

“ CPTPP indicates Viet Nam’s strong commitments towards comprehensive and deep reform and integration ”

General Secretary, President *Nguyen Phu Trong*



“In the modern market economy, conditions for workers - including wages, are decided via social dialogue and collective bargaining and are empowered as well as regulated by industrial relations related laws and provisions. The Labour Code needs improving to be consistent with the ILO 1998 Declaration”.

Chang Hee Lee, Director of the ILO Country Office for Viet Nam



“Wages shall be the main income which adequately reflects workers’ income and guarantees the life of workers and their families”.

Resolution No. 27-NQ/TW dated 19 May 2018, 7th Conference of the XII Central Executive Committee of CPV

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CURRENT SITUATION OF INDUSTRIAL RELATIONS IN VIET NAM AND RECOMMENDATIONS¹



Characteristics of industrial relations in Viet Nam

So far, Viet Nam Trade Union is the only workers' organization who functions to protect workers' legitimate rights and benefits. The union is operated in an incorporated system from the central to grassroots level under the Trade Union Law, in which grassroots unions (GTUs) are established and operate within the enterprises themselves. Trade union is both a partner and a positive factor affecting the development of the enterprise; therefore, the development and current operation of industrial relations (IR) is directly affected by the development and effectiveness in operation of trade unions.

Features of industrial relations

IR in Viet Nam is in the process of reform and operates in accordance with market principles and socialist orientation. It is characterised by factors reflecting domestic political and socio-economic features of Viet Nam. Those include:

A wide range in level of awareness of IR actors. Especially, there is a slow change in the awareness of workers and their representative organization on their role and IR in the market mechanism. The ability to exercise the right to negotiate and bargain on their own regarding selection of employment,

workplace and matters relating to workers' benefits is still limited.

IR operated in an unbalanced and unstable labour supply-demand situation in terms of quantity and structure. In the labour market, over-supply of unskilled and low-skilled workers occurs frequently, plus seasonal labour shortage - especially at the end of the year, are among the causes to IR instability in recent years.

Incompatibility of some issues in the IR legal system with the market economy and requirements of international integration, pacing the needs to revision and amendment. This derives from the fact that the socialist-oriented market economy in Viet Nam is on its completion process.

Most of Vietnamese enterprises are of micro, small and medium size (those who account for 98%) with low qualifications and competitiveness; while there is no close sectoral connection between them in order to form sectoral IR actors.

The majority of the labour force in enterprises has low level of education and skills because they are mainly farmers and live in rural areas. They are yet able to meet the requirements of the modern industry. Therefore, workers often find themselves outweighed by their employers in negotiating and bargaining labour-related issues.

Misalignment in some IR institutions with marketing principles, especially one with workers' representative institution.

Current IR issues

Along with the above characteristics, IR in Viet Nam signals complicated and unhealthy moves in development, despite its certain progresses.

The number of workers covered by the workers' representative organization is not high. There has not been a mechanism allowing organizing workers through beyond-enterprise representative organizations among small enterprises of under 10 workers to protect their rights and benefits.

The operation of grassroots trade unions is slowly renewed, with little consideration of supervising labour law enforcement, dialogue and concluding collective bargaining agreement (CBA) as a core issue in order to protect workers' rights and benefits. In many disputes and strikes, the Executive Committee of grassroots trade unions hardly shows a particular role. Workers lack trust in the GTU Executive Committee; plus limited and ineffective support of the upper level trade unions for grassroots trade unions and for employees in non-unionised workplaces.

Little attention has been drawn to support of the employers' representative organization on IR, while the awareness of the issues related to IR of enterprise associations also differs. The role of the employers' representative organization on IR has not been specifically stipulated by the labour law so that it can serve as a foundation and legal basis for such organisation to operate effectively.

Dialogue and collective bargaining in many enterprises have not received proper concerns by parties. The negotiation to sign CBA remains formalistic. The number of sectoral and multi-employer CBAs and CBAs is still small and ineffective.

Workers' wages and incomes remain low, with unstable employment, and high turn-over rate. There is insufficiency in accommodations, public facilities and social welfares for workers, especially for those in industrial zones.

Legal compliance among a part of employers remains limited. Remarkable violations are still quite popular, including employment contract termination, labour discipline, development of wage table and scale, work norms, overtime mobilization exceeding legal regulations, overtime pay, bonus payment and debts in social insurance payment in enterprises, etc. All are affecting workers' rights and interests.

The number of individual labour disputes tend to increase. The number of wildcat strikes tend to reduce; however; there still exist many potential risks of instability.

Mechanisms and institutions to labour disputes settlement and strikes are not really effective.

There still exist shortcomings in the tripartite coordination mechanism between state management agencies, representatives of workers and representatives of employers, especially in the mechanism of consultation to support IR parties.

State management on IR has not yet met the requirements. Supporting the promotion and development of IR for enterprises has not been given adequate attention. Mediation and arbitration are not effective. Sanctioning measures are not sufficient to deter enterprises' violations.

Recommendations

1. Improving labour institutions and labour law to be more in line with international labour standards

To continue to improve labour institutions and law as well as trade union law, in accordance with the roadmap and plan to ratification of ILO conventions of Viet Nam; to clearly define workers' and employers' rights to establishing and joining organizations of their own choosing; to recognize the right to organize and collective bargaining of IR parties; to improve institutions on labour dispute settlement aiming at establishing such specialized agencies in localities with great demands; to clearly define the role of state management agencies in support to promote IR issues,

ensuring the compliance with ILO's labour standards and international commitments in new generations of FTAs.

2. Strengthening the role of state management on IR

- To strengthen the system of IR state management agencies from the central to grassroots level, so that they can perform both state management function on IR and promoting the development of IR.

- To strengthen the state management agencies to perform the function of registering and managing the operation of workers' and employers' organizations.

3. Promoting dialogue, negotiation and conclusion of CBAs

- To encourage the parties to maintain regular dialogue to enhance the cooperation between workers and employers, and build a friendly and healthy working environment.

- To promote State support so that the grassroots trade unions actively raise their proposals and employers are willing and ready to negotiate and conclude CBAs.

4. Enhancing the role and responsibilities of workers' representative organization

- Viet Nam Trade Union needs to renovate its organizational structure and operating contents, especially at the grassroots level in order to bring into play the advantages to carry out the mission of representing and protecting workers' rights and interests. Trade unions should consider the development objectives of each enterprise as a motivation; and the gathering, educating and taking care of material and spiritual life, and protecting the legitimate rights and benefits of trade union members as their key and permanent mission.

- To ensure and well manage the establishment and operation of workers' organizations in enterprise in order to protect the legitimate rights and benefits of the workers, and to create conditions for stable business operation and development of enterprises in consistency with ILO

labour principles and standards, while maintaining socio-political stability.

5. Completing the organizational system, functions and mission of the employers' representative organization in IR

To ensure the ability to protect legitimate rights and benefits of employers while conforming to the socio-political-economic characteristics of Viet Nam.

6. Improving labour dispute settlement institutions

To complete the organizational model and operation mechanism of the existing labour dispute settlement institutions. To supplement the role, functions and missions of the Labour Arbitration Councils, ensuring the settlement of both individual and collective labour disputes if requested by either party. To study and build on pilot specialized labour dispute settlement agencies in a number of provinces and municipalities with a duo-role as an agency in charge of mediation and arbitration, and a support agency who promotes dialogue and collective bargaining.

7. Consolidating and completing the mechanism of tripartite consultation on IR

It is necessary to clearly define the organizational model of tripartite consultations at the central and local levels, ensuring that the mechanism well performs both its role of advising the Government and the Prime Minister in the formulation and promulgation of IR policies, consult and support partners in implementing legal regulations on IR and promoting dialogue and collective bargaining at the workplace.

8. Continuing to implement projects on accommodation and welfare and social works

The works include schools, kindergartens, cultural and sports institutions to serve workers in highly concentrated industrial zones, contributing to promoting and strengthening the development of IR.

1. "Industrial relations report", Department of Industrial Relations and Wages, Ministry of Labour – Invalids and Social Affairs.

Key labour content in the Comprehensive and Progressive Trans-Pacific Partnership (CPTPP) Agreement



“CPTPP promises to bring economic growth and social benefits; create jobs and new opportunities for both workers and businesses; contribute to improving workers’ living standards, reducing poverty and promoting sustainable growth; and tighten friendship and cooperation between governments and people of signatory countries”

Mr. Dao Quang Vinh, Director General, Institute of Labour Science and Social Affairs, Ministry of Labour – Invalids and Social Affairs

“Countries should not create commercial competitive advantages by lowering labour standards”

Mr. Nguyen Manh Cuong, Director General, International Cooperation Department, Ministry of Labour – Invalids and Social Affairs; Leader of Labour group, CPTPP negotiation delegation of Viet Nam

Background

On 12 November 2018, the National Assembly of Viet Nam approved the Comprehensive and Progressive Trans-Pacific Partnership, referred to as CPTPP. 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; Viet Nam 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 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 Viet Nam. 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: Viet Nam’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 Viet Nam, 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 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.

Viet Nam’s side commitments

They are embedded in the letters exchanged between Viet Nam and the other 10 signatories, which state in their text:

- From the date of entry into force of the Agreement for Viet Nam, Viet Nam shall fully implement the obligations of Chapter 19 (Labour).
- If Viet Nam possibly takes any measure that is inconsistent with the obligations of Chapter 19 (Labour), other signatories shall refrain from seeking to suspend benefits for a period of three years after

INTERNATIONAL INTEGRATION

the date of entry into force of the Agreement for Viet Nam.

- If Viet Nam 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 for a period of five years after the date of entry into force of the Agreement for Viet Nam.
- After the fifth anniversary and before the seventh anniversary of the date of entry into force of the Agreement for Viet Nam, 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 address matters related to Labour Chapter within 90 days of the date of entry into force of CPTPP 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 multilaterally.
- 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 CPTPP. 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.

Enforcement mechanism of Labour Chapter

Arising issues 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 Labour Chapter; clearly identify the person or organisation making the submission; and explain, how and to what extent the issue raised affects trade or investment between the Parties.

Steps to resolve conflicts

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 benefits or the imposition of trade sanctions.

ILO's 1998 Declaration and 3 core conventions not yet ratified by Viet Nam

ILO Declaration on Fundamental Principles and Rights at Work

All member States have an obligation arising from membership in the Organisation to respect, to promote and to realise the principles concerning fundamental rights at work

Convention 87 - Freedom of Association and Protection of the Right to Organise, 1948

- * The right to establish and join workers' organisations
- * Autonomy of workers' organisations
- * State's role

Convention 98 - Right to Organise and Collective Bargaining, 1949

- * Protect workers against acts of anti-union discrimination
- * Protect workers' and employers' organisations against acts of interference
- * Promote collective bargaining

Convention 105 - Abolition of Forced Labour, 1957

"to secure the abolition and prevent the abuse of compulsory or forced labour"



It is expected that the Labour Code will be amended to enhance the ability to identify industrial relations in practice, to govern newly arising relations in the labour market, to ensure the rights and interests of industrial relations parties and to adapt to changes in the labour market in the new context

Revising and supplementing the Labour Code in the new context

The Labour Code (LC) was first introduced in 1994, revised in 2002, 2006, and 2007 with the current code in 2012. In response to the increasingly complex changes and developments of industrial relations (IR), the LC should continue to be revised, supplemented and improved.

Currently, the Ministry of Labour, Invalids and Social Affairs is consulting on draft revised LC's contents, with the goal of submitting to the National Assembly for comments at the 7th session (May 2019) and for approval at the 8th session (October 2019).

3 reasons to revise and supplement the LC 2012

- (1) Addressing problems and shortcomings from implementation progress after 6 years of entry into force in practice, and creating a clearer and more flexible legal framework for recruitment and employment to improve competitiveness for Vietnamese businesses.
- (2) Meeting requirements of institutionising the Constitution 2013 and ensuring the synchronisation of recently promulgated laws.
- (3) Meeting the requirements of international economic integration with the commitment to implement the 4 fundamental principles at work for workers according to the ILO's 1998 Declaration; while at the same time, implementing commitments in new-generation free trade agreements.

10 significant issues expected to be revised

- (1) Employment contract; (2) Working hours; (3) Maximum overtime hours; (4) Wages, minimum wages; (5) Retirement age; (6) Anti-discrimination in the workplace (on the ground of sex, forced labour, sexual harassment at the workplace); (7) Prevention and elimination of the worst forms of child labour; (8) Workers' organisations at enterprises outside the Viet Nam General Confederation of Labour system; (9) Workplace dialogue, collective bargaining and (10) Mechanism for resolving labour disputes and strikes in the multi-workers' organisations at enterprise's context.

Establishing workers' representative organisation in enterprises

Amend and supplement the LC to ensure equality between workers' representative organisation and grassroots trade unions in operation, so that such organisations can convey workers' voice without employers' discrimination, manipulation and interference.

The Party's Resolution No. 06-NQ/TW dated 5 November 2016 guiding the promulgation of new law or revision of current law to facilitate the sound and effective establishment and operation of workers' representative organisation in IR beside the Viet Nam General Confederation of Labour (VGCL) system to ensure compliance with ILO's labour standard, the legal improvement as well as Viet Nam's development level. Therefore, it is expected that the LC introduces 3 groups of provisions related to the establishment of workers' representative organisation in enterprises, including:

The right to form and conditions, procedures and authority regarding registration

Workers have the right to form, join and operate their own representative organisation and registering with the competent state agency, or to form and join a grassroots trade unions affiliated to VGCL system.

For such organisation to operate healthily in IR, the revised LC may stipulate in details the following matters: conditions to establish including minimum membership, requirements for founding members and statutes; registering procedures including: profile, order and procedure to register, withdrawal, competency to register, etc.

Protecting mechanism for workers and guaranteeing the exercise of the right of workers' representative organisation in IR

It is expected to have the following

provision added: anti-discrimination of employers against workers and those who exercise the right of workers' representative organisation in IR; anti-interference and anti-manipulation from employers into the organisation and operation of workers' representative organisation; and sanction and remedies for violations.

Conditions and guarantees for the operation of workers' representative organisation

These include provisions on the right of workers' representative organisation officials such as the right to access workers and employers, time spent on representative function, and employment protection; provisions on the right of workers' representative organisation; and the responsibilities of employers in recognising workers' representative organisation without hindering the exercise of workers' right to organise.

Renovating institutions of dialogue at the workplace and collective bargaining (CB) in a multi-workers' representative organisation context

To consider to revise and supplement provisions on dialogue at the workplace and CB to fit a multi-workers' representative organisation context and Viet Nam's IR characteristics.

2 issues regarding dialogue at the workplace to be revised and supplemented

Gathering different forms of dialogue/consultation which have been scattered in the current LC, including 3 forms of dialogue: periodical, upon request and ad-hoc dialogue.

Establishing the Bipartite Cooperative Committee at the workplace.

Enterprises with more than 50 workers are obliged to establish Bipartite Cooperative Committee at the workplace and such institution is encouraged in enterprises with less than 50 workers. This committee will undertake all 3 forms of dialogue/consultation mentioned above. The committee will consist of 3-10 members nominated by employers and 3-20 members nominated by workers' representative organisation and additionally elected by workers. Besides, there are detailed provisions on the committee's operative principles and guarantees. The revised LC may also as-

sign the Government to detail the committee's establishment and operation.

3 groups of issues regarding collective bargaining

The principle & right to request CB

CB principle in the context of multi-workers' representative organisations may be: in each enterprise, only one CB process will be adopted for each content to be negotiated and bargained - which will cover all workforce of the enterprise. The CBA concluded and implemented therewith needs to be approved by over 50% of the whole workforce.

In respect of the right to request CB, it is expected to have 2 alternatives: (1) Workers' representative organisation with more than 30% workers as their members in an enterprise is granted the right to request CB, or some workers' representative organisations can affiliate to meet such requirement; or (2) Any workers' representative organisation with over 10% or 100 members reserves the right to request CB, other workers' representative organisations can join any CB process or to request other CB process if the former is unsuccessful.

Revising and supplementing the LC regarding dialogue at the workplace and collective bargaining so that all workers and their representative organisations enjoy the right and opportunities to have a voice in such process in order to address matters related to their legal rights and interests in IR

CB in good faith. This includes the parties' obligation to bargain in good faith once requested, maximum time limit for bargaining, obligation to provide related information and the right to organise discussion or collect workers' opinion.

Multi-employer CB. Adding provisions on multi-employer CB via Collective Bargaining Council which allows CB at any level/scope beside enterprise and sectoral level, as well as the mechanism to expand the coverage of beyond-enterprise collective agreements and the joining or withdrawing from sectoral or enterprise CBAs.

Effective labour dispute resolution mechanism in Viet Nam

Based on the situation of labour disputes and wildcat strikes in recent years, the LC's shortcomings regarding resolving labour disputes and in the context of multi-workers' organisation in an enterprise, it is required that provisions on labour dispute settlement and strikes to be fundamentally and comprehensively amended.

5 issues expected to be revised and supplemented

Governing newly arisen labour disputes

- Adding provisions on settling disputes related to multi-representative organisations (such as disputes between workers' representative organisations over collective bargaining right; disputes over discrimination, manipulation and interference or collective bargaining in good faith; disputes over registration and dissolution of repre-

sentative organisations).

- Re-conceptualising right-based collective labour disputes to include 3 cases: interpretation of internal rules, of law and unfair labour practices; at the same time, re-conceptualising interest-based collective labour disputes which removes the request to establish new work conditions compared to legal provisions.

Diversifying labour dispute resolution methods.

Opening up chances for disputing parties to select different dispute resolution methods which they deem appropriate. Accordingly, the parties may be entitled to choose various options from the first stage or conciliation may be compulsory from the first stage for all collective labour disputes.

Genuine competency (jurisdiction) of the Labour Arbitration Council (LAC). Enlarging the LAC's mandate to



resolve both individual and right-based collective labour disputes.

Renovating the LAC's organisation and operation so that arbitration will be a central point in resolving labour disputes.

Guaranteeing workers' legal right to strike so that when the last resort is needed, workers can use it lawfully after collecting workers' opinions and making advance notice to organise the strike.

Indicators to assess industrial relations in Viet Nam

Evidence-based policy-making and law making

In the context where there are rapid changes in the labour market and IR in the workplace, IR data system

Industrial relations indicators play an important role in measuring the progress of decent work.

Currently, ILOSTAT uses the following key indicators to assess IR situation:

1. **Trade union:** The coverage rate of trade unions
2. **Negotiation:** The coverage rate of collective bargaining agreements
3. **Strikes and lockouts:** The number of strikes and lockouts according to economic activities; the number of working days lost due to strikes according to economic activities; the number of workers participating in strikes and lockouts according to economic activities; the number of working days lost due to strikes and lockouts calculated per 1000 workers.

should continue to be improved and expanded with more comprehensive and timely indicators to make it possible for Viet Nam to assess the situation, thereby making policy decisions based on authentic IR data. The exact IR data and indicators, along with other sources of information, will also be the foundation for Viet Nam to participate in international institutions such as ILO and new generation of international trade agreements - which thereby helps Viet Nam to integrate better with the world economy and measure its economy's sustainable development, business community and living standards of workers.

Set of IR indicators in Viet Nam

IR indicators need to incorporate ILO's IR indicators which are currently in use in all member states to ensure international comparability, and at the same time, reflect socio-

IR indicators, information and data are necessary in the process of formulating evidence-based policies and laws. Nevertheless, the system of IR indicators, information and data in Viet Nam is still incomplete and shows several shortcomings, such as: a lack of a unified system of IR and wages indicators; lack of consistency on the indicators used for data collection (definitions, formulas, time and method of collection...); limited and administrative synthetic coordination as well as sharing and dissemination of IR information and data between information collecting and processing units. Focal points for information collecting are mainly in vertical line with limited sharing, therefore, the collected information is not analyzed and summarized in a timely manner for appropriate actions, recommendations or policy orientation.

In Viet Nam, most of the basic indicators reflect the characteristics of the labour market, but still there is an absence of data for IR indicators introduced by the International Labour Organization (ILO) in which Viet Nam is a member state.

Essential indicators reflecting IR in Viet Nam

Group of indicators on quantity and quality of trade unions' performance

1. The ratio of grassroots trade union density
2. The ratio of wage-earners joining trade union
3. The rate of enterprises conducting periodical dialogue at the workplace

Group of indicators on collective bargaining agreement

1. The rate of production units (enterprises, cooperatives) having CBA
2. The coverage rate of CBA. The rate of enterprises conducting periodical dialogue at the workplace

Group of indicators on labour dispute settlement

1. Number of collective labour disputes
2. Number of individual labour disputes
3. The rate of successfully settled cases of collective labour disputes
4. The rate of successfully settled cases of individual labour disputes

Group of indicators on strikes

1. Number of strikes
2. Average number of workers participating in a strike
3. The rate of workers participating in a strikes
4. The average strike time per strike
5. Number of working days lost per 1000 wage-earners

economic development characteristics of Viet Nam; besides, it must also ensure the feasibility in collection process in Viet Nam..

With a general awareness of the need to build a data system of IR and wages for policy making in Viet Nam, the project VNM/16/04/CANADA on ‘Support to Build Capacity for Improving National Industrial Relations Database for Evidence-based Policy-making’ by the ILO and the Institute of Labour Science and Social Affairs, the Ministry of Labour, Invalids and Social Affairs establishes the set of indicators on IR, including the following four basic groups:

1. Group of indicators on quantity and quality of trade unions’s performance

Trade union participation rate is one of the indicators measuring trade union’s influence and coverage. The data and indicators will help state management agencies in labour to capture the coverage of trade unions on workers, the implementation of trade union’ responsibilities towards workers.

2. Group of indicators on collective bargaining agreement

The indicators on CBA meeting the requirements of state management agencies to capture information on the status of of CBA negotiation and signing, the coverage of CBA on workers, at the same time, meet the requirements of taking hold of the operating quality at the grassroots trade unions of Viet Nam General Confederation of Labour.

3. Group of indicators on labour dispute settlement

Indicators on the number of disputes and the situation of dispute settlement will help state management agencies to know the variation of dispute quantity over time to analyze the development of IR by sector, region and nationwide, and analyze the operating quality of the labour dispute settlement system to have solutions to build an effective labour dispute settlement system.

4. Group of indicators on strikes

Indicators on strikes are one of the most important indicators to represent the “health” of IR system by sector, region and nationwide. Strike indicators also show the effectiveness of social dialogue at many levels.

Improving the data collection, analysis and dissemination process through the set of IR indicators will help Viet Nam to make better evidence and information-based policy decisions.

Data on IR in Viet Nam in 2018

Economy – Society

GDP growth (%)	7.08
Consumer Price Index CPI (%)	3.54
Employed labour force above 15 years of age	54.3
<i>In which: The rate of employed female labour force (%)</i>	47.7
The rate of labour having IR (%)	43.25
The rate of trained labour (%)	58.6
Unemployment rate in urban areas (%)	3.1
Underemployment rate (%)	1.46
Total number of active enterprises (thousand)	~ 635
Number of newly established enterprises in 2018	131,275
Total jobs created (millions of labours)	1.648

Industrial relations

Total trade union members (millions of labours)	10.05
Total number of grassroots trade unions	126.313
Number of Federation of Labours	83
Number of trade union members and grassroots trade unions established under the new method	97,231 and 1,010
Number of valid CBA	27,866
The rate of enterprises with trade unions signing CBA (%)	67
Number of sectoral CBA	4
Number of CBA of enterprise collective	4
Number of strikes	~98
The rate of strike in labour-intensive enterprises	~65.86

Productivity, wage, working condition

The rate of labour signing employment contract (%)	66
The rate of labour force participating in social insurance	29
Average wage (million VND/labour)	7,27
New Year’s bonus (million VND/labour)	1,1
Lunar New Year’s bonus (million VND/labour)	6,3
Productivity in 2018 (current price) (million VND)	102
The rate of labour productivity increase in 2018 compared to 2017	5,93%

Viet Nam ready to develop a new industrial relations framework for the market economy



“The NIRF project will make an important contribution to addressing the shortcomings of the current industrial relations system, at the same time, it helps Viet Nam to internalize international labour standards in line with the socio-economic development level for the country’s international economic integration process”

(Mr. Doan Mau Diep,
Vice Minister, MOLISA)

Viet Nam is in the process of increasingly integrating into the regional and world economy. It has participated in negotiations and conclusion of various new generation trade agreements namely the Comprehensive and Progressive Transpacific Partnership Agreement (CPTPP) and the Viet Nam - EU Free Trade Agreement (EVFTA) most recently. Besides, Viet Nam is also striving to reform its institutional and legal system in all socio-economic fields in the direction of complying with the principles of socialist-oriented market economy.

As an ILO’s member, Viet Nam has been receiving enormous technical support from the ILO in improving legal framework and strengthening management capacity in the field of labour and employment, especially in industrial relations. Since 2000, ILO has actively supported the Government and social partners to improve the industrial relations system through the implementation of technical cooperation projects. In the context of Viet Nam’s integration and renovation, the support of the ILO and donors to improve the industrial relations system is essential and meaningful.

On 9th November 2018, MOLISA and

the ILO Country Office for Viet Nam organized the signing and launching ceremony for “Promoting the development of the new industrial relations framework in respect of the ILO Declaration on fundamental principles and rights at work” Project – short as NIRF project. The project is funded by the US Department of Labour, the Government of Japan (who are two original donors of the project), together with the ILO’s financial and technical resources for Viet Nam.

NIRF’s project goal is to lay the legal and institutional foundations for a new industrial relations framework based on the 1998 ILO Declaration on Fundamental Principles and Rights at Work in full consideration of Viet Nam’s context. Specifically, the project will contribute to: (1) Labour Code and national legal documents being consistent with ILO’s core labour standards; (2) State management capacity on industrial relations being strengthened; (3) Employees and employers to become effective industrial relations players and to contribute to building and maintaining harmonious and stable industrial relations in enterprises.

The project will be implemented in 2018-2019.

NIRF's outstanding upcoming activities in Quarter I/2019

- ❖ Roundtable on reforming Viet Nam's labour dispute settlement system, January 2019
- ❖ High-level meeting on the revised Labour Code, January –February 2019
- ❖ VCCI’s Consultation workshop with sectoral and occupational associations, experts and enterprises on the draft revised Labour Code, February - March 2019
- ❖ Forum: “Viet Nam Industrial Relations”, March 2019
- ❖ Workshop: “Industrial Zones Trade Union network”, March 2019
- ❖ Training course for journalists on reforming labour law and international labour standard, March 2019
- ❖ Second round award for the labour research competition in 2018, March 2019
- ❖ Piloting the collection of industrial relations data, January -March 2019



NIRF/USDOL project
“Developing a New Industrial Relations Framework in Respect of the ILO Declaration on Fundamental Principles and Rights at Work”

In order to support the development of a new industrial relations framework that respects the ILO’s 1998 Declaration on FPRW, the NIRF project focuses on three objectives: (1) National labour laws and legal instruments are consistent with the ILO Declaration on FPRW; (2) The labour administration develops effective national industrial relations policy; (3) The labour inspectorate effectively enforces and promotes compliance with national labour laws



NIRF/Japan Project
“Improving Trade Unions and Employers Representative function in the New Industrial Relation Framework”

Representative functions for employers and workers are reinforced through implementing the objectives of strengthening social dialogue, capacity building and VGCL’s participation in revising the law and in collective bargaining and social dialogue, VCCI’s and business associations’ participation in revising labour law, reformative plans, cooperation mechanisms in the business community and improving industrial relations at the workplace

NIRF/Canada Project

“Support to Build Capacity for Improving National Industrial Relations Database for Evidence-based Policy-making”

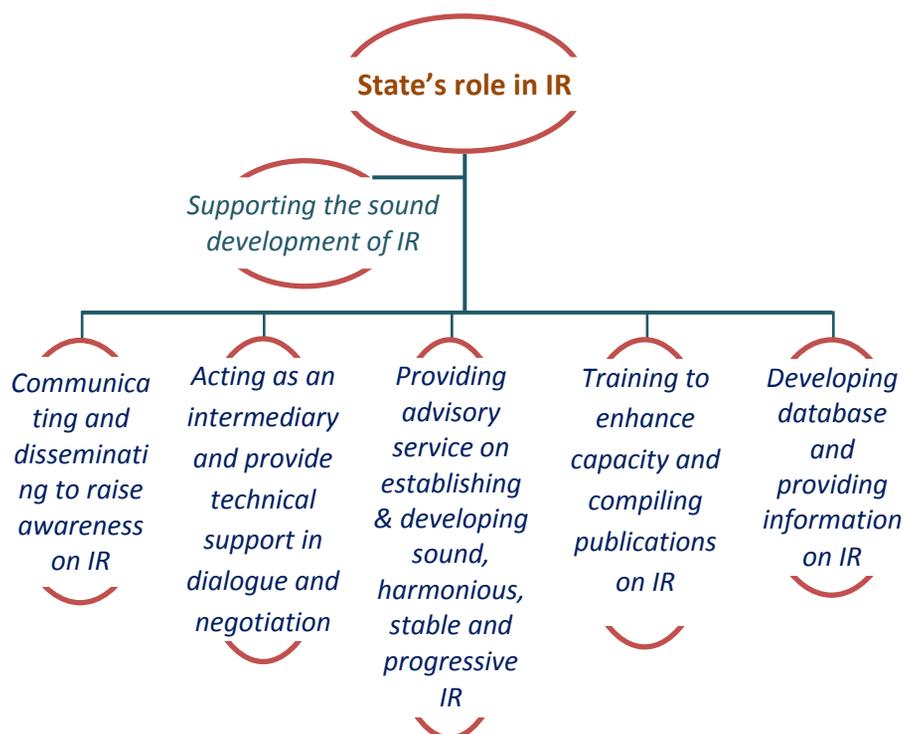
The Government of Viet Nam together with social partners can make better informed, evidence-based IR policy decisions through improved industrial relations data collection, analysis and dissemination based on strengthened gender-responsive IR data system to better meet country needs and capture obligations under ILO 1998 Declaration on Fundamental Principles and Rights at Work; and Viet Nam’s capacity is enhanced for developing and implementing evidence-based IR policies and social dialogue



NIRF/EU Project
“Promoting ILO fundamental conventions towards ratification of various Conventions”

To contribute to sustainable and inclusive economic growth of Viet Nam by enhancing the existing legislative framework through better application and implementation of international labour standards consistent with the ILO Declaration on Fundamental Principles and Rights at Work

STATE IN ITS SUPPORT ROLE TO DEVELOPMENT OF SOUND INDUSTRIAL RELATIONS AT LOCAL LEVEL



In industrial relations (IR), the State plays dual roles of both introducing, guiding the implementation of labour laws and being a party in tripartite relationship (State – Employer – Employee), representing the benefits of the nation and whole society.

IR between employers and employees is established on the basis of rights and benefits. Right are the obligatory parts that cannot be violated: the violation of right is the violation of law; while benefits are the part decided upon agreement by both parties. Thus, the State's impacts also consist of 2 corresponding parts, that are management (rights and obligations - compulsory enforcement) and support (benefits – self negotiation and self-determination). Administrative measures can be applied to implement compulsory rights but cannot be used to enforce benefits.

The state participates in IR from central to local levels, through its state administrative system (Government, Governmental agencies, local authorities).

Therefore, the support role of the State in IR at local level is implemented through specific activities such as researching, propagating and disseminating of knowledge and laws on IR to change the awareness of social partners; mediating for parties of labour disputes; consulting, training, giving technical support for parties in industrial relations; establishing information database, issuing documents and publications to support the sound development of industrial relations...

1. The state plays an important role to help improve, or even change the awareness of parties and the entire society on IR and the sense of law observance. Employees and employers are the subjects directly involved in IR, but their awareness of and legal status in IR and IR regulations is sometimes limited. In many cases, the subjects do not correctly identify their positions, which leads to improper behaviors or requests resulting in misunderstandings which may develop into conflicts. In countries like Viet Nam, limitations in awareness and understanding of labour laws of the subjects significantly affect the

stability and harmony of IR. The state, through its labour management and support agencies, can carry out communication, dissemination and education of basic knowledge and laws on labour, IR and other relevant laws to employees, employers, their representative organizations and other related subjects. These activities can place particular emphasis on enterprises employing a large number of labours, where disputes are likely to happen.

2. One of the support activities that the State can undertake is to act as a mediator in dialogue and negotiation between the parties in IR at the request of the employees and employers, helping the parties to agree and establish their benefits on their own. In addition to performing the intermediary role, the State may also provide technical assistance in dialogue, negotiation, signing collective bargaining agreements, settling labour disputes at the request of employees, employers and other agencies and organizations. It should be noted that the role of the State in this case is to only “mediate” and “support” rather than intervene too deeply in the process of dialogue or collective bargaining between the two parties and this role can only be carried out when requested by the parties in dialogue and negotiation.

3. The State's support agencies on IR provide advisory services on establishing and developing harmonious, stable and progressive IR, such as: advising on solutions and models for IR development, prevention and settlement of labour disputes; advising on the development and implementation of IR projects and programmes; monitoring, analyzing and forecasting the situation and development trend of industrial relations to serve the state management agencies on labour and other social partners.

4. The state, with its resources and conditions, can build an information system and database on industrial relations. This will be an important and practical source of reference to assess the situation of national and local IR, helping relevant agencies to

provide timely interventions when IR progresses to a negative direction, plus in-time mediation, minimizing labour disputes and ensuring a stable and sustainable business environment and labour market.

5. In addition, the State can also support the development of IR through a number of other activities such as:

- Training, fostering capacity and skills of dialogue, negotiation, bargaining and signing collective bargaining agreements for employers and especially for employees' representative organizations so that they can operate effectively. The guidance, support and assistance for employees' representatives in dialogue and negotiation on the methods and manner of representing the employees to conduct dialogue and negotiation with enterprises' owners are necessary to ensure the rights and benefits of employees.
- Compiling documents and publications on dialogue, negotiation, collective bargaining agreement, labour dispute settlement and forms of consultation forms in IR to provide for personnel in enterprises, trade union officials, mediators and support units.
- Researching and providing domestic and international information and experiences on IR as a reference for the process of finalizing the legal framework and the operation of the stakeholders in IR.
- Researching and establishing forms to support IR development.

Integration has provided opportunities for strong development but also have posed challenges to the role of the state in managing and supporting IR. Current common trend is that the State's role in the IR will change in the direction of reducing administratively direct intervention (hard intervention) and gradually shifting to strengthen the leading and supporting role (soft intervention), especially the support in dialogue, collective bargaining and prevention and settlement of labour disputes to promote the self-determination of IR's parties.

Local support activities of the Center for Industrial Relations Development

As a public service unit affiliated to Department of Industrial Relations and Wages - Ministry of Labour, Invalids and Social Affairs, the Center for Industrial Relations Development (CIRD) is responsible for carrying out administrative operations, advisory and support services on labour management, industrial relations and wages. For the localities, CIRD is responsible for supporting provinces /cities to implement Master Plans to develop industrial relations in the area (following the direction of the Prime Minister in Official Letter No. 4690/VPCP-KGVX dated June 11, 2013 and Resolution 97/NQ-CP of the Government dated December 26, 2014), simultaneously implementing communication activities, raising awareness and capacity on IR.

Outstanding activities in 2018

1. **Advising and supporting to build the Program to develop industrial relations in Bac Ninh Province** (joint activities with other units in the Department of Industrial Relations and Wages).
2. **Continuing to support localities to implement activities within the framework of the Programme to develop industrial relations.**
3. **Supporting Quang Ninh province in piloting the establishment of industrial relations document in 05 enterprises where there are risks of labour disputes.**
4. **Providing trainers in training mediation skills and operation for labour mediators and managers in Dong Nai, Lam Dong, Thanh Hoa and Quang Ninh.**
5. **Enhancing staff capacity by organizing 2 training courses for leaders of DOLISA and Industrial Zones Authority on policies on IR and wages in the new context of Quy Nhon and Quang Ninh.**
6. **Conducting communication activities on industrial relations to localities and enterprises, through the following activities:**
 - ✓ Maintaining the website (<http://quanhelaodong.gov.vn/>) and the Center's fanpage to promote, provide and share domestic and international knowledge, information and experiences in labour, IR and wage matters.
 - ✓ Releasing Industrial Relations Bulletin every 3 months.
 - ✓ Making 2 videos introducing the Center and the content of CPTPP Agreement; 2 videos on "Technical guidance on establishing and using suggestion boxes at enterprises" and "Labour dispute settling skills".
 - ✓ Publishing 2 technical handbooks on "Guidance on dialogue skills at the workplace" and "Questions regarding labour, industrial relations and wages".
 - ✓ Publishing the reference book on "Implementing international commitments on labour".
 - ✓ Developing and introducing to localities and enterprises about research, advisory and training services on labour, industrial relations and wages provided by CIRD.

LABOUR, INDUSTRIAL RELATIONS AND WAGES POLICIES
PROMULGATED AND CAME INTO EFFECT IN 2018



1. Exemption from procedures of sending wage scales, payrolls and work norms for enterprises employing less than 10 employees

Enterprises employing less than 10 employees are now exempted from the procedures of sending wage scales, payrolls and work norms to the district-level state management agencies in charge of labour in localities where they are located.

2. Adjusting working time for calculation of severance and job loss allowances

Working time for calculating severance and job-loss allowances is the total time that the employee has actually worked for the employer minus the period in which the employee has participated in unemployment insurance scheme in accordance with the law, and the period for which the employee has been paid previous severance and job-loss allowances by the employer (if any).

3. Procedures for imposing labour discipline

- When detecting an employee who has violated labour discipline at the time the violation is committed, the employer shall make a written record of the violation, notify such to the workers' collective representative organization at grassroots level; parents or at-law representatives in case the employee is under 18 to hold the meeting for labour discipline.

- In case the employer detects the violation of labour discipline after it is committed and has sufficient grounds to prove the employee's fault within the time limit for handling violations of labour discipline, the order of imposing labour discipline is as follows:

+ The employer shall notify the contents, time and venue of the meeting for labour discipline to all invited parties specified at Point b and Point c of Clause 1 Article 123 of the Labour Code, and ensure such parties receive the notice before the meeting and that the meeting for labour discipline is held in the presence of all invited parties.

+ Within 3 working days after receiving the notification of the employer, the invited parties specified at Point b and Point c of Clause 1 Article 123 of the Labour Code shall confirm their presence. If failing to participate in the meeting, he/she/it shall notify such to the employer, clearly stating the reason.

In case one of the parties specified at Point b and Point c of Clause 1 Article 123 of the Labour Code fails to confirm his/her/its presence, or gives implausible reasons, or have confirmed his/her/its presence but fails to appear at the meeting, the employer may hold the meeting.

- The meeting for labour discipline shall be recorded in min-

utes which is approved by all participants before its end. Such minutes shall be signed by all participants. In case one of the participants refuses to sign the minutes, the reason must be clearly stated.

- A decision on labour discipline shall be issued within the time limit for imposing labour discipline or the extended one under Article 124 of the Labour Code. Such decision shall be sent to employees, parents or at-law representatives of under-18 employees and workers' collective representative organisation at grassroots-level.

4. Authority to impose labour discipline

Persons entering into employment contracts on the employer side are competent to issue decisions on labour discipline to be imposed on employees.

5. Dismissing workers absent from work without plausible reasons

An employer shall apply dismissal as a form of discipline to employees absent from work without plausible reasons for a total of 5 working days accumulated within the maximum of 1 month (30 days), from the first day of being absent from work without plausible reasons; or for a total of 20 working days accumulated within the maximum of 1 year (365 days), from the first day of being absent from work without plausible reasons.

6. Principles of exercising grassroots democracy at workplace

Grassroots democracy at the workplace shall be carried out under the principle of good faith, cooperation, honesty, equality, publicity and transparency; respecting legitimate rights and interests of employers and employees; and not contravening law and social ethics.

7. Dialogue at the workplace

Dialogue at workplace shall be held through a direct discussion between employees and the employer or between the representative of employees' collective and the employer. Dialogue at workplace shall be held periodically or upon request of either party.

Contents of, participants in, time, place and process of holding a dialogue shall comply with the enterprises' regulations on grassroots democracy at workplace. The enterprise is not required to hold a periodical dialogue if such dialogue coincides with the employees' conference.

8. Employees' conference

- Employees' conferences shall be held by employers and grassroots-level representative organizations of employees' collectives. Employees' conferences shall be held at least once a year. Employees' conferences shall be held as a plenary conference or delegates' conference.

ACCOMPANYING ENTERPRISES

- Contents of employees' conferences must comply with Article 64 of the Labour Code.
- Participants in, contents, time and place of, forms, process and responsibility to organise and forms of notifying results of the employees' conferences shall comply with the enterprises' regulations on grassroots democracy at workplace.

9. Employees of foreign nationality working in Viet Nam to participate in the compulsory social insurance scheme

- Employees who are foreign nationals working in Viet Nam shall be required to participate in the compulsory social insurance program if they obtain work permits, practicing certificates, practicing licenses issued in Viet Nam and they enter into indefinite-term employment contracts or employment contracts valid for at least one year with employers in Viet Nam. Exclusion shall be applied if they are intra-company transferees as stipulated in clause 1 Article 3 of the Government's Decree No. 11/2016/ND-CP dated February 03, 2016 detailing the implementation of a number of Articles of the Labour Code regarding foreign employees in Viet Nam or if they reach retirement age under clause 1 Article 187 of the Labour Code.
- Employers participating in the compulsory social insurance includes state agencies, public service provider units, political entities, socio-political bodies, socio-political and occupational, socio-occupational and other social organizations; foreign or international bodies or organizations operating within territory of Viet Nam; enterprises, cooperatives, single-person households, cooperative associations, other organizations, and persons who are licensed to do business as per laws hiring and employing personnel to work under employment contracts.

10. Contribution rates and methods at the side of foreign employees working in Viet Nam

From January 01, 2022, foreign employees working in Viet Nam required to participate in the compulsory social insurance scheme shall, on a monthly basis, make a social insurance contribution accounting for 8% of his/her monthly pay to the retirement and death benefit fund. The employee who neither works nor receives salaries or wages for a period of at least 14 working days in each month shall not be bound to pay the social insurance premium in that month. This month shall not be taken into account to determine entitlement to social insurance benefits, except for parental leaves.

11. Contribution rates and methods at the employer side who employs foreign employees working in Viet Nam

- The employer hiring foreign employee working in Viet Nam required to participate in the compulsory social insurance scheme shall, on a monthly basis, make a social insurance contribution in proportion to the employee's payroll in the social insurance payment month, including 3% paid into the sickness and parental insurance benefit fund; 0.5% paid into the occupational accident and disease benefit fund; and 14% paid into the retirement and death insurance benefit fund, in effect from January 01, 2022. Based on the capability of state budget balances for the occupational accident and disease insurance benefit fund, the Government shall consider adjusting the contribution rate from January 01, 2020.

- If an employee entering into multiple employment contracts with more than one employer and is required to participate in the compulsory social insurance scheme, both the employee and the employer shall only have to pay social insurance contributions as agreed upon in the first employment contract. For the occupational accident and disease insurance fund, the employer shall be required to pay per each employment contract.

SOME LEGAL DOCUMENTS ON LABOUR, INDUSTRIAL RELATIONS AND WAGES PROMULGATED IN 2018

Decree No. 121/2018/ND-CP dated September 13, 2018 of the Government amending a number of Articles of Decree No. 49/2013/ND-CP dated May 14, 2013 of the Government on guidelines for the Labour Code in terms of wages.

Decree No. 148/2018/ND-CP Ddated October 24, 2018 of the Government amending and supplementing a number of articles of the Government's Decree No. 05/2015/ND-CP of January 12, 2015, detailing and guiding a number of provisions of the Labour Code.

Decree No. 149/2018/ND-CP dated November 07, 2018 of the Government detailing Clause 3, Article 63 of the Labour Code regarding the implementation of regulations on grassroots democracy at workplace

Decree No. 157/2018/ND-CP dated November 16, 2018 of the Government providing for region-based minimum wages applied to employees working under employment contracts

Circular No. 04/2018/TT-BLDTBXH dated June 22, 2018 of the Ministry of Labour, War Invalids and Social Affairs on amending a number of Articles of the Circular No. 37/2016/TT-BLDTBXH dated October 25, 2016 providing guidelines for management of employees, wages, remunerations and bonuses paid to employees working in Viet Nam Asset Management Company

Circular No. 07/2018/TT-BLDTBXH dated August 01, 2018 of the Ministry of Labour, War Invalids and Social Affairs on formulating employee utilization plan and implementing employee policies in the context of equitization prescribed in the Government's Decree No. 126/2017/ND-CP dated November 16, 2017 on conversion from state-owned enterprises and single-member limited liability companies with 100% of charter capital invested by state-owned enterprises into joint-stock companies.

Circular No. 16/2018/TT-BLDTBXH dated October 12, 2018 of the Ministry of Labour, War Invalids and Social Affairs guiding the management of labour, wages, remuneration and bonuses for workers and managers of the State Capital Investment and Trading Corporation.

7 outstanding industrial relations events of 2018



CPTPP Agreement officially signed in Chile (in March 2018) with Viet Nam as the 7th country to approve the agreement (ratified by its National Assembly on 12 November 2018) which reflects Viet Nam's strong commitment for comprehensive innovation and international integration

1



Resolution 27-NQ/TW on wage reform policy issued on 21 May 2018 shows the Party's determination to comprehensively reform the wage policy to fully comply with the principles of socialist-oriented market and timely meet the requirements of international integration

2



Viet Nam Trade Union established the Industrial Zones Trade Union Champion Network (including 50 Industrial Zones Trade Unions across 48 provinces and cities) to promote trade union activities, enhance the role of representing and protecting trade union members and employees

3



The National Wage Council made a recommendation for the Government to issue regional minimum wage for 2019 – the tripartite institution plays an increasingly important role in industrial relations

4



Strikes continue to decline significantly compared to the previous year. There is an increasing trend of strikes over interest, such as wage increases, working hours and other welfare benefits

5



Prime Minister Nguyen Xuan Phuc conducted dialogue with workers and direct bipartite dialogue and consultation (Government - workers, enterprises, trade unions, managers - workers ...) which expresses the state's desire in listening to the aspirations of employees and businesses

6



There are diverse supportive activities to develop harmonious, stable and progressive industrial relations. Policies to support houses and kindergartens for workers in industrial zones; law propaganda projects... show the care of the Party, the State and the community to the life of workers

7

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