



# TRADE UNION REFORM

## FOR WORKER'S RIGHTS AND INTERESTS



### HIGHLIGHTS

## SUCCESSFUL LESSONS LEARNED FROM PILOT PROGRAMMES



**EXPANSION OF MULTI-EMPLOYER COLLECTIVE BARGAINING AGREEMENT – OUTCOMES OF PILOT CONDUCTED BY FEDERATION OF LABOUR IN DA NANG**

**MULTI-EMPLOYER SOCIAL DIALOGUE IN LINH TRUNG EXPORT-PROCESSING ZONE, HO CHI MINH CITY**

- Labour commitments in CPTPP – Issues concerning Trade Unions
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# SUCCESSFUL LESSONS LEARNED FROM PILOT PROGRAMMES

## Expansion of Multi-employer Collective Bargaining Agreement – Outcomes of pilot conducted by Federation of Labour in Da Nang

On 22 December 2018, the Pilot Implementing Unit of the Federation of Labour (FoL) completed multi-employer collective bargaining (MECB) and signed an agreement (MECBA) with the Da Nang Tourism Association. The scope of application for this MECBA has expanded from 4 enterprises with 750 employees to 10 enterprises with 2400 employees (48% of the employees are female) in the tourism sector of Da Nang City. This event marked a new development in the negotiation and execution of expanded MECBA in Vietnam.



### Objectives and principles of the pilot implementing unit

In 2016, the Pilot Implementing Unit of the FoL Da Nang piloted MECBA with four businesses in the tourism sector. The 2018 MECBA aims to expand the scope of application in comparison with the 2016 MECBA.

### Objectives and principles used in 2018 MECB

#### Objectives

- To substantially improve performance of grassroots trade union (GTU) by enhancing direct support from the provincial FoL, thus strengthening genuine participation by employees.
- To ensure that the content for collective bargaining is more favorable than the conditions found in existing enterprise CBAs.
- To reduce turnover rates and instability in labour relations in tourism and service enterprises; to mobilize the collective strength of employees and GTUs in negotiation process.
- To experiment with other forms of effective CB as a pragmatic inputs for labour laws reform.

#### Principles

- The genuine participation of a large number of employees in the whole process, starting from the survey through to negotiations must be ensured.
- Negotiations must be conducted by trade union groups and GTUs with the FoL. These negotiations must consist of real bargaining with real content and real implementation.
- The content for MECB must initiate from the workers and be gained through a process of surveys, dialogue and legal advice for them.
- The content for negotiation must guarantee consensus on the part of enterprise employers, in accordance with business conditions and activities.



## Enterprises under the 2018 MECBA in Da Nang

Nr.	Name of enterprise	Affiliated hotel*	Number of employees
1 <sup>i</sup>	Vitours (Vietnam Tourism Joint-Stock Company)	Thu Bon Hotel Bamboo Green 1 Hotel Bamboo Green 2 Hotel Bamboo Green 3 Hotel	263
2 <sup>i</sup>	Saigontourane Hotel Joint-Stock Company	Saigon Tourane Hotel	68
3 <sup>i</sup>	Phuong Dong Viet Joint-Stock Company	Orient Hotel	41
4 <sup>i</sup>	Phu An Thinh Trading and Tourism Co., Ltd	Pullman	365
5 <sup>ii</sup>	Bac My An Tourism Joint-Stock Company	Furama Resort	700
6 <sup>ii</sup>	Danang Trade Union One Member Limited Liability Company	Thanh Binh Hotel	81
7 <sup>ii</sup>	Ngu Hanh Son Ocean Tourism Joint-Stock Company	Hyatt Regency Danang Resort and Spa	600
8 <sup>ii</sup>	Taseco Ocean View One Member Limited Liability Company	À la carte	221
9 <sup>ii</sup>	Tien Sa Ocean Invest Management Joint-Stock Company	Tien Sa Hotel	33
10 <sup>ii</sup>	Kachiusa Service and Trading One Member Limited Liability Company	Finger Hotel	27

\* These pilot enterprises own a number of affiliations, such as hotels, restaurants and tourist services, etc. The table provides names of hotels under ownership of the pilot enterprises. Note that the terms found in the MECBA are applied to all employees in these enterprises, including employees of the aforementioned hotels and others.

<sup>i</sup> The enterprises participated in 2016 and 2018 MECBAs.

<sup>ii</sup> The enterprises are new to participation with 2018 MECBA.

Source: Data provided by the pilot implementing unit of the FoL Da Nang, January 2019.

## Process of negotiation

The aforesaid principles were rigorously applied by the pilot implementing unit of the FoL Da Nang throughout the process of preparing for negotiations, collecting inputs from workers regarding content for negotiation, bargaining in each enterprise, and collective bargaining with all employers in order to ensure that negotiations would be genuine and voluntary.

### 7 steps of the 2018 MECB process

↓	CBA quality was reviewed in-depth and evaluated for each enterprise.
↓	Employee opinions on the 2016 MECBA as well as on the proposed content for negotiation were obtained.
↓	Tentative content for the MECBA for the piloting enterprises was drafted.
↓	Working sessions with GTU Executive Committees were organized.
↓	Meeting with the Department of Tourism of Da Nang, the Tourism Association, and enterprise employers participating in the MECBA pilot was organized.
↓	Workshop to collect inputs for MECB was organized.
→	Collective bargaining was conducted with each enterprise and one joint negotiation was organized involving the participation of all employers and enterprise trade unions.



## Outcomes of the negotiation process

Outcomes of 2018 MECBA partially demonstrate the sustainability of MECB in four particular dimensions.

First, even though 2016 MECBA expired as of January 2018, at the time that surveys were conducted in the relevant four enterprises under the MECBA, implementation of all policies for workers prescribed by 2016 MECBA were still being voluntarily maintained by employers, without any change.

Second, in comparing survey results from the 16 enterprises initially targeted, the difference between employee demands in the four enterprises participating in 2016 MECBA and demands made by the employees of other enterprises can be clearly seen. In the four enterprises participating in 2016 MECBA the employees mostly proposed maintaining the content of the agreement without any additions, while the majority of employees in the remaining 12 enterprises wanted to negotiate on wages and welfare benefits and they bore in mind comparisons of wages and bonuses with other companies.

Third, it is noticeable that the content found in Expanded 2018 MECBA basically remains unchanged from the content found in 2016 MECBA, such as regards the Minimum Wage (Article 5), Probations (Article 6), Development of Wage Scales and Tables (Article 7), etc. Although there has been

no change, this content is sustainable because the content focuses on core issues such as wages and benefits, but does not utilize a fixed increase in VND. The pilot implementing unit negotiated an annual percentage increase for the aforesaid clauses.

Finally, sustainability is found in the capacity and commitment of the parties involved in MECB. The pilot implementing unit of the FoL Da Nang performed a key coordinating role in the negotiation process, from liaising and organizing the Negotiation Team at the grassroots level and connecting employees, to finding the corresponding partners for negotiation. At the same time, on the employer side, after recognizing relatively

stable results for the two years after 2016 MECBA was implemented, employers are more willing to work together with unions to build a common framework within the industry. Acceptance of this strong role and commitment from the Tourism Association of Da Nang to broaden 2018 MECBA is one piece of evidence showing that labour relations in the service sector in Da Nang are growing.

“The association will work closely with the FoL Da Nang to advocate and pave the way for more tourism enterprises to join the MECBA. We will try to bring the number of enterprises that join MECBA up to 50 in 2019.” – Mr. Huynh Tan Vinh, Chairman of the Tourism Association in Da Nang

The 2018 Expanded MECBA marks a new step in scaling up collective bargaining with the participation of businesses that own high quality resorts and hotels having a large number of employees. With positive signals from the 2018 Expanded MECBA and with the commitment of the negotiating partners, the 2018 Expanded MECBA could potentially become an industry-level framework agreement, contributing to building an important foundation for industrial relations in this industry, not only in Da Nang, but also with possible replication in other localities.

<sup>1</sup> Report of the pilot implementing unit of the FoL Da Nang on outcomes of piloting the 2018 Expanded MECBA, December 2018.



# MULTI-EMPLOYER SOCIAL DIALOGUE IN LINH TRUNG EXPORT - PROCESSING ZONE, HO CHI MINH CITY

Under the collaborative framework between the Vietnam General Confederation of Labour (VGCL) and the ILO/NIRF-Japan Project, the pilot program on Multi-employer Social Dialogue (MESD) was implemented in three pilot implementing units, including: (i) the Federation of Labour in Ho Chi Minh City (with a group of textile enterprises in the Linh Trung Export-Processing Zone); (ii) the Federation of Labour in Binh Duong (with a group of wood-processing enterprises in Tan Uyen Town); and (iii) the Federation of Labour in Dong Nai (with a group of wood-processing enterprises in the Tam Phuoc Industrial Zone).



## Process of piloting the multi-employer social dialogue by the FoL Ho Chi Minh



Source: Adapted from Report of the Pilot Implementing Unit of the FoL Ho Chi Minh

These targeted locations are in the leading area in economic development in southern Vietnam; it is attracting many production investment projects, resulting in a high demand for labour. This is also a place with relatively dynamic industrial relations, where labour disputes and strikes often emerge. This area was selected for piloting MESD with the goal of determining the most appropriate and most influential "point of intervention".

The pilot was initiated in March 2018 in order to conduct MESD in various areas of the three provinces in order to respond to the demands and aspirations of workers in the area. By the start of January 2019, the pilot implementing unit of the Federation of Labour (FoL) in Ho Chi Minh City successfully carried out MESD in six garment enterprises in the Linh Trung Export-Processing Zone (EPZ).

The pilot was implemented in three main stages. The first two phases were applied equally to all three pilot implementing units, including (1) pilot strategic planning and survey; and (2) training on knowledge and skills for members

of the pilot implementing unit with the elaboration of detailed action plans. The third stage depends on the creativity and flexibility of each pilot implementing unit in accordance with the local context.

For the pilot implementing unit of the FoL Ho Chi Minh, the third stage was carried out in two steps: (1) support and promote dialogue at the workplace in each of six enterprises, and then, based on issues raised during the dialogue at each enterprise, (2) analyze and synthesize common content for MESD with the six enterprises.

Through six rounds of dialogue in each enterprise, the pilot implementing unit compiled four main groups of content, including: (1) minimum wage adjustment; (2) increase in cost of mid-shift meals; (3) advance notice for the Lunar New Year holidays; and (4) other content concerning taking an additional one day of paid leave for the Tet holidays for employees with more than five years of seniority at the enterprise, and then incorporating this content into the Collective Bargaining Agreement for those enterprises.



MESD at six enterprises was conducted on January 5, 2019, under the lead of the pilot implementing unit of the FoL Ho Chi Minh in coordination with grassroots trade unions. The outcome of the dialogue was the solid commitment by the employers at these enterprises to three out of four requests.



### The commitment of the employers gained through MESD in the Linh Trung EPZ <sup>2</sup>

(1) Advance notice of the annual Lunar New Year Holidays will be made on October 15, lunar calendar, so that employees can actively make arrangements to return home;

(2) Increase in the mid-shift meal rate from VND 15,000 to VND 17,000; the quality and also the hygiene and safety of the food will be guaranteed. This change will take effect on April 1, 2019;

(3) Adjustment for the 2019 minimum wage was increased from 230,000 to 290,000 VND (equivalent to a 5.8% increase when compared with the current level).

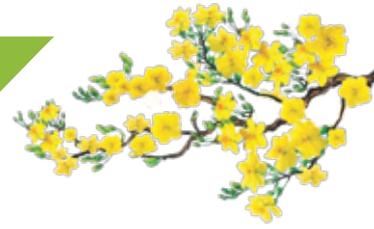
Through this process, the change in the employers' perceptions can be seen; specifically, their attitude transformed from doubtful and reluctant to engage with the complexity of MESD at first, to active participation in the dialogue by the end. The outcomes from the MESD are expected to stabilize the labour relations in these enterprises, especially during the Lunar New Year period when wages, bonuses, leave and other fringe benefits enter into the spotlight and can easily become a cause for disagreement between employers and workers, leading to instability in labour relations.

Moreover, the successful MESD in the Linh Trung EPZ has exceptional significance, because the Linh Trung EPZ is the "gateway" to the region of the three provinces of Ho

Chi Minh City, Dong Nai and Binh Duong, all of which have a large number of businesses and workers. Developments in labour relations in the Linh Trung EPZ serve as indicators for labour relations throughout the region. Therefore, the positive results of the MESD in the Linh Trung EPZ are assessed as having a positive resonant effect on the region.

One must acknowledge the persistent effort and creative capacity of the pilot implementing unit of the FoL Ho Chi Minh, the ongoing support of VGCL's Technical Advisory Committee, and the ILO/NIRF-Japan Project, as well as the skills and knowledge of dialogue and negotiation provided timely by international and national experts, in achieving these results.

<sup>2</sup> Report on progress of implementing the pilot programme on multi-employer social dialogue in garment enterprises located in the Linh Trung EPZ.



## LABOUR COMMITMENTS IN CPTPP ISSUES CONCERNING TRADE UNIONS

**Center for Industrial Relations Development  
Ministry of Labour-Invalids and Social Affairs**

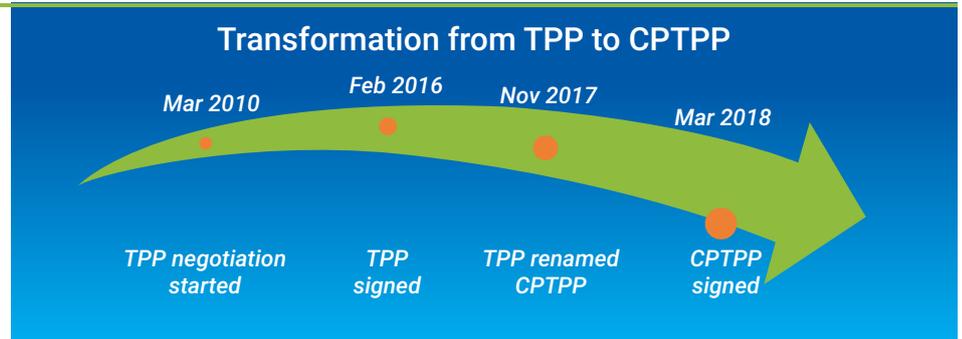
### General information

On 11 December 2018, the National Assembly of Vietnam approved the Comprehensive and Progressive Trans-Pacific Partnership, referred to as CPTPP, with the approval of 469 members of the National Assembly (96.7% of the total number of delegates and 100% of the delegates present). After being approved by six countries (Australia, Canada, Japan, Mexico, New Zealand and Singapore), CPTPP has become eligible to come into effect on 30 December 2018; Vietnam is the seventh nation to approve this Free Trade Agreement.

CPTPP, also known as TPP 11, has its "precursor" as the Trans-Pacific Partnership (TPP), the as negotiation process of which was launched in March 2010. TPP was an agreement involving 12 countries: Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, the USA, Singapore and Vietnam. Over nearly six years of negotiation, 12 countries concluded the negotiation process; the signing ceremony for TPP took place in February 2016. However, when U.S. President Donald Trump came to power, the U.S. announced its intentions to withdraw from the TPP agreement. In November 2017, the remaining 11 countries decided to change the name of the agreement from TPP to CPTPP. By March 2018, the parties officially signed CPTPP.

### Labour provisions in CPTPP

Regarding labour provisions, there are both similarities and differences between the commitments found in TPP and CPTPP; these are as follows: Vietnam's labour commitments in both agreements include a shared commitment in Chapter 19 (Labour). The difference lies in the side commitments. TPP included bilateral



commitments with the U.S., while in CPTPP bilateral side letters were exchanged with the other 10 signatories.

For the shared commitment found in Chapter 19 (Labour), countries, including Vietnam, adopt and maintain in its laws and practices thereunder the four groups of fundamental labour rights as stated in the 1998 Declaration of the ILO, including: (1) freedom of association and the effective recognition of the right to collective bargaining; (b) the elimination of all forms of forced or compulsory labour; (c) the effective abolition of child labour and, for the purposes of this Agreement, a prohibition on the worst forms of child labour; and (d) the elimination of discrimination in respect to employment and occupation. Furthermore, each Party shall adopt and maintain in its laws and practices thereunder governing acceptable conditions of work with respect to minimum wage, hours of work, and occupational safety and health.

Vietnam's side commitments are embedded in the letters exchanged between Vietnam and the other 10 signatories, which state in their text:

- From the date of entry into force of the Agreement for Vietnam, Vietnam shall fully implement the obligations of Chapter 19 (Labour).
- If Vietnam possibly takes any measure that is inconsistent with the

obligations of Chapter 19 (Labour), other signatories shall refrain from seeking to suspend benefits stipulated in the Article on Non-Implementation – Compensation and Suspension of Benefits of Chapter 28 (Dispute Settlement) for a period of three years after the date of entry into force of the Agreement for Vietnam.

- If Vietnam possibly takes any measure that is inconsistent with the obligations of freedom of association and collective bargaining, the other signatories shall refrain from seeking to suspend the benefits stipulated in the Article on Non-Implementation – Compensation and Suspension of Benefits of Chapter 28 (Dispute Settlement) for a period of five years after the date of entry into force of the Agreement for Vietnam.
- After the fifth anniversary and before the seventh anniversary of the date of entry into force of the Agreement for Vietnam, any issues arising from violations of freedom of association (if any) shall be reviewed by the Labour Council in accordance with Article 19.12.

In order to implement Chapter 19 (Labour), each Party needs to make institutional arrangements as follows:

- The National Contact Point shall be an office or officer within the Ministry of Labour of each Party designated to



# CPTPP AND ISSUES CONCERNING TRADE UNIONS

address matters related to this Chapter within 90 days of the date of entry into force of this Agreement for that Party. The contact points shall facilitate regular communication and coordination between the Parties; assist the Council; act as a channel for communication with the public; and develop and implement specific cooperative activities bilaterally or plurilaterally.

- The Labour Council shall be composed of senior governmental representatives at the ministerial level or department level on behalf of the ministries of member countries. The Council shall meet within one year of the date of entry into force of this Agreement. Thereafter, the Council shall meet every two years. The Council shall oversee and evaluate the general work programme, review reports from the contact points, facilitate public participation, and perform any other functions as the Parties may decide. All Council decisions shall be made by consensus.

Regarding enforcement of Chapter 19 (Labour) of the CPTPP, issues that arise shall be handled through three channels: public submission, cooperative labour dialogue and labour consultations. In particular, a person or an organisation shall send written submission to the contact points designated by each Party. A submission should, at a minimum, raise an issue directly relevant to this Chapter; clearly identify the person or organisation making the submission; and explain, to the degree possible, how and to what extent the issue raised

affects trade or investment between the Parties.

If any matter emerges, there are four steps for resolving it: 1) The receiving party can exchange and clarify information, and must accept and respond in writing to the requesting party; 2) A cooperative labour dialogue may be proposed by one party at any time and any issues related to the Labour Chapter and dialogue shall commence within 30 days of the party's receipt of a request for dialogue; 3) Labour consultation is the next step and shall be conducted no later than 30 days after the date of receipt by the responding party of the request for consultation; the parties may use advice from an independent expert, procedures as good offices, conciliation or mediation; and 4) The final step is the Agreement's dispute settlement mechanism; this step may lead to the suspension of trade incentives or the imposition of trade sanctions.

### What should Vietnam do to implement its labour commitments under CPTPP?

In order to realize labour commitments under CPTPP, the governments of signatories must:

- Promulgate or revise their labour law system to bring it into alignment with the commitments.
- Implement institutional arrangements such as contact points, labour councils, etc.
- Implement enforcement activities, including: cooperation, exchange of information, dialogue, consultation, dispute settlement, etc.

Practices for implementing labour commitments in free trade agreements in some countries around the world have shown that complaints are often caused by violations of international fundamental labour standards by enterprises. There could be two reasons for this: 1) enterprises violate local labour laws; 2) enterprises comply with local labour laws, but local laws do not ensure compatibility with international labour standards. Then, if the settlement of the dispute results in the issuance of an Action Plan for rectifying the violation, the government is also the actor who is responsible for implementing the Plan by strengthening compliance or revising its laws.

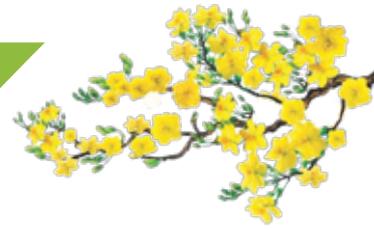
- Implement the content resulting from the dispute (for example: an action plan).

The Government of Vietnam is attempting to codify into national legislations the fundamental labour standards and commitments with other international treaties that Vietnam joined. Vietnam is working on the Labour Code revision. In the drafting process, there are considerations on allowing the formation of new workers' representative organizations that might not affiliates to VGCL.

The Labour Code (revised) is expected to be approved by the National Assembly in 2019.

## Channels for handling matters





# CONSULTATION WITH TRADE UNION OFFICERS ON LABOUR CODE REVISION

**Mr. Le Dinh Quang**

*Vice Director of Industrial Relations Department - Vietnam General Confederation of Labour*



*Through consultation workshops for trade union officers at all levels on the draft Labour Law (revised), many opinions from trade union representatives were recorded. Below is a summary of the major comments made at the workshops organized by the Vietnam General Confederation of Labour (VGCL).*

For revisions in the draft of the Labour Code, VGCL has agreed on five revision principles proposed by the Drafting Committee of the Labour Code. The VGCL makes a proposal and emphasizes the point of view of not diminishing the rights of workers which have been affirmed by the law and enforced stably in reality, while strengthening protections for vulnerable groups in labour relations. Through the Trade Union Congress at all levels, much input focused on the revision of Labour Code according to the guiding principles that have been

suggested in order to:

- Stipulate mechanisms for the settlement of labour disputes in a professional, friendly and effective manner;
- Outline employers' responsibilities for ensuring a mid-shift meal for workers;
- Prescribe a retirement age suitable for each subject and field of labour;
- Specify a time for workers to take part in studying the Party's guidelines, policies and laws of the State;



- Set up overtime hours at a reasonable rate with payment on a progressive basis; ensure gender equality while not reducing the progressive regimes that are applied to female workers.

Based on these guiding principles, the inputs from trade union officers of VGCL focused on a number of major revisions.

**(1) Extension of the workers’ right to unilaterally terminate employment contracts**

Consultation opinions of trade union officers show that the option which allows workers to unilaterally terminate employment contracts without reason but in compliance with prior notice requirements is preferable. Workers are always in a weak position compared to employers; if they are not satisfied with their current job, employees can exercise the right to unilaterally terminate the employment contract without reason. Compliance with prior notice helps employers to recruit replacement workers and to organize work.

**(2) Extension of overtime limits**

Overall, majority of participants agreed to remove the monthly overtime limit (currently regulated as not to exceed 30 hours/month).

**(3) Wages**

The majority of input agreed on the direction towards restricting the state’s interference in the relations between labour market actors by creating an enabling environment for those actors



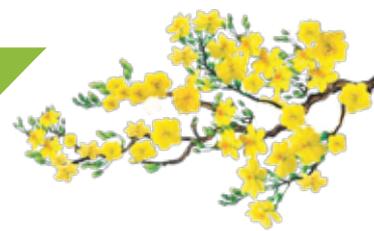
**Two options for accumulative overtime payment**

**Option 1**

- The first 200 hours of overtime: to be paid in accordance with current regulations
- From the 201st hour to the 300th hour of overtime: equal to at least 250%
- From the 301st hour to the 400th hour of overtime: equal to at least 300%

**Option 2**

- On regular days, equal to at least 150% for the 1st hour of overtime, and to 200% for the following hours of overtime
- On the weekly day off, equal to at least 200% for the first 2 hours of overtime, and to 300% for the following hours of overtime
- On public holidays and paid leave days, equal to at least 300% for the 1st hour of overtime, and to 400% for the following hours of overtime



to negotiate wages. Regarding minimum wages, it was recommended to use the definition of **minimum living standards** for fixing the minimum wage. At the same time, comments regarding regulation noted that the Government should be responsible for determining "the minimum living standards" as well as the time for announcing such determination. Input also suggested the addition of experts and scientists in the field of wages and labour as members of the National Wage Council.

#### (4) Age of retirement

The majority of input approved the option of increasing the age of retirement, which stated "From 1 January 2021, every year the retirement age for workers shall increase by 3 months for men and by 4 months for women until the age for men reaches 62 years old and the age for women reaches 60 years old."

It was recommended that the adjustment of the retirement ages should take rank-and-file workers who are working in manufacturing industries and special sectors into account.

#### (5) Strike and labour dispute resolutions

In order to translate the law into practice, the participants agreed to simplify the procedures and process for strike and labour dispute settlement. It was suggested to:

- strengthen the role of immediate upper-level trade unions in settling labour disputes and organizing and leading strikes.
- design a variety of options for labour dispute settlement for workers and unions to be able to organize strikes without necessarily going through compulsory mediation and arbitration (as prescribed in the current Code). Accordingly, the

disputing parties have the right to choose the method that they think appropriate in order to protest violation of labour laws as well as violation of commitments embedded in CBAs with enterprises.

- possibly organize collective action when over 50% of the elected members of the management of the worker representative organization agrees on the organization of such collective action (including strikes).

Regarding the organizational structure and operation of provincial labour arbitration councils at provincial level, it's necessary to set up labour arbitration councils as a jurisdictional institution having the power to issue awards which are binding to the parties.

Furthermore, the participants suggested abolishing the regulations on the power of Chairmen of District People's Committees to settle rights-based collective labour disputes.





# ACTIVITIES OF TRADE UNION LEGAL ADVISORS NETWORK – INTRODUCTION TO LITIGATION PROCESS AT COURT

**Mr. Vu Ngoc Ha**

Director of the Center for Union Legal Advisory Service - Federation of Labour in Dong Nai

Participating in the litigation process protecting employees is a very important task for trade unions. In order for trade union officers to perform this task, as a reference we would like to share some experiences on the proceedings at Court for trade union officers.

### Methods for participation

According to the Civil Proceedings Code, there are three methods by which Trade Unions can participate in litigation to protect employees:

1. As a plaintiff initiating a labour lawsuit:

*For collective labour disputes*

- When rights and interests of workers' collective are violated, grassroots trade unions shall be the plaintiff to file a lawsuit of collective labour dispute(s).
- Trade unions shall be the plaintiff to

file a lawsuit relating union financial dispute(s).

- In case of non-unionized enterprises, immediate upper level unions shall be the plaintiff to file a lawsuit relating union financial dispute(s).

*For individual labour disputes*

- When rights and interests of individual workers are violated, such workers shall authorize the unions to file a lawsuit. In this case, trade unions shall be seen as the plaintiff of individual labour dispute(s).

2. As a defender for lawful rights and interests of workers

- Trade union officers shall participate in defending workers as a representative of union. In this case, the trade union officers are playing roles of the defenders, as a lawyer.

3. As an involved party with related rights and interests

- Trade unions shall participate in cases relating to enterprise's bankruptcy as representative of

workers' collective in disputes on wage debts, employment contract termination, etc. or as a party with involved rights and interests in cases of union fee debt.

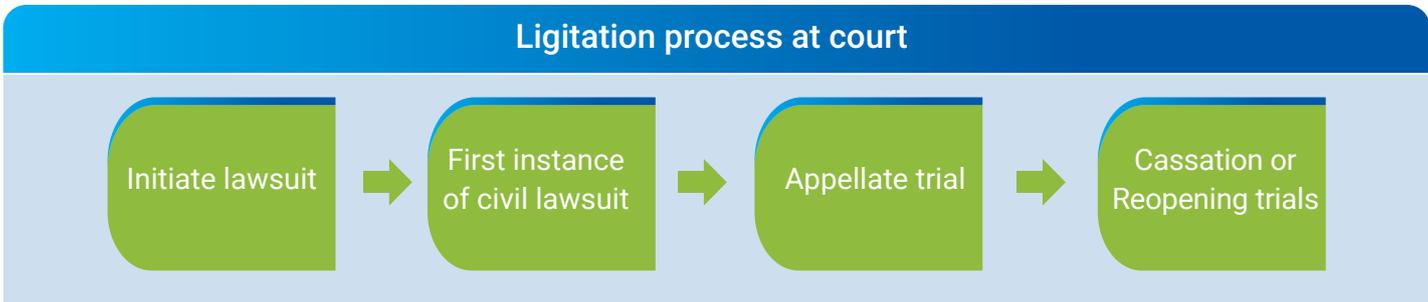
### Initiating a labour-related lawsuit

If employee rights are violated, trade union officers need to support employees in filing a lawsuit against the company with the Court. In the case of an individual labour dispute, the competent court is the District People's Court where the employee works or where the company is located.

### First instance trial

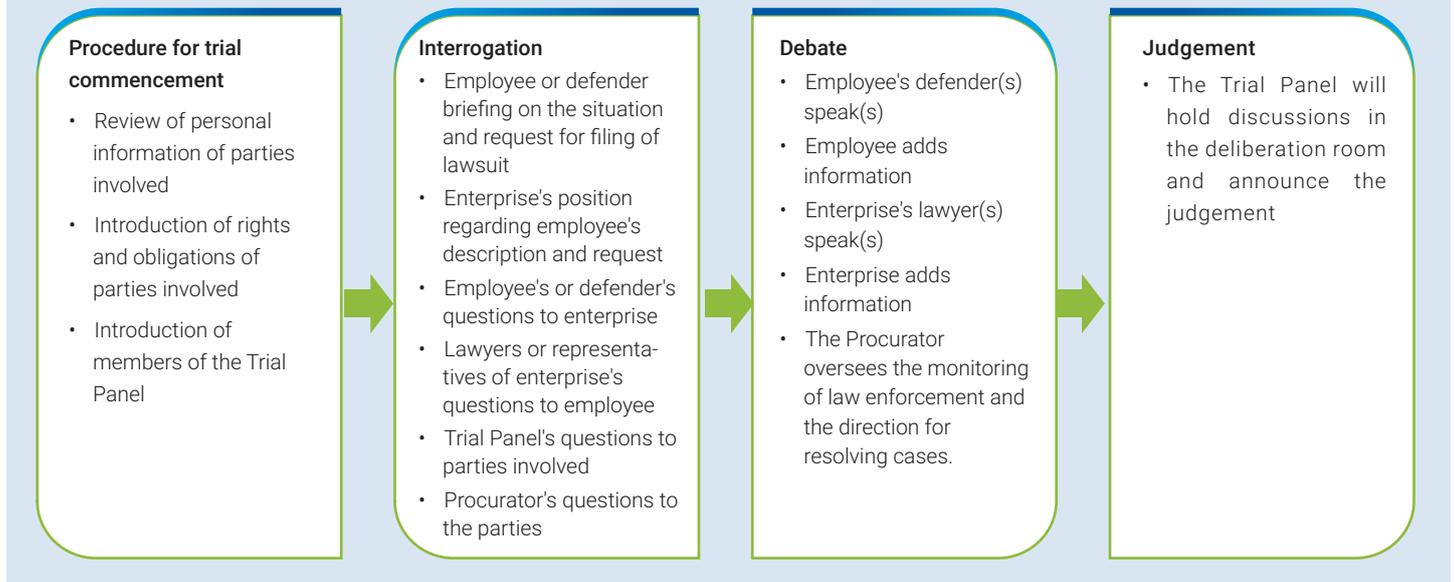
After the lawsuit has been filed and the Court has accepted the case, employees will have to participate in a trial of first instance, including:

- Testimony of the parties involved: The Court will summon the parties involved to work and ask for self-declarations presenting the entire situation and petition requirements. Based on the content of the case, employees and trade union officers make a self-declaration to the court.





## Procedures in the trial of first instance



- Disclosure of evidence: After the parties have presented and submitted evidence, the Court will summon the parties involved to disclose the evidence. The employee has the right to request that the company provide evidence from the company to him-/herself or to the court in order to copy the complete evidence to the case file.
- Mediation at Court: The mediation process at court is a mandatory procedure.
  - If the two parties reach an agreement, the Court will make a record of successful mediation; within seven (07) days either of the parties may change their mind. At the end of seven (07) days, if the two parties raise no opposition, the Court issues a decision recognizing the agreement reached by the parties. This decision takes legal effect immediately.
  - If either party fails in mediation at court, it may be possible for the parties to re-mediate or they may make a record of unsuccessful mediation and proceed with the procedure for

bringing the case to trial.

- Trial of first instance requires employees and trade union officers to be well prepared before joining the trial, which includes the following procedures:

### Appellate trial

*Appealing the judgment:* Within 15 days from the date of pronouncement of the judgement if the employee or the enterprise disagrees with the first instance judgement, either of the parties involved have the right to appeal. An appeal shall follow the form of the Court and be sent to the Court of First Instance. After receiving the appeal, the Court of First Instance will send notice of the appeal and forward the file to the Court of Appeal.

*Receipt of the appellate case:* When the Court of Appeal receives the case, it will issue a notice accepting the case.

*Preparation for appellate trial:* this phase will not require the parties involved to appear for testimony; but if the appeal is not clear, the Court will summon the appellant to present the specific content and request an appeal.

*Participation in the appellate trial:* the process for the appellate trial is almost

the same as that for the trial of first instance. The difference is prior to the examination the Court will summarize the first instance judgement and the content of the appeal. The appellant must then first present the content and request an appeal, then proceed with the interrogation procedure.

### Cassation or Reopening of Trials

The appellate judgement is binding, but if the judgement has errors in the application of law or the conclusion of the judgement does not conform to objective circumstances, the employee has the right to file an appeal for a cassation trial. In the case that, after declaring the appellate judgement, the parties discover that new circumstances may substantially change the content of the judgement, the employee must notify the competent person in writing to undertake the reopening of the trial.

The cassation or reopening of the trial is decided by the Court and the employee is not summoned to participate.

Often when cassation or reopening of a trial results in an annulment of the judgment, the case will be handed over to the Court of First Instance or the Court of Appeal for retrial.

## ACTIVITIES OF INDUSTRIAL ZONE TRADE UNIONS NETWORK

*After the XII Congress of the Vietnam Trade Union, the role of trade unions at the level of industrial zones/export-processing zones/economic zones (hereinafter referred to as IZTUs) is emphasized as an important part of the Vietnam General Confederation of Labour (VGCL). This acknowledgement is expressed by amending a number of provisions on the subject of application and authority of IZTUs in the VGCL Statute. Therefore, in the future, increasing focus should be placed on capacity building and the sharing of activities between IZTUs.*



To strengthen activities of the ITZU Network, the Workshop on "Trade Union model to enhance the functions of representing and protecting workers of unions in a new context" was hosted by VGCL's Organizing Committee and supported by the ILO/NIRF-Japan Project. This workshop provided a forum for ITZU officers to discuss the role of the immediate upper-level trade unions in collective bargaining, dialogue, strike and labour dispute settlement, and at the same time to share the valuable experience of IZTU officers.

The ITZU is a special trade union

model in the VGCL system because of its ability to approach and support workers and members most directly. The experiences shared at the workshop showed that the ITZU staff effectively implemented many union functions related to industrial relations (IR) and other meaningful activities for workers and union members.

### **Roles of IZTUs in performing IR-related functions**

In the discussion of the workshop, participants from the IZTUs shared many good experiences and practices for directly implementing

and supporting workers in exercising their trade union rights during the presentations at the workshop.

Particularly, the discussion focused on emphasizing the role of IZTUs in the establishment of grassroots trade unions (GTUs), in representing workers of non-unionized workplaces in collectively bargaining with the relevant employer, in participating in the process of LDS, and in protecting workers in court, providing legal advisory services, etc.

### **Social dialogue at and beyond the enterprise level**

Discussions held by the IZTU



participants showed that there are diverse options for IZTUs to support GTUs in social dialogue and many initiatives for raising the dialogue to higher levels in order to solve problems common among workers in the IZs. While the Ha Tinh IZTU focuses on enabling workers to promote their ownership in dialogue at the workplace, the IZTUs in Binh Duong and Ho Chi Minh City enhance, step by step, dialogue at a higher level: IZ level dialogue. The dialogue also covers a wide array of topics from direct benefits for workers, such as wages, bonuses or benefits, to major content relating to policies and laws. IZTUs play an important role in connecting workers and in creating opportunities for them to raise their voices, demands and views. Simultaneously during this process, IZTUs have liaised with bipartite and, in some cases, tripartite partners in order to engage in dialogue with workers and union members, helping the voices of workers and unionists to spread and have more power.

## **Diversification of collective bargaining models**

The workshop participants shared practices showing the flexibility and dynamism of IZTU officers in the role of promoting collective bargaining in various models and levels.

For collective bargaining in unionized enterprises, the key roles in this process are occupied by the workers, union members and GTUs. IZTUs in this case play a supporting role for

the GTUs. An example from the Ha Tinh IZTU shows that the support of the IZTU helps Collective Bargaining Agreements (CBAs) in enterprises achieve better quality, with over 60% of CBAs ranked as Class A or B.<sup>3</sup>

For non-unionized enterprises, IZTUs with direct connections to the workers of such workplaces are the negotiators with employers at these enterprises. Although this practice is not popular, it demonstrates the initiative taken by and the boldness shown by IZTUs. Practices shared by Binh Duong IZTUs on a failed negotiation in a non-unionized enterprise show that collective bargaining in a non-unionized workplace is among an IZTU's core activities, but that they face many difficulties from employers.

Besides the statutory collective bargaining forms, IZTUs are one of the pioneering components of the VGCL system for experimenting with unprecedented new bargaining practices such as multi-employer collective bargaining (MECB) with a variety of scopes. Having been piloted by VGCL since 2012, the MECB gained a number of successes and also failures that bring valuable lessons. In all of these successes and lessons, there are the footprints of pioneering IZTUs, such as the MECB between Hai Phong IZTU and Korea Electronic Enterprises in 2016, or Binh Duong IZTU on the negotiation of the minimum wage adjustment with a number of textile enterprises in 2011.

## **Labour dispute prevention and settlement**

The prevention and settlement of labour disputes are among the tasks focused on by IZTUs. The IZTUs in Hanoi, Ho Chi Minh City, Khanh Hoa, Ha Tinh, Binh Duong, etc. all have close coordination with the IZ Authorities, creating a network for timely communication between agencies sharing information on the risk of labour disputes and how to resolve them in cases where disputes emerge.

In addition, IZTU staff also provide direct advice for solving individual and collective labour disputes. In particular, the IZTU in Ho Chi Minh City actively represents workers' collectives should they initiate lawsuits and participates in court proceedings in cases where the rights of workers and members have been violated.

## **Roles of IZTUs in other activities**

The IZTUs also carry out many non-IR related activities, which are very important for supporting workers and for ensuring worker voice.

### *(1) Consultation during the process of developing wage scales and tables*

Thoroughly applying the regulation of labour law to consult with unions in developing wage scales and internal work regulations, the IZ Authorities often require enterprises to consult with the immediate upper-level trade unions when receiving enterprise registration of

<sup>3</sup> As best and second best CBAs, with the rank stipulated by VGCL.



this content. On that basis, when enterprises are contacting IZTUs, IZTUs request to send the above content and the list of workers in order to receive comments one week in advance for study and review of the content. On the day that worker input is collected, IZTUs send their staff to the enterprises to directly collect workers' opinions and have them return the minutes including comments within five working days. This practice helps IZTUs to contact workers directly and to support them immediately when they have requests or concerns.

### *(2) Roles of IZTUs in inspection and examination of law enforcement*

In collaboration with State management agencies, especially the IZ Authorities, IZTUs participate in inspections and examinations of law enforcement in non-unionized enterprises.

### *(3) Effective advocacy and dissemination of laws and policies*

Advocacy activities in recent years have been promoted by trade unions at all levels in order to increase worker and union member awareness regarding legal documents.

### *(4) Other services*

With the policy of building cultural institutions, IZTUs (such as in Binh Duong, Dong Nai, etc.) are actively constructing cultural institutions and undertaking other new activities to



serve union members and workers.

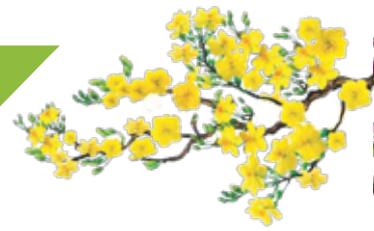
### **Recommendations of immediate upper-level unions**

Although discussions at the participant workshop provided separate and dispersed practices from each IZTU, these experiences and practical lessons clearly showed the capacity of the IZTUs to implement the innermost core functions of unions. These functions have been recognized through activities of various trade union models in the world, including: policy dialogue, collective bargaining, worker support, and assistance for increasing public awareness. The IZTU activities are evaluated as focusing on the key tasks of the trade union, closely and directly related to workers and union members.

In order to enhance the effectiveness of trade union activities, many trade

union officers express opinions suggesting an expansion of the legal framework for immediate upper-level trade unions to perform the role of representing the workers' collective in non-unionized workplaces or where GTU officers are unable to fully carry out trade union functions. At present most of the GTU officers only perform the task of taking care of non-IR activities well, while they perform other core functions in a more limited manner, such as: collective bargaining, commenting on building rules, wage scales, and LDS. In so doing, it is necessary to promote the training and capacity building of immediate upper-level union trade union officers, especially regarding the knowledge of law, skills for organizing workers, conducting dialogue, and collectively bargaining.

<sup>4</sup> From the presentation "Trade Union organizing Models: Experiences and Practices in some countries" by Yoon Youngmo, Senior Industrial Relations Specialist, ILO Regional Office for Asia and Pacific.



## HOW IMMEDIATE UPPER LEVEL UNIONS WORK IN OTHER COUNTRIES AND SOME OBSERVATIONS IN VIETNAM



*Dr. Chang-Hee Lee  
Senior Industrial Relations Specialist  
Director, ILO Country Office for Vietnam*

*Grassroots trade unions are the core union unit which is directly in touch with workers and which interacts with employers for improving wages and working conditions and protecting workers' rights. But the roles filled by the immediate upper level unions are as important as those filled by grassroots unions.*

There are many different forms and models of trade unions in the world. There can be **enterprise unions** composed of employees from the same enterprise, **occupational unions** which are unions of the same occupations or crafts across different enterprises (such as carpenters' unions or electricians' unions, for example), **general unions** which are composed of all types of workers in any industry in the same locality, or **sectoral unions** composed of all types of workers across different enterprises in the same economic sector (such as educational workers unions, metal workers unions, financial sector unions). Different forms of unions can co-exist in one country.

Occupational unions are rare these days. In recent years, there has been

a re-emergence of general unions which tend to organize and protect workers with non-standard forms of employment in small- and medium-size enterprises and the informal economy, whose numbers are growing in many countries. The Vietnam General Confederation of Labour (VGCL) needs to develop nationwide strategies for organizing and representing workers in small and micro enterprises.

Whatever forms trade unions take, there are **three common functions** of trade unions across different countries and continents. **The first and most important function** of any trade union is representation of workers and the negotiation of collective agreements. **The second function** is to influence laws and policies affecting workers and union

members by actively participating in social dialogue at the national, sectoral and regional levels. **The third function** is providing services and some welfare benefits to union members.

There are countries such as Korea, China, or the US where enterprise-based unions and collective bargaining are dominant, while sector/industry-based unions and collective bargaining are dominant in most continental European countries such as Germany, Sweden and others.

Even in a country where enterprise-based unions and collective bargaining are the prevailing mode, immediate upper level unions (IUTU) fill very important roles in supporting workers and grassroots unions. Key functions of



IUTUs include **1) organizing workers in non-union enterprises, 2) educating and training grassroots trade unionists in the effective representation of workers and collective bargaining, 3) coordinating and supporting collective bargaining across enterprises under the IUTU's jurisdiction, 4) advocacy and communication of union policies to union members, and 5) influencing government policies towards favourable conditions for workers.**

Histories of trade unions show that upper level unions are 'created' on the basis of 'association' of unions at the grassroots level that have been established by workers themselves. As such, the most important roles filled by IUTUs are helping workers to organize unions at workplaces where there is no union. EZ/IZ/EPZ unions (hereafter IZ unions) should make every effort to create direct links with workers, supporting not only leadership of grassroots unions, but also group leaders at the workplace.

One of the key problems with grassroots unions in Vietnam is that many of them are dominated by management. How can grassroots unions gradually transform into unions of workers, free from management interference and dominance? After all, trade unions are organizations of, for and by workers, and union rights are workers' rights.

As a part of three major breakthroughs adopted at the 12th National Congress of VGCL, VGCL should consider some innovations for IZ unions. Individual IZ unions have neither adequate human resources nor the 'sectoral foundation' for performing the key roles of IUTUs as described above. To overcome these difficulties, IZ unions may establish working groups within each IZ union composed of leaders and group leaders of grassroots unions, focusing on collective bargaining in specific sectors (such as food processing or garments, for example). Also, IZ unions in

neighboring provinces may develop arrangements for collaboration under which an IZ union from Province A can be the focal point for Sector A (for example, food processing) for IZ unions of A, B, C and D in neighboring provinces, while IZ union of Province B can be the focal point for Sector B (say, garments) for IZ unions in A, B, C and D. In this way, they can increase the effectiveness of the work of IZ unions under each IZ union's manpower constraints, while also gradually developing a sector structure for trade unions in Vietnam. In this respect, groups of IZ unions may also consider gradually forming committees of workers in the same sector across different IZs.

VGCL has a long and proud history, with a large membership and financial resources. VGCL will face the challenges presented by new workers' organizations once the revised labour code has been adopted. However it is only when VGCL becomes an effective organization for workers that VGCL will become an even stronger champion of the Vietnamese working class. In this respect, IZ unions occupy a very unique position in the VGCL structure as their roles are geared more towards representation and collective bargaining than other 'political and social' functions, and they are in direct touch with workers and grassroots unions. This is where the key breakthrough, as adopted at the 12th VGCL National Congress, should take place, which will ensure VGCL's continued leadership among Vietnamese workers.



## PROGRESS OF PILOT ACTIVITIES

Pilot programmes, under the collaborative framework of the Vietnam General Confederation of Labour and ILO/NIRF-Japan Project, have been launched and gained initial outcomes in seven local pilot implementing units. The updates on the progress of these pilot programmes and the results achieved at the end of 2018 and beginning of 2019 are recorded in this Bulletin.

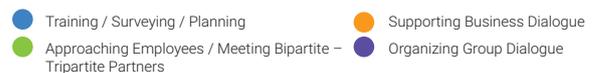
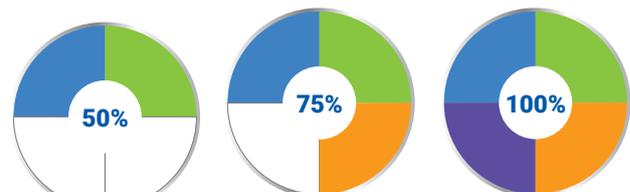
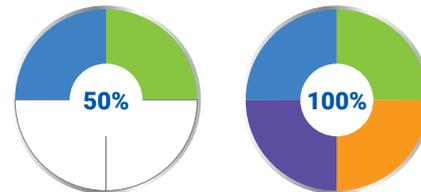
**Pilot 1** – on direct election of the chairperson for grassroots trade unions at the Union Congress in order to introduce, choose and elect union leaders who are genuinely capable of representing the voice, rights and interests of workers

**Pilot 2** – on formation of multi-employer unions at small-and-micro-sized enterprises in order to diversify the organizing work of unions - In progress



**Pilot 3** – on extension of multi-employer collective bargaining agreements with coordinating and supporting roles for upper-level unions - In progress

**Pilot 4** – on promotion of various forms of social dialogue to improve bipartite/tripartite IR, both internally and externally of firms – In progress



### List of implemented activities

- Training on Collective Bargaining for Quang Nam Pilot Unit, 4-5 October 2018
- Research on Termination of Employment Contracts for Middle-Aged Workers (35-45 years old) in enterprises in Vietnam
- Two Consultation Workshops on major revisions of the Labour Code, in Ho Chi Minh City on 14-15 September 2018, and in Hai Phong on 17-18 September 2018
- Two Workshops for raising awareness of international labour standards and the new generation of Free Trade Agreements for key trade union leaders of VGCL, November 2018
- Two Workshops on Improving IZ Trade Union Models for better and more effective collective bargaining and labour dispute settlement, in Quang Ninh 20-21 November 2018 and in Can Tho, 20-21 December 2018

### List of activities to be implemented

- Planning activities with the Technical Advisory Committee of VGCL and local pilot implementing units
- Mid-term meeting for sharing information on collaboration in pilot implementation between VGCL and VCCI, 25 February 2019
- 2018 Preliminary Recap and 2019 Planning Workshop, tentatively 7-8 March 2019
- Preliminary Recap Workshop on multi-employer collective bargaining agreements – lessons learned from practices, 21-22 March 2019



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Hãy cùng ILO kỷ niệm 100 năm thành lập vào năm 2019!

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Continue our great journey together towards social justice and decent work for all

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