

**Terms of Reference – EXCOLL Contract**  
**REVIEW REPORT ON LABOUR SUBLEASING PRACTICES**

|                                    |                                          |
|------------------------------------|------------------------------------------|
| Programme/Project Name             | <b>VNM/20/02/APL</b>                     |
| Tentative duration of the contract | <b>01 August 2023 – 15 November 2023</b> |

## **I. Background and Rationale**

### **Project Background**

With USD 113,5 billion in exports in 2022, Viet Nam is one of the largest electronics exporters in the world, and the industry continues to grow, accounting for one-third of the total national export. In addition to playing a major role in overall economic growth, the electronics industry has also been one of the biggest job creators in Viet Nam in the last decade, employing more than one million workers. The growth of the electronics sector has taken place in the context of Viet Nam’s development strategy of deeper global economic integration, pursued primarily through FDI and the free trade agreements, including the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) and the EU-Viet Nam Free Trade Agreement (EVFTA). The COVID-19 crisis negatively affected the national economy in general and the electronics supply chains in the past years as well as the years to come. There is a strong need to enhance the improvement of decent work in the sector with efforts from governments, employers, workers, and their associations.

In recent years, the ILO and national constituents are cooperating in implementing a joint project toward the overall goal of advancing decent work in the supply chain in Viet Nam and contributing to the sustainable and inclusive economic growth of Viet Nam via the promotion and improvement of compliance and dialogue in the electronics sector especially in the context of post-COVID-19 pandemic and international economic and political uncertainty. This includes the development of knowledge, tools, guidance, policy advice, technical assistance, and training to address decent work challenges and opportunities in electronics manufacturing in Viet Nam.

### **National Context**

The regulations for labour dispatch were first adopted in the Chapter on Employment Contracts (Chapter 5; Article 53 to Article 58) of the 2012 Labour Code. They were revised in the Labour Code 2019 and detailed provisions were included in the Decree No. 145/2020/ND-CP (December 14, 2020). The regulations provided further details and guidance on the implementation of labour dispatch as a special arrangement of employment relations, emphasizing the specific conditions in which it can be used (including a list of jobs for which labour dispatch is allowed), highlighting the protection

of the rights of workers, and set out the conditions and procedures for the granting licence for the operation of labour dispatch enterprises.

According to reports from the labour administration agencies of the provinces, there are currently 488 licensed labour dispatch enterprises. These enterprises are concentrated in 33 provinces and cities including the most dynamic and industrialised provinces/cities of Hanoi, HCMC, Dong Nai, Binh Duong, Ba Ria Vung Tau with a total of 202,115 workers, reflecting an increase in the demand for labour dispatch in various fields of business, including electronic manufacturing and assembling. Labour dispatch is emerging as a solution for job matching in the labour market.

The rapid expansion of the labour dispatch practice indicates that the relevant legal provisions are, in general, sufficiently adequate, creating the legal basis for labour dispatch practices, ensuring the rights and interests of the workers.

However, the actual implementation process has brought to light some problems and shortcomings. Prominent among them are:

- (1) lack of clarity in identifying – and methods for determining -- the specific “work” or “jobs” for which labour dispatch can be applied
- (2) shortcomings in the enforcement of compliance, including inadequate inspection and monitoring of the practices of the labour dispatch enterprises

While these challenges and issues have come to light from informal reports and monitoring, it is important to investigate them more systematically, including examination of any disputes related to labour dispatch practices that have been brought to the attention of labour administration agencies and dispute resolution mechanisms, including courts. At the same time, there is a need to carefully examine some work/business practices that are similar to labour dispatch, including the “so-called” “in-house sub-contracting”, which is reported to exist in the electronics manufacturing sector.

The ILO in Viet Nam is working closely with MOLISA Department of Industrial Relations and Wage to develop a review report on the application of labour dispatch regulations and the actual practices, through an in-depth study in selected regions and industries, including the electronics sector, fishing, telecommunications, garment. Based on this review, MOLISA shall institute a process to explore and develop policy actions, including the improvement of enforcement measures and related guidelines for the state labour administration agencies, and, if necessary, identifying areas that may require law amendment, to better ensure the rights and legitimate interests of dispatched workers and the related enterprises.

The development of this report needs the engagement of several national experts to draft the report and provide other technical inputs on this specific labour administration area.

## **II. Objectives and Scope of work**

The assignment aims at grasping the actual implementation of regulations on grant, re-grant, extension and revocation of labour dispatch license; the exercise of rights and obligations of the labour dispatch enterprise, the labour dispatch enterprise, and the rights and obligations of employees at the labour dispatch enterprise.

The survey is aim at exploring the following aspects but not limited of labour dispatch at the local level

- Overall assessment of labour dispatch situation, the observation on capacity of the dispatch companies to meet the labour market requirement, and labour standards. The business trend preferably by sector.
- Whether the rights of workers are effectively guaranteed, what is the experiences of workers, whether social insurance accessible to those workers
- What are the practices and experiences of user-companies: why and how much they use, for what jobs they use, what would be the challenges for not using the in-house workers, what would make them use all in-house workers in the workplace
- What is the experience of labour dispatch enterprises: whether they service just one company, or many companies; in one sector or in many different sectors; frequency, size each time, size in total, duration, etc.; what are the challenges from policy.
- What is the situation and challenges in state administration at all levels (which could be gathered via administrative reports and information
  - o Record of requests for license; how many are granted license; how many are rejected; how many are revoked – reasons
  - o Reports from labour dispatch enterprises: in each province, what is the ratio of licensed companies that submit reports (promptly)
  - o Information about which sectors labour dispatch takes place, how many workers are involved
  - o Check with courts for any cases involving labour dispatch; check with labour inspection for information about “complaints” between the host and guest company, between workers and employers and inspection actions/results related to labour dispatch: what are the key issues

The External Collaborator will work closely with the ILO specialist and DIRWA team to conduct the field survey at the south of Viet Nam to develop a synthesis review with the key tasks mentioned in the next section.

## **III. Expected tasks and timelines**

The external collaborator is expected to complete the tasks below in coordination with the ILO Electronics GSC Project team and MOLISA DIRWA.

### 3.1. Develop the synthesis report outline in August 2023

The external collaborator shall draft a report outline of about 3-5 pages including the following main contents:

- (1) Background, preface;
- (2) Literature review of labour dispatch, employment relations and relevant international legal framework and practices,
- (3) National Legal framework on labour dispatch
- (4) Implementation of legal regulations on labour dispatch (summarized from survey reports and periodical reports of localities with enterprises operating labour dispatch; assessing the gaps and loopholes of the implementation of legal provisions on labour dispatch);
- (5) Proposals and recommendations for implementation and enforcement solutions and legal framework improvement in the coming time.

### 3.2. Conduct field trips to collect data in the three industrial provinces in Viet Nam in August 2023

Together with DIRWA research team and the ILO Electronics GSC Project team, the external collaborator shall conduct field trip to Hochiminh City, Binh Duong and Dong Nai with the tentative details in Annex I.

### 3.3. Develop the review report in September and October 2023

The external collaborators will work closely with the ILO specialist to develop a synthesis report with the following contents:

- A literature review and compilation of international legal framework and good practices in the topic.
- A draft synthesis report of about 40 pages (excluding appendices) in line with the preidentified outline in which provides details, specific analysis, and full data from direct surveys and questionnaires.

The synthesis Report shall include at least the following contents:

- Introduction (scope, research purpose)
- Vietnam's legal context and framework on entering into employment contracts via electronic means
- Legal framework and implementation experience of some relevant countries.
- Practicality and applicability in the business sector
- Key findings and policy recommendations
- Anticipated next steps to improve policy framework and facilitate workplace compliance

### 3.4. Finalize the review report after receiving feedback from the ILO and other national expert in November 2023

#### IV. Expected deliverables

| No. | Expected tasks                                   | Deliverables/Other notes                                                                              |
|-----|--------------------------------------------------|-------------------------------------------------------------------------------------------------------|
| 3.1 | Develop synthesis report outline                 | Report outline                                                                                        |
| 3.2 | Conduct field trips to collect data in the South | Field agenda<br>List of meetings and interviewees<br>List of informants<br>(Travel costs might occur) |
| 3.3 | Develop a review report                          | Draft synthesis report                                                                                |
| 3.4 | Finalize the review report                       | Final synthesis report                                                                                |

#### V. Competencies

The external collaborator is expected to possess the following qualifications:

- Significant knowledge and understanding about labour law, labour administration and management system in Viet Nam with suitable training background (University level or higher);
- At least 10 years of experience in labour administration, labour policy management and monitoring, experience on labour dispatch policy is an advantage;
- Proficiency in Vietnamese, strong communication skills and significant writing capacity, significant knowledge on research and field data collection;
- Experience with the ILO mandates and electronics supply chains is an advantage.

#### VI. Application

Application to deliver this consultancy service should be submitted by email to [kimhue@ilo.org](mailto:kimhue@ilo.org) with a copy to [nguyenthi@iloquest.org](mailto:nguyenthi@iloquest.org) no later than 5 p.m. Hanoi time, Wednesday 19 July 2023 and must include:

- CV of the consultant.
- Proposed consultancy fee with daily rate and expected number of working days.
- Proposed travel costs and other reimbursable costs (if any).

## Annex I. Tentative travel agenda

| Day | a.m./p.m. | Agenda Item                                             | Key informants/other notes                                                                                   |
|-----|-----------|---------------------------------------------------------|--------------------------------------------------------------------------------------------------------------|
| 1   | p.m.      | Travel Hn-HCM city by air                               |                                                                                                              |
| 2   | a.m.      | Meeting at DOLISA HCMc                                  | DOLISA HCMc<br>FOL HCMc<br>VCCI HCMc<br>IZ management board<br>Commercial bank receiving deposits (optional) |
| 2   | p.m.      | Meeting with dispatch enterprises                       | Dispatch enterprises                                                                                         |
| 3   | a.m.      | Meeting with user enterprises                           | User enterprises                                                                                             |
| 3   | p.m.      | Travel HCMc – Dong Nai                                  |                                                                                                              |
| 4   | a.m.      | Meeting at DOLISA Dong Nai                              | DOLISA Dong Nai<br>FOL Dong Nai<br>IZ management board<br>Commercial bank receiving deposits (optional)      |
| 4   | p.m.      | Meeting with dispatch enterprises                       | Dispatch enterprises                                                                                         |
| 5   | a.m.      | Meeting with user enterprises                           | User enterprises                                                                                             |
| 5   | p.m.      | Travel Dong Nai – Binh Duong                            |                                                                                                              |
| 6   | a.m.      | Meeting at DOLISA Binh Duong                            | DOLISA Binh Duong<br>FOL Binh Duong<br>IZ management board<br>Commercial bank receiving deposits (optional)  |
| 6   | p.m.      | Meeting with dispatch enterprises                       | Dispatch enterprises                                                                                         |
| 7   | a.m.      | Meeting with user enterprises                           | User enterprises                                                                                             |
| 7   | p.m.      | Travel Binh Duong – HCMc<br>Travel HCMc – Ha Noi by air |                                                                                                              |