

Terms of Reference

Pair of Consultants to Conduct Legal Framework Review to Facilitate Development of Decree on Workers' Organization and Collective Bargaining

Programme/Project Name	VNM/16/02M/USA: Improving Labour Law and labour administration for a new industrial relations framework in respect of the ILO Declaration on FPRW at work.
Name of individual consultant ¹	TBD
Duration of the contract	May 2021 – July 2021
Total value of consultancy (USD/VND)²	TBD
Source of funding (AFF/PTAEO)	Act 1.4.3 - 105902/017.050/501906/514170

I. Background & Rationale

The Labour Code 2019 adopted in November 2019 introduced fundamental changes in the area of industrial relations. Specifically, Chapter 13 of the Code introduces workers' representative organizations, and stipulates that workers have the right to establish, join and participate in non-VGCL workers' representative organizations' activities at the grassroots level. Chapter 5 on Workplace Dialogue, Collective Bargaining and Collective Agreement has also been revised to identify the mechanisms for dialogue, collective bargaining and collective agreements in a multi-WROs context.

On 6 January 2020, the Prime Minister issued Decision 24/QĐ-TTg. This decision makes the Ministry of Labour, Invalids and Social Affairs (MoLISA) responsible for drafting decree on workers' representative organizations and collective bargaining.

According to the 2015 Law on Promulgation of Legislative documents, Art. 94, Clause 4, draft decree portfolios submitted to the Ministry of Justice for appraisal must contain a Narrative Paper, the Draft Decree and other materials, including a written analysis on the normative legal documents related to the draft decree. As described more fully below, this team consultancy is designed to contribute key portions the required analysis of such normative legal documents.

The new decree on WROs and collective bargaining introduces new and complex issues in labour law. The legal review process will therefore enhance the consistency and feasibility of implementation by thoroughly analyzing the existing legislative foundation.

The ILO Country Office for Vietnam is implementing a technical co-operation project entitled Developing and Implementing a New Industrial Relations Framework in respect of the ILO Declaration on Fundamental Principles and Rights at Work ("NIRF Project"). The aim of the NIRF Project is to assist Vietnam to reform and improve its industrial relations framework consistent with the ILO Declaration on

¹ This information could be filled upon completing the recruitment process

² This information for internal use only

Fundamental Principles and Rights at Work (1998), with funding from the USDOL. NIRF intends to support these consultancies in furtherance of this goal.

II. Objective/purposes

The consultancy's objective is to enhance and expedite MoLISA's effort to produce the analyses required by Government through providing a relevant, thorough, and well-organized analysis of the normative law documents that pertain to the subjects of the new decree, i.e., WROs and collective bargaining. The analysis should reflect consideration of the practical application of the decree, noting areas covered by existing laws as well as any policy or legal gaps that become apparent.

This consultancy requires two consultants [hereafter called Consultant#1 and Consultant#2] working in a team under the leadership of consultant #1. While the Consultant #1 is expected to focus on legislation review on WRO's provisions, Consultant#2 will mainly cover the parts relating to collective bargaining process.

III. Scope of Work

Prior to commencement of work, NIRF Project staff and staff from its partner, MoLISA, will further particularize the scope of each consultancy listed below, noting crucial contents, reference documents, and areas for further exploration.

However, it is expected that the review should cover, but not limit to, the following aspects and issues:

- *Thematic issue 1: Specific regulations on eligibility, competency, procedures for issuing, reissuing and revoking registration of WROs, unions, associations and NGOs, etc.*
- *Thematic issue 2: Regulations promulgated about State administration on the organizations such as workers' organizations, trade unions, associations, social organizations and non-governmental organizations and its activities, including those implied on financial matters and assets of these organizations*
- *Thematic issue 3: Regulations on the release time for WRO's leader's committee to perform the tasks of the WROs*
- *Thematic issue 4: Existing regulations for collective bargaining or similar process, and practices;*
- *Other relevant regulations arising out of the review process.*

This issue list is subject to revision following discussion with the Project technical team and MOLISA, whom the work product is expected to benefit by facilitating the decree preparation and appraisal process.

The consultancy is expected to commence on 2nd May 2021 and conclude on 30 June 2021. The consultants will be based in Ha Noi during the timeframe designed for the assignment. The estimated number of working days for the consultant #1/Lead consultant is 27 workdays and Consultant# 2 amounts up to 23 days.

IV. Specific Tasks and Methodology

To facilitate a comprehensive review that serves the above objectives, consultants are expected to do the following:

- Desk review of the following: Labour Code 2019 Portfolio; reference materials related to the revision of some articles in the Law on Trade Union 2012, state ordinances on the right to establish associations and organizations; Decree 45/2010/ND-CP dated 21 April 2010 on management, operation and organization of associations; Decree 33/2012/ND-CP dated 13 April 2012 on amendment of some articles in Decree 45/2010/ND-CP dated 21 April 2010 on management, operation and organization of associations; some legal documents stipulating regulations to socio-political organizations and non-governmental organizations; and reference materials/research reports on international practices on industrial relations issues.

With close collaboration from the NIRF Project team and MOLISA's Department of Legal Affairs, two consultants will work on different content areas, with one taking the lead as described below:

1. Consultant 1 – Team leader

- Work with Consultant #2 to develop a detailed outline of the general report which meets with the satisfaction of the Legal Department of MoLISA and ILO NIRF project team;
- Conduct desk review, research and develop the background and rationale of the report, as well as the objectives of the report.
- Study relevant national and select international documents (if any) to serve the development of the general report and the issues/report sections in charge
- Write report in the way that presents key elements required by Government's template including (1) the list of legal documents related to the draft Decree, (2) the summary of these regulations and indicate their links to the provisions of Decree, (3) giving comments/opinions on the reviewed contents, and (4) providing recommendations directly to the provisions of the draft Decree to make it better align with overarching legal frameworks.
- This expert goes into detail on Thematic issues #1 and #2 according to the proposed research framework.
- Consolidate the first draft of the full report.
- Work with Consultant #2 to finalize the full report based on comments from Legal Department of MoLISA and the ILO .

Estimated workdays for Lead consultant: 27WDs

2. Consultant 2 – team member

- Study of international practices [if any] for reference relating to the legal framework for collective bargaining process and procedures in the context of multi-union involvement.
- Conduct desk review and collect materials and information on unions' functions and collective bargaining practices in Viet Nam, which constitutes the key inputs for the review report.
- Research, review, synthesize and make recommendations in accordance with the proposed provisions of the draft Decree when applying to Issues 3 and 4.
- Work closely with the lead consultant to draft the report with the sections relating to Issue 3 and 4.
- Work closely with the Lead consultant to finalized the report based on comments of the ILO and Legal Department of MoLISA .

Estimated workdays for consultant #2: 23WDs

V. Expected results

The Team Leader will take responsibility for organizing and presenting the following products, which result from the team's efforts:

1. An initial list of relevant legal frameworks that consultants will analyse during the review process.
2. An outline of the report, which shows the structure, organization and anticipated content/ coverage of the report for approval by ILO/ NIRF and MOLISA by 12th May 2021.
3. A final draft of report that take into all comments from ILO, MoLISA and related agencies should be submitted to the satisfaction of ILO and MoLISA no later than 30th June 2021

VI. Timeline and supervision

The tentative time frame for the contract: from May 2nd 2021 to 31 July 2021, with a total of 27 working days for Consultant#1 and 23 working days for Consultant#2.

The consultant will work under the supervision of ILO's technical team and Legal Department of MoLISA. They will be supported by Legal Department for all administrative procedures for getting access to and establishing contacts with Gov't agencies as deemed necessary. The consultants' travel cost to other places outside Ha Noi for this service, if requested by the ILO, will be covered by ILO following the applicable EU/UN cost norms. However, it is expected that most work can be concluded from the Hanoi base.

#	Item	Expected Delivery	Remarks
1	List of relevant legal instruments for reference during the review	9 May 2021	To be submitted to both ILO and MOLISA
2	Outline of the research report	12 th May 2021	To be submitted to both ILO and MOLISA
3	First Draft of the Report	30 May 2021	To be submitted to both ILO and MOLISA
4	Final Draft of the Report	30 June 2021	To be submitted to both ILO and MOLISA

VII. Desired Qualifications of the consultants

For Consultant #1/Lead Consultant:

- A masters or doctoral degree in law studies, labour and employment, or related fields.

- Significant experience within the last five years as a primary or contributing author of legislation reviews in Vietnam, especially on the topics of free association, worker association, unionisation or similar.
- Experience in producing academic papers and draft legal documents will be an asset.
- A sound understanding of the socio-economic background in Viet Nam, with analytical thinking and the ability to consolidate and propose recommendations.
- Experience in working with government agencies and social organizations in Viet Nam particularly on creation or revision of legal norms
- Experience successfully leading analogous team consultancies.

For Consultant#2:

- A graduate degree law studies, labour and employment, trade union or related fields.
- Prior experience completing assignments on legislation reviews or developing legal framework in Viet Nam, especially as they pertain to trade union's activities including collective bargaining.
- A sound understandings of ILO's pertinent conventions, including C.98 on right of WROs to collective bargaining.
- Experience in working with government agencies and social organizations in Viet Nam particularly on creation or revision of legal norms.

VIII. Application

Interested candidates are invited to submit an application package **in English** including the following documents by email to huongn@ilo.org by 25 April as the latest.

1. A clear statement indicating whether you wish to be considered for Consultancy #1 (Lead), Consultancy (#2), or either one.
2. Half page (150 words) briefly highlighting experience relevant to the requirements set by the TOR.
3. List of legislative reviews or similar analogous reports for Vietnam for which you were either a primary or contributing author that specifically relate to the labour and industrial relations topics that form the focus of this consultancy. *It does not suffice to simply attach a comprehensive list of publications. You must extract those that are directly relevant to this consultancy into a short list that is independent of your CV.*
4. Full CV including comprehensive list of publications.
5. Confirmation of availability during the contract period.
6. Your proposed daily fee or fee range [for 27-day consultancy for Consultant#1/Lead consultant; and 23-day for Consultant#2], exclusive only of travel, which

necessitates prior written authorization and shall be reimbursed in accordance with ILO and USDOL regulations.

Only submissions with complete documents stated here above before the deadline will be considered. We regret that detailed screening results will not be released and only shortlisted candidates will be contacted.