on policies applied to people fought in the Ward to Save the Nation, fulfilled international duties in Cambodia and Laos after April 30, 1975 that was demobilized or ceased work.

5. The employers prescribed in Clause 3 Article 2 of the Law on Social insurance.

6. Agencies, organizations, and individuals involved in compulsory social insurance.

Chapter II

TYPES OF COMPULSORY SOCIAL INSURANCE

Section 1. MATERNITY BENEFIT FOR FEMALE EMPLOYEES AS SURROGATE MOTHERS AND INTENDED MOTHERS

Article 3. Maternity benefit for female employees as surrogate mothers

The maternity benefit for female employees prescribed in Clause 1 Article 35 of the Law on Social insurance as follows:

1. Each female employee as surrogate mother (hereinafter referred to as the surrogate mother) who is contributing to the fund of sickness and maternity of the compulsory social insurance shall be entitled to take leaves for 5 prenatal check-ups, one day for each check-up; the employee who lives far from health facilities or have pathological signs or abnormal pregnancy is entitled to take a two-day leave for each prenatal check-up.

The leave period specified in this Clause shall be counted in working days, excluding public holidays, New Year holidays and weekly days off.

2. Each surrogate mother who is contributing to the fund of sickness and maternity of the compulsory social insurance shall be entitled to take a maternity leave as prescribed by a competent health establishment when getting miscarriage, abortion, stillbirth or pathological abortion. The maximum leave period is:

- a) 10 days, for pregnancy of under 5 weeks;
- b) 20 days, for pregnancy of between 5 weeks and under 13 weeks;
- c) 40 days, for pregnancy of between 13 weeks and under 25 weeks;
- d) 50 days, for pregnancy of 25 weeks or longer.

The maternity leave period specified in this Article is inclusive of public holidays, New Year holidays and weekly days off.

3. When a surrogate mother gives childbirth and satisfies all requirements prescribed in Clause 2 or Clause 3 Article 31 of the Law on social insurance, she shall be entitled to the following benefit:

- a) A lump-sum benefit equaling 2-month base salary for each child in the month of childbirth;
- b) The maternity leave until the time of relinquishing the child to the intended mother, with the leave period not exceeding the period prescribed in Clause 1 Article 34 of the Law on Social insurance;

In case the maternity leave period from the date of childbirth to the time of relinquishing the child is shorter than 60 days, the surrogate mother is entitled to continue enjoying the maternity benefit until such leave period reaches full of 60 days, including public holidays, New Year holidays and weekly days off.

The time relinquishing the child to the intended mother is the time mentioned in the document certifying the time relinquishing the child between the surrogate mother and the intended mother.

- c) Each surrogate mother whose health has not yet recovered within the first 30 working days after the maternity leave period specified in Clause 2, Point b Clause 3 of this Article, is entitled to take leave for convalescence and health rehabilitation as prescribed in Article 41 of the Law on Social insurance, unless she terminates the labor contract or quit job before the time of childbirth.

4. When the surrogate mother gives birth, her husband, who is currently paying compulsory social insurance to the fund of sickness and maternity social insurance whose is entitled to a maternity leave as prescribed in Clause 2 Article 34 of the Law on Social insurance.

5. The maternity benefit levels for the surrogate mother shall be granted as prescribed in Article 39 of the Law on Social insurance and determined according to the average of salaries of 6 months preceding the leave on which social insurance is paid.

If the surrogate mother has paid social insurance for only under 6 months, the benefit level under the maternity benefit specified in Clause 1 and Clause 2 of this Article is the average of salaries of the months for which social insurance has been paid.

6. The maternity leave period of 14 working days or longer in a month shall be regarded as a period of social insurance payment. During this period, the surrogate and the employer are not required to pay social insurance.

If the surrogate mother terminates the labor contract or quits job before her childbirth, the maternity leave period shall not be regarded as a period of social insurance payment.

Article 4. Maternity benefit for female employees as intended mothers

The maternity benefit for the female employee as intended mother (hereinafter referred to as intended mother) prescribed in Clause 2 Article 35 of the Law on Social insurance as follows:

1. If the intended mother has paid compulsory social insurance to the fund of sickness and maternity for 6 months or longer within 12 months until the time of receiving the child, she is entitled to the following regimes:

a) A lump-sum payout equaling 2-month base salary for each child in the month of childbirth if the surrogate mother fails to pay compulsory social insurance premiums or satisfy requirements prescribed in Clause 3 Article 3 of this Decree;

If the surrogate mother and the intended mother do not pay compulsory social insurance or do not satisfy requirements prescribed in Clause 3 Article 3 of this Decree, the husband of the intended mother, who is paying compulsory social insurance to the fund of sickness and maternity shall be entitled to a lump-sum payout equaling 2-month base salary in the month of childbirth.

b) Taking maternity leave from the time of receiving child until the child is 6 months of age. If the intended mother has twins or more infants, she is entitled to an additional leave of 1 month for each infant from the second child;

If the intended does not take leave under Clause 4 of this Article, she is entitled to not only his/her salary but also the maternity benefit as prescribed.

c) In case the intended mother dies or her health declines that makes her unable to care for the child when the child is not enough 6 months of age, as certified by a competent health facility, the father or the direct fosterer is entitled to a maternity leave for the remaining period applicable to the mother as specified in Point b of this Clause;

d) If the father or the direct fosterer who is covered by social insurance does not take leave under Point c of this Clause is entitled to not only his/her salary but also the maternity benefit for the remaining period applicable to the mother as specified in Point b of this Clause;

dd) After childbirth, if an under-6-month child dies, the intended mother is entitled to take maternity leave as prescribed in Clause 3 Article 34 of the Law on Social insurance.

2. The maternity benefit levels for the intended mother shall be granted as prescribed in Article 39 of the Law on Social insurance and determined according to the average of salaries of 6 months preceding the leave on which social insurance is paid.

3. The maternity leave period of 14 working days or longer in a month shall be regarded as a period of social insurance payment. During this period, the intended mother and the employer are not required to pay social insurance.

If the intended mother terminates the labor contract or quits job before the time of receiving child, the maternity leave period shall not be regarded as a period of social insurance payment.

Article 5. Procedures for maternity benefit claim applicable to surrogate mothers and intended mothers

1. A claim for maternity benefit applicable to surrogate mother getting prenatal check-ups, miscarriage, abortion, stillbirth or pathological abortion includes:

a) A certificate of maternity leave eligible for social insurance benefit in case of outpatient treatment, or an original or a copy of the hospital discharge paper, in case of inpatient treatment;

b) The list of employees taking maternity leave made by the employer.

2. A claim for maternity benefit applicable to surrogate mother upon her childbirth includes:

a) A copy of the agreement on altruistic gestational surrogacy prescribed in Article 96 of the Law on marriage and families 2014; a document certifying the time of relinquishing the child between the intended mother and the surrogate mother;

b) A copy of the birth registration certificate or birth certificate of the child;

c) The list of employees taking maternity leave made by the employer;

d) A copy of the child's death certificate, in case the child dies whereas the maternity leave period is shorter than 60 days;

dd) A copy of the mother's medical record or hospital discharges paper in case the child dies after birth without being granted the birth certificate;

e) A copy of the surrogate mother's death certificate, in case the mother dies in childbirth;

g) A competent health facility's document certifying that the surrogate mother has to take leave for pregnancy care.

3. A claim for convalescence and health rehabilitation benefit after maternity leave applicable to the surrogate mother shall be made as prescribed in Article 103 of the Law on Social insurance.

4. A claim for maternity benefit applicable to the intended mother upon the childbirth includes:

a) A copy of the agreement on altruistic gestational surrogacy prescribed in Article 96 of the Law on marriage and families 2014; a document certifying the time of relinquishing the child between the intended mother and the surrogate mother;

b) A copy of the birth registration certificate or birth certificate of the child;

c) The list of employees taking maternity leave made by the employer;

e) A copy of the intended mother's death certificate, in case the mother dies in childbirth;

dd) A document certifying that the intended mother's declining health making her unable to care for the child issue by a competent health facility;

e) A copy of the child's death certificate, in case the child dies whereas he/she is not enough 6 months of age.

5. Each claim for maternity benefit applicable to the surrogate mother's husband shall be prescribed in Clause 4 Article 101 of the Law on Social insurance as follows.

6. The claim pay for maternity benefit applicable to the surrogate mother and the intended mother shall be implemented as prescribed in Article 102 of the Law on Social insurance.

a) The employee shall submit the claim prescribed in Point a Clause 1, Points a, c, d, dd, e and g Clause 2 and Points a, b, d, dd and e Clause 4 and Clause 5 of this Article to the employer within 45 days from the first day at work after leave.

If the employee terminates the labor contract or quits job before the childbirth or the time of receiving child, he/she shall submit the claim and present the social insurance book to the social security agency at his/her residence.

b) Within 10 days from the date on which the adequate claim is received, the employer must prepare the claim prescribed in Clauses 1, 2, 3, 4 and 5 of this Article and submit it to the social security agency.

c) The social security agency shall pay benefit to the employee within 10 days from the date on which the adequate claim is received from the employer. Within 5 working days from the date on which the adequate claim is received from the employee who terminates the labor contract or

quits job before the childbirth or the time of receiving child, the social security agency shall pay benefit to the employee.

If the application is rejected, they must provide explanation in writing.

7. If the social insurance agency fails to pay benefit by the prescribed deadline, the Article 116 of the Law on Social insurance shall apply.

Section 2. RETIREMENT BENEFIT

Article 6. Conditions for pension enjoyment

1. Each employee who is 50 years of age or older and has paid social insurance for 20 years or longer, including 15 years working in coal mines shall be entitled to a pension as prescribed in Point c Clause 1 Article 54 of the Law on Social insurance. The coal-mine works shall be prescribed in by the Minister of Labor, War Invalids and Social Affairs.

2. Each employee who is infected with HIV/AIDS due to occupational risks and has paid social insurance for 20 years or longer shall be entitled to a pension.

Article 7. Monthly pension

The monthly pension prescribed in Article 56 of the Law on Social insurance as follows:

1. The monthly pension of an employee equals his monthly pension rate multiplied by (x) the average monthly salary as the basis for social insurance payment.

2. The monthly pension rate of the employee who fully satisfies the conditions for pension prescribed in Article 54 of the Law on Social insurance shall be determined as follows:

a) From January 1, 2016 until January 1, 2018, each retired employee shall be entitled to a monthly pension rate of 45% equivalent to 15 years of social insurance payment, which shall be added with 2%, for male employees, or 3%, for female employees, for each additional year of social insurance payment provided that the maximum rate is 75%.

b) From January 1, 2018, each retired female employee shall be entitled to a monthly pension rate of 45% equivalent to 15 years of social insurance payment, which shall be added with 2% for each additional year of social insurance payment provided that the maximum rate is 75%;

c) From January 1, 2018, each retired male employee shall be entitled to a monthly pension rate of 45% equivalent to the number of years of social insurance payment in the below table, which shall be added with 2% for each additional year of social insurance payment provided that the maximum rate is 75%.

Retired year	Number of years of social insurance payment corresponding to the pension rate of 45%
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2018	16 years
2019	17 years
2020	18 years
2021	19 years
From 2022	20 years

3. The statutory retirement ages as the basis for determination of the number of years of early retirement on which a decrease in pension rate prescribed in Clause 3 Article 56 of the Law on Social insurance shall be based as follows:

- a) The statutory retirement ages of employees, in the normal working condition prescribed in Point a Clause 1 Article 54 of the Law on Social insurance, shall be 60 years of age for males and 55 years of age for females;
- b) The statutory retirement ages of employees, in the heavy, harmful or dangerous working condition or extremely heavy, harmful or dangerous working condition or in areas with a region-based allowance coefficient of 0.7 or higher, shall be 55 years of age for males and 50 years of age for females;
- c) The statutory retirement age of employees working in coal mines prescribed in Clause 1 Article 6 of this Decree shall be 50 years of age;
- d) If the day and the month of birth of an employee are unidentifiable according to his/her documents, the January 1st of his/her year of birth shall be based to determine the number of years of early retirement.

Article 8. Lump-sum social insurance payout

1. Each employee defined in Clause 1 and Clause 2 Article 2 of this Decree is entitled to a lump-sum social insurance payout upon request if they fall in any of the following cases:

- a) He/she reaches the statutory retirement age specified Clauses 1, 2 and 4 Article 54 of the Law on Social insurance but has paid social insurance for under 20 years or he/she reaches the statutory retirement age specified Clause 3 Article 54 of the Law on Social insurance but has paid social insurance for under 15 years and does not continue paying voluntary social insurance;
- b) He/she has not paid social insurance for under 20 years and does not continue paying social insurance after 1-year work ceasing.
- c) He/she settles abroad;
- d) He/she suffers a fatal disease, such as cancer, poliomyelitis, dropsy cirrhosis, leprosy, serious tuberculosis, HIV infection progressing into AIDS, or other diseases as prescribed by the Ministry of Health;

2. The lump-sum social insurance payout shall be calculated based on the number of years of social insurance payment; for each year of payment they are entitled to:

a) 1.5-month average monthly salary as the basis for social insurance payment, for the years of payment prior to 2014;

b) 2-month average monthly salary as the basis for social insurance payment, for the years of payment since 2014;

c) In case the period of social insurance payment (hereinafter referred to as payment period) is under 1 year, the social insurance benefit must equal the paid amount but must not exceed 2-month average monthly salary as the basis for social insurance payment.

3. The lump-sum social insurance payout prescribed in Clause 2 of this Article is exclusive of the State's monetary support for payment of voluntary social insurance, except the case specified at Point d, Clause 1 of this Article.

4. The time for claiming the lump-sum payout is the time stated in decisions of social security agencies.

5. The claim for lump-sum social insurance payout shall be prescribed in Article 109 and Clauses 3 and 4 Article 110 of the Law on Social insurance.

Article 9. Average monthly salary as the basis for social insurance payment for determination of pension or lump-sum benefit

Average monthly salary as the basis for social insurance payment for determination of pension and lump-sum benefit prescribed in Article 62 of the Law on Social insurance (hereinafter referred to as average monthly salary) shall be determined as follows:

1. Each employee subject to the State-prescribed salary regime and having the entire period of social insurance payment under this salary regime, his/her payment period shall be determined as follows:

a) The last 5 years prior to retirement if he/she begins paying social insurance before January 1, 1995;

b) The last 6 years prior to retirement if he/she begins paying social insurance between January 1, 1995 and December 31, 2000;

c) The last 8 years prior to retirement if he/she begins paying social insurance between January 1, 2001 and December 31, 2006;

d) The last 10 years prior to retirement if he/she begins paying social insurance between January 1, 2007 and December 31, 2015;

dd) The last 15 years prior to retirement if he/she begins paying social insurance between January 1, 2016 and December 31, 2019;

e) The last 20 years prior to retirement if he/she begins paying social insurance between January 1, 2020 and December 31, 2024;

g) The entire payment period if he/she begins paying social insurance from January 1, 2025.

2. Each employee who has the entire payment period the employer-decided salary regime, the average monthly salary as the basis for social insurance payment of the entire period shall apply.

3. Each employee who have both a payment period under the State-prescribed salary regime and a payment period under the employer-decided salary regime, the average monthly salary as the basis for social insurance payment of these periods shall apply, which for the payment period under the State-prescribed salary regime specified in Clause 1 of this Article shall begin from the time of paying compulsory social insurance. If the above payment period is shorter than the periods prescribed in Clause 1 of this Article, the average month salary of the former period shall still apply.

4. When an employee having a payment period of 15 years or longer according to the salary paid for any of the following jobs changes to another job having lower salary for which the social insurance is paid, his/her monthly average salary as the basis for pension equals the highest salary in the jobs prescribed in the below Point a or the salary paid before changing new job corresponding to the number of years prescribed in Clause 1 of this Article:

a) Extremely heavy, hazardous or dangerous jobs and heavy, hazardous or dangerous jobs in the pay scale and salary scale set by the State;

b) Officers or professional soldiers in the people's army, professional and technical officers in the people's police, cipher officers who are salaried like people's army or police personnel before switching to work in agencies, organizations, units or enterprises where they are subject to the salary regime set by the State.

5. Each employee having the payment period applied the salary regime by the State before October 1, 2004 that claims for social insurance from January 1, 2016 shall have his/her monthly salary as the basis for social insurance payment changed to the salary regime regulations at the work ceasing time.

6. When an employee that is subject to the salary regime set by the State and has paid social insurance including seniority pay changes to another job not entitled to seniority pay and the monthly salary as the basis for social insurance payment for pension determination does not include seniority pay, his/her average monthly salary as the basis for social insurance payment at the retirement time plus seniority pay(if eligible), corresponding to the payment period, may be changed to the salary regime prescribed in the retirement time for the pension determination.

In case the employee changing to another job is entitled to a seniority pay and his/her monthly salary as the basis for social insurance payment includes such seniority pay, the monthly salary as the basis for social insurance payment for pension determination shall comply with Clause 1 of this Article.

Article 10. Adjustment of salaries for which social insurance have been paid

The adjustment of salaries for which social insurance premiums have been paid prescribed in Article 63 of the Law on Social insurance shall be prescribed as follows:

1. Salaries for which social insurance payment premiums have been paid for calculation of the average monthly salary as the basis for social insurance payment for employees subject to salary regime set by the State shall be adjusted based on the basic salary at the time of enjoying the retirement regime, for employees paying social insurance premiums prior to January 1, 2016.

Each employee starting participating in social insurance from January 1, 2016 shall have his/her monthly salaries for which social insurance have been paid adjusted for calculation of the monthly salary as the basis for social insurance payment as prescribed in Clause 2 of this Article.

2. Salaries for which social insurance premiums have been paid for calculation of the average monthly salary as the basis for social insurance payment applicable to employees subject to salary regime set by employers shall be adjusted as follows:

$$\begin{array}{l} \text{Post-adjusting monthly} \\ \text{salary as the basis for} \\ \text{social insurance payment} \\ \text{of a year} \end{array} = \begin{array}{l} \text{Monthly salary as the basis for} \\ \text{social insurance payment} \\ \text{applicable to an employee} \\ \text{subject to salary regime set by} \\ \text{employer of the year} \end{array} \times \begin{array}{l} \text{Adjusting rate of salaries} \\ \text{for which social insurance} \\ \text{have been paid of the year} \end{array}$$

a) The adjusting rate of salaries for which social insurance have been paid shall be calculated according to the average consumer price index (CPI) of the year in the below formula:

$$\begin{array}{l} \text{Adjusting rate of salaries for which} \\ \text{social insurance have been paid in the} \\ \text{year } t \end{array} = \frac{\begin{array}{l} \text{Average CPI of the year preceding the year of} \\ \text{claiming social insurance (compared with the} \\ \text{average CPI of 100\% of 1994)} \end{array}}{\begin{array}{l} \text{Average CPI of the year } t \text{ (compared with the} \\ \text{average CPI of 100\% of 1994)} \end{array}}$$

Where:

- **t** is any of years in the adjustment period;

- The adjusting rate of salaries for which social insurance has been paid of the year **t** shall be rounded to two decimal places and the lowest rate is 1 (one)

b) The adjusting rate of salaries for which social insurance have been paid of the years prior to 1995 shall equal the adjusting rate of salaries for which social insurance have been paid of 1994.

3. Annually, the Minister of Labor, War Invalids and Social Affairs shall promulgate regulations on adjustment rate of salaries for which social insurance have been paid applicable to employees subject to salary regime set by employers as prescribed in Clause 2 of this Article and the annual average CPI announced by General Statistics Office of the Ministry of Planning and Investment.

Article 11. Retirement benefit for employees paying voluntary social insurance

Retirement benefit for each employee paying voluntary social insurance prescribed in Article 71 of the Law on Social insurance as follows:

1. The period over which the retirement benefit is paid is total payment periods of voluntary and compulsory social insurance.
2. Each employee having a total payment period of voluntary and compulsory social insurance of 20 years or longer shall have the standard retirement age of 60 years of age for male and 55 years of age for female, excluding the cases prescribed in Clause 5 of this Article.
3. The monthly pension of an employee equals his monthly pension rate multiplied by (x) the average monthly income as the basis for social insurance payment prescribed in Clause 4 of this Article.
4. The average monthly income as the basis for social insurance payment for determination of pension and lump-sum allowance shall be:

$$\begin{array}{r}
 \text{Average monthly} \\
 \text{income as the} \\
 \text{basis for social} \\
 \text{insurance} \\
 \text{payment}
 \end{array}
 =
 \frac{
 \begin{array}{r}
 \text{Total monthly} \\
 \text{income as the basis} \\
 \text{for voluntary social} \\
 \text{insurance payment}
 \end{array}
 +
 \begin{array}{r}
 \text{Average monthly} \\
 \text{income as the basis} \\
 \text{for compulsory} \\
 \text{social insurance} \\
 \text{payment}
 \end{array}
 \times
 \begin{array}{r}
 \text{Total number of} \\
 \text{months over} \\
 \text{which} \\
 \text{compulsory} \\
 \text{social insurance} \\
 \text{is paid}
 \end{array}
 }{
 \begin{array}{r}
 \text{Total number of months over} \\
 \text{which voluntary social} \\
 \text{insurance is paid}
 \end{array}
 +
 \begin{array}{r}
 \text{Total number of months over} \\
 \text{which compulsory social} \\
 \text{insurance is paid}
 \end{array}
 }$$

Where:

- The average monthly salary as the basis for compulsory social insurance payment shall be calculated as prescribed in Article 9 of this Decree.

- The average monthly salary as the basis for voluntary social insurance payment shall be the monthly income for which the voluntary social insurance has been paid which is adjusted as prescribed in Clause 2 Article 79 of the Law on Social insurance.

5. Regarding each employee having paid compulsory social insurance for 20 months or longer:

a) His/her standard retirement shall be prescribed in Clauses 1, 2 and 4 of Article 54 and Article 55 of the Law on Social insurance and Article 6 of this Decree;

b) His/her lowest monthly pension shall equal the base salary, excluding entity prescribed in Point e Clause 1 Article 2 of this Decree.

6. The lump-sum benefit upon retirement shall be calculated as prescribed in Article 58 of the Law on Social insurance, each year of social insurance payment in excess of the number of years corresponding to the 75% pension rate shall be expressed as 0.5 month of the average monthly salary as the basis for social insurance payment prescribed in Clause 4 of this Article.

7. The lump-sum social insurance payout for employees shall be prescribed in Article 8 of this Decree. The lump-sum social insurance payout shall be calculated according to the average monthly salary as the basis for social insurance payment prescribed in Clause 4 of this Article.

Section 3. SURVIVORS BENEFIT

Article 12. Survivors benefit for relatives of employees paying voluntary social insurance

The survivors benefit for relatives of an employee paying voluntary social insurance prescribed in Article 71 of the Law on Social insurance shall be prescribed as follows:

1. The period over which the survivor benefit is paid is total payment periods of voluntary and compulsory social insurance.

2. When any of the following employees dies, the persons who take charge of their funeral are entitled to a lump-sum funeral benefit worth 10-month base salary:

a) The employee who has paid compulsory social insurance for 12 months or longer;

b) The employee who has paid both compulsory and voluntary social insurance for 60 months or longer;

c) The employee who dies of a labor accident or an occupational disease or dies during treatment due to a labor accident or an occupational disease;

d) The person who is on pension or monthly labor accident or occupational disease benefit and has ceased working.

3. When the persons defined in Clause 2 of this Article are declared dead by the court, their relatives are entitled to the funeral benefit worth 10-month base salary in the month of declaration.

4. When an employee defined in any of the following cases, dies, his/her relatives meeting requirements prescribed in Clause 2 and Clause 3 Article 67 of the Law on Social insurance are entitled to a monthly survivor benefit:

a) He/she has paid social insurance for 15 years or longer;

If the employee has only paid social insurance for 14 years and 6 months or longer but not enough 15 years, his/her relatives may continue paying the social insurance to the fund of retirement and survivorship with the premium equaling 22% of the employee's monthly salary as the basis for social insurance payment before his/her death;

b) He/she dies of a labor accident or an occupational disease or dies during treatment due to a labor accident or an occupational disease;

c) He/she is on monthly labor accident or occupational disease benefit for their working capacity decrease of 61% or more;

d) He/she is on pension and his/her period of compulsory social insurance payment is 15 years or longer.

The levels of monthly survivor benefit shall be prescribed in Article 68 of the Law on Social insurance.

5. Relatives of the employee defined in Clause 1 of this Article who are entitled to a lump-sum survivor benefit include:

a) The employee does not fall in any of the cases in Clause 4 of this Article;

b) The employee falls in one of the cases specified in Clause 4 of this Article but have no relative eligible for the monthly survivor benefit as defined in Clause 2 and Clause 3 Article 67 of the Law on Social insurance;

c) His/her relatives who are entitled to the monthly survivor benefit as defined in Clause 2 and Clause 3 Article 67 wish to receive a lump-sum survivor benefit, except under-6 children, children or spouses suffering a working capacity decrease of 81% or more.

6. Levels of lump-sum survivor benefit:

a) The lump-sum survivor benefit for relatives of an employee who is paying social insurance or of an employee who has his/her period of social insurance premium payment preserved shall be calculated as prescribed in Clause 1 Article 70 of the Law on Social insurance and the average monthly income mentioned in Clause 4 Article 11 of this Decree.

b) The lump-sum survivor benefit for relatives of dead pensioners shall be calculated as prescribed in Clause 2 Article 70 of the Law on Social insurance.

c) The lump-sum survivor benefit for relatives of an employee who is on monthly labor accident or occupational disease benefit for their working capacity decrease of 61% or more and has not claimed a lump-sum social insurance payout shall be prescribed similarly to an employee who has his/her period of social insurance premium payment preserved.

The lump-sum survivor benefit for an employee who is on monthly labor accident or occupational disease benefit and claimed a lump-sum social insurance payout shall equal 3-month labor accident or occupational disease benefit.

Article 13. Survivor benefit for persons on monthly pension, working capacity loss benefit, labor accident or occupational disease benefit and survivor benefit

1. If a person on pension before January 1, 2016 dies from January 1, 2016, the persons who take charge of his/her funeral are entitled to a lump-sum funeral benefit worth 10-month base salary determined in the month when he/she dies, and his/her relatives are entitled to monthly survivor benefit or a lump-sum benefit as prescribed in Section 5 Chapter III of the Law on Social insurance and Section 3 Chapter II of this Decree.

2. If a person on monthly benefit of working capacity loss before January 1, 2016 dies from January 1, 2016:

a) The persons who take charge of his/her funeral are entitled to a lump-sum funeral benefit worth 10-month base salary determined in the month when he/she dies;

b) His/her relatives prescribed in Clause 2 Article 67 of the Law on Social insurance shall be entitled to monthly survivor benefit as prescribed in Article 68 of the Law on Social insurance. If the person has no relative eligible for the monthly survivor benefit, the relatives shall be entitled to a lump-sum survivor benefit equaling 3-month working capacity loss benefit before his/her death.

3. If a person on monthly labor accident or occupational disease benefit ceases his/her work before January 1, 2016 and dies from January 1, 2016, the persons who take charge of his/her funeral are entitled to a lump-sum funeral benefit worth 10-month base salary determined in the month when he/she dies, and his/her relatives are entitled to survivor benefit as follows:

c) Upon the death of a person who is on monthly labor accident or occupational disease benefit for their working capacity decrease of 61% or more, his/her relatives meeting requirements prescribed in Clause 2 and Clause 3 Article 67 of the Law on Social insurance shall be entitled to monthly survivor benefit;

b) Upon the death of a person who is on monthly labor accident or occupational disease benefit other than the entity prescribed in Point a of this Clause and has paid social insurance but has not claimed a lump-sum social insurance payout, the survivor benefit shall be implemented similarly

to a person who has his/her period of social insurance premium payment preserved before the death.

4. Upon the death of a person who is on both monthly pension and labor accident or occupational disease, his/her relatives shall be entitled to survivor benefit similarly to the benefit for a dead person who is on pension.

5. Each under-18 relative who is on monthly survivor benefit before January 1, 2016 shall continue receiving monthly survivor benefit until 18 years of age, unless he/she suffers decreased work capacity of 81% or higher.

Article 14. Monthly survivor benefit for other relatives and lump-sum survivor benefit

1. An under-18 relative other than the persons prescribed in Point d Clause 2 Article 67 of the Law on Social insurance shall be eligible for monthly survivor benefit until 18 years of age, regardless of his/her decreased work capacity of 81% or higher.

2. In case there are many relatives eligible for a lump-sum survivor benefit, they shall assign a representative receiving the survivor benefit in writing.

Chapter III

SOCIAL INSURANCE FUND

Article 15. Levels and methods of payment of persons on spouse benefit in overseas Vietnamese representative missions

1. Each employee prescribed in Point g Clause 1 Article 2 of this Decree, during the spouse benefit in a Vietnamese representative mission, shall pay monthly premiums to the fund of retirement and survivor fund of social insurance as follows:

a) The monthly premium shall equal 22% of employee' monthly salary for which the premium is paid, if the employee has paid compulsory social insurance in a certain period;

b) The monthly premium shall equal 22% of 2-month base salary, if the employee has not paid compulsory social insurance or has paid compulsory social insurance but he/she has received the lump-sum social insurance payout.

2. The payment applied to employees prescribed in Point g Clause 1 Article 2 of this Decree shall be made once every 3 months, every 6 months or every 12 months or in a lump sum.

3. The senior agencies or organizations of officials having spouses must:

a) Collect the premiums of compulsory social insurance from their spouses prescribed in Clause 1 and Clause 2 of this Article to contribute to the fund of retirement and survivorship;

b) Carry out the procedures for social insurance registration prescribed in Clause 1 Article 97 and Clause 1 Article 99 of the Law on Social insurance.

Article 16. Suspension from payment of compulsory social insurance

Suspension from payment of compulsory social insurance prescribed in the Law on Social insurance is specified as follows:

1. The cases of suspension of payment to the fund of retirement and survivorship:

a) Suspend business operation in 1 month or longer because the employers meet with difficulties due to their structural or technical changes, or economic crisis or recession, or economic restructuring according to state policies or international commitments.

b) The employers meet with difficulties due to natural disasters, conflagration, epidemic diseases, or bad harvest.

2. Conditions for suspension of payment to the fund of retirement and survivorship:

Each employer, under any of the cases prescribed in Clause 1 of this Article and satisfying any of the following conditions, shall be entitled to suspend payment to the fund of retirement and survivorship:

a) Failing to provide works for employees, in which there are 50% or more of total employees determined before the business suspension that are subject to social insurance;

b) Suffering damage of 50% of total assets' value due to natural disasters, conflagration, epidemic diseases, or bad harvest (excluding land value).

3. Period of suspension of payment to the fund of retirement and survivorship:

a) The period of suspension of payment to the fund of retirement and survivorship not exceeding 12 months. In the period of suspension of payment to the fund of retirement and survivorship, the employer must still contribute to the fund of sickness and maternity and the fund of occupational accidents and occupational diseases.

Upon the expiration of the time limit for payment suspension specified at Point a of this Clause, employers and employees shall continue paying social insurance premiums and make supplementary payment for the suspension period. The supplementary amount paid for the suspension period is not subject to late- payment interest under Clause 3, Article 122 of this Law.

b) Upon the expiration of suspension period prescribed in Point a of this Clause, the employer and the employee shall continue paying social insurance and make a supplementary payment for such suspension period, the supplementary amount shall not be charged late-payment interest prescribed in Clause 3 Article 122 of the Law on Social insurance.

4. The social security agency shall accept the suspension from payment to the fund of retirement and survivorship applied for by the employee and employer meeting requirements prescribed in Clauses 1, 2 and 3 of this Article. The time of suspension from payment to the fund of retirement and survivorship shall be from the month in which the written request for suspension submitted by the employer is received.

5. The suspension from social insurance payment applied to an employee on compulsory social insurance that is put in temporary detention shall be conducted as follows:

a) If an employee prescribed in Clause 1 Article 2 of this Decree who is put in temporary detention, the employee and his/her employer shall be entitled to suspend social insurance payment;

b) After the expiration of the temporary detention period, if the competent agency concludes that the employee suffers a miscarriage of justice; supplementary payment shall be made for the detention period.

In case the employee is an official, a civil servant, a public employee, a national defense worker, a public security worker or a person doing other jobs in a cipher organization, the employee and his/her employer must pay supplementary social insurance.

In other case, the supplementary payment shall be made by an authority responsible for compensation prescribed in the Law on State compensation liability through the employer;

c) The supplementary amount paid for the suspension period shall not be charged late-payment interest under Clause 3 Article 122 of the Law on Social insurance;

d) In case the competent authority finds the employee guilty, it is not required to make supplementary payment of social insurance for the temporary detention period.

6. Each guest worker prescribed in Clause 2 Article 2 of this Decree that loses job temporarily certified by the enterprise provide guest worker services, such unemployment period shall be entitled to suspension from payment to the fund of retirement and survivorship.

After the temporary unemployment, if the employee returns to work, he/she shall continue paying social insurance as prescribed without paying supplementary social insurance the temporary unemployment.

7. The Minister of Labor, War Invalids and Social Affairs shall stipulate competence to and procedures for determination of number of employees on social insurance that in temporary unemployment and damaged asset value prescribed in Clause 2 of this Article.

Article 17. Monthly salary as the basis for compulsory social insurance payment

For each employee who pays social insurance premiums according to the salary regime by the employer, his monthly salary as the basis for social insurance payment prescribed in Clause 2 Article 89 of the Law on Social insurance shall be determined as follows:

1. From January 1, 2016 to December 31, 2017, the monthly salary as the basis for social insurance payment will be the salary plus salary-based benefit mentioned in the labor contract as prescribed in the labor law.
2. From January 1, 2016 to December 31, 2017, the monthly salary as the basis for social insurance payment will be the salary plus salary-based benefit mentioned in the labor contract as prescribed in the labor law.
3. The monthly salary as the basis for social insurance payment applied to each enterprise management receiving salary prescribed in Point dd Clause 1 Article 2 of this Decree will be the salary decided by the enterprise, other than managers in state-owned single member limited companies.

The monthly salary as the basis for social insurance payment applied to each manager of cooperatives receiving salary prescribed in dd Clause 1 Article 2 of this Decree will be the salary decided by the member's meeting.

Article 18. Collection of monthly salary as the basis for compulsory social insurance payment in arrears

The collection of monthly salary as the basis for compulsory social insurance payment in arrears prescribed in Clause 4 Article 89 of the Law on Social insurance applied to employees and employers other than the cases prescribed in Clause 3 Article 122 of the Law on Social insurance shall be carried as follows:

1. The monthly salary as the basis for compulsory social insurance payment in arrears applied to employees and employers shall be collected in any of the following cases:

- a) Increasing the monthly salary of an employee as the basis for social insurance payment
- b) Making supplementary payment of social insurance which has not been paid by a guest worker.

2. The arrear amount of social insurance shall be determined as follows:

- a) Regarding the cases prescribed in Clause 1 of this Article, the arrear amount shall not be charged the late-payment interest.

After 6 months from the date on which the decision on increase in monthly salary as the basis for social insurance payment or termination of the guest worker labor contract, the social insurance in arrears shall include the compulsory social insurance payable as prescribed and charged interest.

b) The interest equals the average interest rate of investment from the social insurance fund in the year preceding the year in which the arrears are collected.

3. The employer must fully pay social insurance, unemployment insurance, and insurance late-payment interest for an employee meeting requirements for social insurance claim or terminating labor contract to settle social insurance and unemployment insurance for the employee.

Article 19. Investment activities of the social insurance fund

1. Management Board of Vietnam Social Security shall decide and take responsibility for the forms of investment and investment structure of the social insurance to the Government at the request of social security agency.

2. Vietnam Social Security shall adopt measures for preservation and development of the social insurance fund according to the decision of the Management board of social insurance. The investment activities of the social insurance fund must be safe, effective and recoverable.

3. The profit from the investment activities of the social insurance fund shall be transferred to the social insurance fund and paid for administrative expenses of social insurance.

Chapter IV

TRANSITIONAL REGULATIONS

Article 20. Transitional regulations applicable to persons on monthly pension, working capacity loss benefit, labor accident or occupational disease benefit and monthly benefit before January 1, 2016

1. Each person on monthly pension, working capacity loss benefit, labor accident or occupational disease benefit, each official of communes ceasing work on monthly benefit, and each person who is no longer eligible for monthly benefit for working capacity loss and on monthly benefit before January 1, 2016 shall still comply with regulations before January 1, 2016 and their benefit shall be adjusted by the Government.

2. Any person prescribed in Clause 1 of this Article that is suspended from receiving social insurance payout before January 1, 2016 shall be entitled to continue receiving social insurance payout following the regulations before January 1, 2016.

Article 21. Region-based allowance applicable to persons eligible for social insurance payout

1. Regulated entities

a) Employees ceasing work that are eligible for a pension or a lump-sum social insurance payout or die from January 1, 2016 and have paid social insurance including region-based allowance before January 1, 2007;

b) Persons on monthly pension, working capacity loss benefit, labor accident or occupational disease benefit before January 1, 2016 who is on region-based allowance at their permanent residence.

2. Benefits

a) Each employee ceasing work who is eligible for a pension or a lump-sum social insurance payout from January 1, 2016 and has paid social insurance including region-based allowance, shall be entitled to receive, apart from pension and a lump-sum social insurance payout as prescribed, a lump-sum benefit corresponding to his/her payment period and premiums for region-based allowance in the social insurance.

If an employee having paid social insurance including region-based allowance dies from January 1, 2016 without receiving pension or a lump-sum social insurance payout, his/her relatives shall be entitled to receive both survivor benefit as prescribed and a lump-sum benefit corresponding to the payment period and premiums for region-based benefit in the social insurance.

b) Persons on monthly pension, working capacity loss benefit, labor accident or occupational disease benefit before January 1, 2016 who is on region-based allowance at their permanent residence shall be continue receiving their current allowance (not adjusting according to the base salary) until there are new regulations promulgated by the Government.

A person on monthly pension, working capacity loss benefit, labor accident or occupational disease benefit before January 1, 2016 who is on region-based allowance at his/her permanent residence but moving to another permanent residence shall be eligible for new region-based allowance from January 1, 2016; if the new permanent residence not eligible for region-based allowance, he/she may not receive any region-based allowance.

A person on monthly pension, working capacity loss benefit, labor accident or occupational disease benefit before January 1, 2016 who is not on region-based allowance at his/her permanent residence but moving to another permanent residence eligible for new region-based allowance from January 1, 2016; he/she still may not receive any region-based allowance.

3. Determination of lump-sum benefit:

Regarding the case prescribed in Point a Clause 2 of this Article, the lump-sum benefit shall be determined according to the period, rate of premiums paid to the fund of retirement and survivorship, coefficient of region-based allowance and the base salary at the payout time. The coefficient of region-based allowance shall be determined as follows:

a) Regarding the payment period from January 1, 1995 to December 31, 2006, the coefficient of region-based allowance as the basis for determination of the lump-sum benefit is the actual coefficient of region-based as the basis for the social insurance payment;

b) Regarding the working period before January 1, 1995, the coefficient of region-based allowance shall be determined according to each province and organization as prescribed in law on region-based allowance;

c) Regarding the serving period at the battlefield B, C before April 30, 1975 and at the battlefield K before August 31, 1989, the coefficient of region-based allowance of 0.7 for lump-sum allowance shall apply.

4. Funding for lump-sum allowance and region-based allowance granted to the entities prescribed in Clause 1 of this Article:

a) Government budget shall cover lump-sum benefit granted to persons having working period at the place eligible for region-based allowance before January 1, 1995; region-based allowance granted to persons on monthly pension, working capacity loss allowance, labor accident or occupational disease benefit ensured by government budget;

b) Social insurance fund shall cover lump-sum benefit granted to persons having working period from January 1, 1995 insurance region-based allowance; and region-based allowance granted to persons on monthly pension, working capacity loss benefit, labor accident or occupational disease benefit ensured by social insurance fund.

Article 22. Benefit for employees on sickness benefit due to diseases requiring long-term treatment before January 1, 2016

Each employee who is taking sick leave mentioned in the List of diseases requiring long-term treatment promulgated by the Ministry of Health and receiving sickness benefit before January 1, 2016 and continues receiving sickness benefit, the regulations on sickness benefit promulgated before January 1, 2016 shall continue applying.

Article 23. Determination of working period as the basis for social insurance payout before January 1, 1995

1. Each employee has a continuous working period in public service before January 1, 1995 but has not received severance pay or lump-sum benefit, or lump-sum social insurance payout, such period shall be considered as the period of social insurance payment. In particular:

a) Each employee has an uninterrupted working period in public service until January 1, 1995 but has not received severance pay or lump-sum benefit, or lump-sum social insurance payout, such period shall be considered as the period of social insurance payment;

b) Each employee has an interrupted working period or ceased work before January 1, 1995, his working period as the basis for social insurance payout shall apply to documents on determination of working period promulgated before January 1, 1995, other than Article 3 of Decree No. 66/CP dated September 30, 21993 of the Government on temporary regulations on social insurance benefits for the armed forces, Article 3 of Decree No. 43/CP dated June 22, 1993 of the Government on temporary regulations on social insurance; Article 54 of Charter of

social insurance issued together with Decree No. 12/CP dated January 26, 1995; Article 49 of Charter of social insurance for commissioned officers, professional soldiers, non-commissioned officers, soldiers of People's Army and People's Public security issued together with Decree No. 45/CP dated July 15, 1995 of the Government and Clause 4 Article 139 of the Law on Social insurance 2006.

c) Each person on the sick soldier benefit that has worked and paid social insurance shall be eligible for both sick soldier benefit and social insurance benefits. The period as the basis for social insurance payout shall be the period of social insurance payment, exclusive of the serving period as the basis for sick soldier benefit.

2. Soldiers, people's polices demobilized before December 15, 1993 and then has worked in agencies, units and enterprises in economic sectors and has paid compulsory social insurance (including employees working in health stations in communes, kindergarten teachers or persons holding positions in communes before January 1, 1995 whose working period is expressed as the period of social insurance payment) and persons hired and employed workers without receiving benefit according to the following regulations shall have their period as the basis for social insurance payout added by their serving period in military or public security and the period of social insurance payment:

a) Decision No. 47/2002/QD-TTg dated April 11, 2002 of the Prime Minister on benefits for soldiers, national defenses workers fought for Resistance War Against France that are demobilized before December 31, 1960;

b) Point a Clause 1 Article 1 of Decision No. 290/2005/QD-TTg dated November 8, 2005 of the Prime Minister on benefits and policies applied to entities directly fought in Resistance War against the American Empire to Save the Nation without receiving any benefit or policy of the Communist Party and the State;

c) Decision No. 92/2005/QD-TTg dated April 29, 2005 of the Prime Minister on benefits for soldiers being minority ethnics in Military zone 7 or 9 that fought in the Resistance War against America and returned before January 10, 1982;

d) Decision No. 142/2008/QD-TTg dated October 27, 2008 of the Prime Minister on benefits for soldiers fought in the Resistance War against the American Empire to Save the Nation that has 20-year serving period in military that are demobilized;

dd) Decision No. 38/2010/QD-TTg dated May 6, 2010 of the Prime Minister on amendments to Decision No. 142/2008/QD-TTg dated October 27, 2008 of the Prime Minister on benefits for soldiers fought in the Resistance War against the American Empire to Save the Nation that have under-20-year serving period in military that are demobilized;

e) Decision No. 53/2010/QD-TTg dated August 20, 2010 of the Prime Minister on benefits for officers and soldiers of People's Public Security fought in the Resistance War Against America that have under-20-year serving in military that are demobilized;

g) Decision No. 62/2011/QĐ-TTg dated November 9, 2011 of the Prime Minister on policies applied to people fought in the Ward to Save the Nation and fulfilled international duties in Cambodia and Laos after April 30, 1975 that was demobilized.

Each soldier or people's police demobilized from December 15, 1993 to December 31, 1994 that has not received severance pay or lump-sum benefit, demobilization benefit, lump-sum social insurance payout, his/her serving period in the people's army or people's public security shall be included in the period as the basis for social insurance payout.

3. Each employee who has worked in public service but has ceased work from November 1, 1987 until January 1, 1995 because his/her employer fails to create vacancies and has not received severance pay or lump-sum social insurance payout but his/her name is still included in the list of employees in such employer until December 31, 1994, his previous working period shall be included in the period as the basis for social insurance payout.

4. Each employee on the public payroll of a regulatory agency, political organization, socio-political organization, state-owned enterprise or an armed force unit that is sent abroad for definite-term business or study trip, returned to Vietnam behind schedule or on schedule but his/her former employer fails to create vacancy for him/her and continues paying compulsory social insurance shall be considered as follows:

a) The working period in Vietnam before taking the business or study trip abroad and the permitted overseas period shall be included in the period as the basis for retirement or survivor benefit payout if the employee has not received severance pay, lump-sum benefit, demobilization benefit or lump-sum social insurance payout before January 1, 1995.

The determination of working period as the basis for social insurance payout before January 1, 1995 shall comply with Clauses 1, 2 and 3 of this Article;

b) The working period from January 1, 1995 shall be included in the period as the basis for social insurance payout if the employee has paid social insurance but has not received lump-sum social insurance payout or demobilization benefit.

5. Each guest worker, after returning to Vietnam, continues paying compulsory social insurance, his/her working period as the basis for social insurance payout shall comply with Clause 4 of this Article.

Each vocational student concluding a labor contract as specified in a Government's Agreement, his/her study period shall not be included in the working period as the basis for social insurance payout.

6. Clause 2 and Clause 5 of this Article shall not apply to persons who violate law abroad and are expelled or subject to a disciplinary action or be liable to imprisonment before January 1, 1995.

7. Each employee who has no original documents on working period before January 1, 1995 shall have his/her employer provided explanation for the loss, certified the employee's working

and salary history, certified that the employee has not received severance pay or lump-sum benefit, and then the employer shall send report to the Ministry or agency in charge of central government or People's Committee of the province for certification and the Ministry of Labor, War Invalids and Social Affairs for consideration.

Article 24. Benefits for person on monthly benefit having period of social insurance payment without social insurance payout

If an employee eligible for monthly benefit as prescribed in Decision No. 91/2000/QD-TTg and Decision No. 613/QD-TTg of the Prime Minister has a period of social insurance payment (excluding his/her working period over which work capacity loss benefit has been paid) that is eligible for a pension, he/she shall be eligible for a higher pension. If an employee has a period of social insurance payment ineligible for a pension, he/she may pay voluntary social insurance to receive a higher pension.

If an employee eligible for monthly benefit as prescribed in Decision No. 91/2000/QD-TTg and Decision No. 613/QD-TTg of the Prime Minister, he/she shall receive a lump-sum social insurance payout for the period over which social insurance is paid (excluding the working period for which the work capacity loss allowance has been paid).

Article 25. Benefits for employees receiving decision on work ceasing awaiting retirement benefit or monthly benefit

1. An employee having a period of 15 years or longer of social insurance payment and obtaining a decision or a certification of awaiting eligibility of statutory retirement age for pension before January 1, 2003, shall be eligible for a pension when he turns 60 years of age or she turns 55 years of age.

2. An official of commune holding a position having a period of 15 years or longer of social insurance payment and obtaining a decision or a certification of awaiting eligibility of statutory retirement age for pension before January 1, 2003, shall be eligible for monthly benefit by a social security agency when he turns 60 years of age or she turns 55 years of age.

Article 26. Converting salaries in foreign currency into Vietnamese dong for social insurance payment

Each employee having salary mentioned in the labor contract in foreign currency, the social insurance payment and social insurance recording shall be carried out as follows:

1. The monthly salary as the basis for social insurance payment in VND by converting the salary in foreign currency into VND according to the average exchange rate on the inter-bank foreign exchange market announced by the State bank of Vietnam on every January 2 and July 1. If the announcement date falls on a legal holiday, the exchange rate of the following date announced by the State bank of Vietnam shall apply.

2. Monthly salary as the basis for social insurance payment mentioned in the social insurance book is the salary in VND determined in Clause 1 of this Article.

Article 27. Transferring government funding to social insurance fund

1. Annually, government budget shall allocate an amount of funding to Vietnam Social Security for implementation of policies and benefits of social insurance, health insurance to entities eligible for pension and social insurance benefit before January 1, 1995, including:

- a) Pension;
- b) Monthly benefit for working capacity loss;
- c) Benefits for rubber workers; monthly benefit for employees no longer eligible for benefit for working capacity loss;
- d) Monthly labor accident or occupational disease allowance; attendance allowance;
- dd) Allowance for purchase of orthopaedic devices;
- e) Survivor benefit;
- g) Funeral benefit;
- h) Payment of health insurance;
- i) Fees for medical assessment of decreased work capacity;
- k) Region-based allowance;
- l) Other expenses.

2. The State shall transfer an amount of funding to social insurance fund to pay social insurance for the entities prescribed in Article 23 of this Decree corresponding to their working period before January 1, 1995.

Article 28. Eligibility applied to employees for social insurance benefits before January 1, 2016

1. Each female employee giving birth or each employee adopting an under-6-month child before January 1, 2016 shall be eligible for benefits prescribed in regulations promulgated before January 1, 2016.

2. Each female employee who was born on December 31, 1970 and earlier and each male employee who was born on December 31, 1965 and earlier and obtain a conclusion of decreased work capacity of 61% or higher issued by a Medical Examination Council before January 1,

2016 that request a pension from January 1, 2016, the regulations on retirement benefit promulgated before January 1, 2016 shall apply.

3. Each employee who dies before January 1, 2016 shall be eligible for the survivor benefit prescribed in regulations promulgated before January 1, 2016 shall apply.

4. Each employee receiving social insurance benefit before January 1, 2016 shall keep eligible for the benefits prescribed in regulations promulgated before January 1, 2016.

Chapter V

IMPLEMENTATION

Article 29. Effect

1. This Decree comes into force from January 1, 2016, other than Point b Clause 1 Article 2 of this Decree which takes effect from January 1, 2018.

2. The following documents shall be annulled from the effective date of this Decree:

a) Decree No. 152/2006/ND-CP dated December 22, 2006 of the Government providing guidance on the Law on Social insurance on compulsory social insurance;

b) Decree No. 83/2008/ND-CP dated July 31, 2008 of the Government on adjustments to salary as the basis for social insurance payment applied to employees subject to salary regime set by employers;

c) Decree No. 122/2008/ND-CP dated December 4, 2008 of the Government on region-based allowance applied to person on monthly pension, working capacity loss benefit, labor accident or occupational disease benefit;

d) Decision No. 107/2007/QĐ-TTg dated July 13, 2007 of the Prime Minister on determination of period as the basis for social insurance benefits applied to officials, public employees, police officers, soldiers or workers on the public payroll of a regulatory agency, political organization, socio-political organization, state-owned enterprise or an armed force unit that is sent abroad for definite-term business or study trip but returned Vietnam behind schedule.

Article 30. Implementation

1. The Minister of Labor, War Invalids and Social Affairs shall provide guidance on this Decree.

2. The Minister of Finance shall ensure the government budget for implementation of policies prescribed in Article 27 of this Decree.

3. Annually, Vietnam Social Security shall announce the average investment interest of social insurance fund of the previous year.

4. Annually, General Statistics Office affiliated to the Ministry of Planning and Investment shall inform the annual average consumer price index to the Ministry of Labor, War Invalids and Social Affairs.

5. Ministers, Heads of ministerial-level agencies, Heads of Governmental agencies, the Presidents of the People's Committees and relevant organizations or individuals shall implement this Decree./.

**ON BEHALF OF THE GOVERNMENT
PRIME MINISTER**

Nguyen Tan Dung

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