

It is clear that in 2020, Vietnam has achieved a "dual goal" in preventing the COVID-19 pandemic and maintaining economic growth.

During the 2016-2020 period, thanks to the dramatic involvement of the entire political system and the collective strength, unanimity, outstanding, dramatic and timely efforts of the entire Party, the entire population, the entire army and the business community, Vietnam has gained many important and comprehensive achievements in almost all fields and made outstanding marks.

*(Prime Minister Nguyen Xuan Phuc, at the nationwide videoconference between the Government and localities on December 28, 2020)*



*An effective system begins with consensus-based processes and places greatest weight on these, and proceeds to rights-based processes; power is only used where no other solution can be found.*

*A voluntary mediation apparatus, appropriate with the national circumstances, is needed to assist the prevention and resolution of labour disputes.*

*(ILO, Labour Disputes Systems: Guidelines for Improved Performance)*

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## Labour dispute resolution system - innovation in accordance with the socialist-oriented market economy

*The Labour Code issued in 2019 (effective from 1 January 2021) manifests a big step in better compliance with the principles of the market economy. Its provisions approach international labour standards, especially fundamental ones in terms of Fundamental Principles and Rights at Work. Such provisions aim to protect the rights of workers and employers, while IR stakeholders are empowered to make their own decision on wages and other working conditions through dialogue and bargaining.*

*In particular, the provisions of the Labour Code 2019 on labour disputes are also comprehensively and systematically amended and supplemented. The labour dispute resolution system is designed aiming at maximizing the role, effectiveness and efficiency of labour dispute settlement institutions and mechanisms such as labour mediation, arbitration and others in resolving labour disputes and supporting industrial relations to ensure their credibility and to meet the requirements of industrial relations actors.*

Regarding labour disputes (LD), there are 5 sections and 33 articles (from Article 179 to Article 211) in the Labour Code 2019 (LC2019), including the following key amendments and supplements:

### 1. Clear and specific definitions of LD types, with some new types of LD

- Individual LD includes:

The individual LD between worker(s) and the employer; between worker(s) and the enterprise/organization sending workers abroad to work under contracts; between dispatched worker(s) and the receiving employer;

- Rights-based collective LD is a dispute between one or more workers' representative organizations and the employer or one or more employers' representative organizations arising in the following cases:

- + There are differences in understanding and implementing the provisions of the collective bargaining agreement, internal work regulations, other lawful regulations and agreements;
- + There are differences in understanding and implementing the labour law;
- + When the employer allegedly discriminates against worker(s), member(s) of the leaders committee of the worker's representative organization for the reasons of establishing, joining and operating the worker's representative organization; intervenes, manipulates the worker's

representative organization; violates the obligation of good-faith bargaining.

- Interest-based collective LD includes:

- + LD arising in the process of collective bargaining;
- + When a party refuses to bargain or fails to bargain within the time limit prescribed by law.
- LD among the Worker Representative Organizations (Article 179).

### 2. Revision of the principle for resolving labour disputes in a way that shows maximum respect for the autonomy of the disputing parties in choosing the method of self- negotiation or requesting a third party's assistance to resolve the labour dispute

The LC 2019 (Clause 1 of Article 180) sets out the principle that "Respect for the right of the parties to self-determination via negotiation throughout the labour dispute resolution process". This replaces the provision that the settlement of labour disputes "shall be initially implemented through direct negotiation by the two parties" in the previous LC2012 (Clause 5 of Article 194).

In addition, the LC2019 (Clause 5, Article 180) stipulates the principle that labour dispute settlement by a competent agency, organization or individual is to be initiated "after it is requested by a disputing party or by another competent authority or person and is agreed by the disputing parties". This replaces the

provision that agencies, organizations and individuals only settle labour disputes "when one of the two parties submits a request due to the fact that one of the two parties refuses to negotiate, or does not negotiate successfully, or negotiates successfully but reneges from the agreement" (Clause 6, Article 194 of the LC2012).

### 3. New regulations - the focal point to receive requests for resolution of labour disputes to be the labour agency under the People's Committee

The provincial labour authority, when requested, shall receive and classify the request for labour dispute resolution, provide guidance and assist the parties during the process of labour dispute resolution.

Within 05 working days, the receiving authority shall forward the request to the labour mediators (where mediation is mandatory); to the arbitration panel (if the disputing parties request Labour Arbitration Council - LAC), or advise the parties to file the petition to the court (Clause 3, Article 181 of the LC2019).

### 4. Additional authority for the LAC

- LAC has the mandate to issue decisions on individual rights disputes.

- Authority to settle rights-based collective labour disputes is assigned to the LAC (removing the stipulation that district-





level People's Committee Chairperson has the authority to labour dispute resolution).

### 5. New regulations on organization and operation of the LAC

- The number of members of LAC is increased, ensuring the principle of tripartite balance.

The number of labour arbitrators of the LAC is decided by the Chairperson of the Provincial People's Committee, to be at least 15 people. The number nominated by each party is equal: the labour agency of the provincial People's Committee, the provincial trade union and the provincial employer's representative organization. Actual hearing of a case will be carried out by an Arbitration Panel.

- An arbitration panel is established by the LAC to resolve a labour dispute when there is a request for settlement

The arbitral panel is constituted by the arbitrators from the LAC who are chosen by the representative of the disputing parties and shall be established by the LAC whenever a request for labour dispute settlement is received (stipulated in Articles 189, 193 and 197 of the LC2019).

### 6. The order and procedures for the resolution of labour disputes by labour mediators

Mediation is a compulsory step for all labour disputes before the parties request for the settlement by the LAC or the Court (except for some individual labour disputes as stipulated in Clause 1, Article 188 of the LC2019).

For an individual labour dispute or a rights-based collective labour dispute: after the compulsory mediation procedure, the parties can choose to resolve the dispute by the LAC or the People's Court.

For an interest-based collective labour dispute, after the compulsory mediation procedure, the worker's representative organization has the right to conduct the prescribed procedure to go on strike.

### 7. Amendment and supplementation to the time limits for settlement of labour disputes

- The time limit to initiate an individual labour dispute is stipulated by the LC2019 to be 06 months from the date of detection of the dispute-creating actions(s) for settlement by labour mediators and 01 year from the date of detection of the dispute-creating actions(s) for settlement by the Court.

However, the LC2019 supplements the time limit for a labour dispute to be settled by the LAC to be 09 months from the date on which a party detects the act of infringement of their lawful rights and interests.

- The LC2019 also stipulates a period not to be included in the time limit (Clause 4, Article 190). Accordingly, in case the requester is able to prove that the aforementioned time limits cannot be complied with due to a force majeure event or unfortunate event, the duration of such event shall not be included in the time limit for requesting settlement of individual labour dispute.

- The time limit to request a labour mediator to settle a rights-based collective labour dispute is 06 months from the date on which a party detects the act of infringement of their lawful rights and interests.

- The time limit to request a LAC to settle a rights-based collective labour dispute is 09 months from the date on which a party detects the act of infringement of their lawful rights and interests.

- The time limit to bring a rights-based collective labour dispute to the Court is 01 year from the date on which a party detects the act of infringement of their lawful rights and interests.

### 8. New regulations on the subject with the right to organize and lead strikes, which is worker's representative organizations

Article 199 LC2019 stipulates that the worker's representative organization (Grassroots Trade Union or Workers' Organization) that is a disputing party to an interest-based collective labour dispute is entitled to call a strike following the specified procedures (the LC2012 stipulates that the subject is the executive committee of the grassroots trade union or of the higher level trade union at the request of workers).

### 9. Specification of the cases where workers have the right to go on strike concerning interest-based collective labour disputes

Accordingly, the worker's representative organization that is a disputing party to an interest-based collective labour dispute is entitled to call a strike following the procedures specified in Articles 200, 201 and 202 of the LC2019 in the following cases: (1) The mediation is unsuccessful or the labour mediator fails to initiate the mediation by the deadline; (2) An arbitration panel is not established or fails to issue a decision on the settlement of the labour dispute; the employer that is a disputing party fails to implement the settlement decision issued by the arbitration panel.

### 10. Provisions on the subjects to be consulted before organisation of a strike

All workers or members of the leaders committee of the worker's representative organization entitled to collective bargaining should be consulted before organisation of a strike (the LC2012 stipulates that those to be consulted include members of the executive committee of the grassroots trade union and the heads of production units).

### 11. Provisions on workplaces where strikes are prohibited

The LC2019 stipulates that strikes are prohibited in workplaces where a strike may threaten national security, national defence, public health or public order. Article 105, Decree No. 145/2020/ND-CP dated December 14, 2020 of the Government specifies the list of workplaces where strikes are prohibited. (According to the LC2012, strikes by worker's collectives are prohibited in undertakings which are essential to the national economy).

### 12. Annulment of provisions under Section 5 Chapter XIV of the LC2012 (namely "The Court to consider the legality of a strike") because these contents are prescribed by the Civil Procedure Code.



### Tasks set out in resolving labour disputes in Viet Nam in accordance with the Party's Directive No. 37-CT/TW issued by the Central Party's Secretariat

#### The Party's direction on strengthening leadership, building harmonious, stable and progressive industrial relations

Directive No. 22-CT/TW dated 5 June 2018

Decision No. 1129/QĐ-TTg dated 18 August 2008 of the Prime Minister issuing the Implementation Plan for Directive No. 22-CT/TW

Conclusion No. 96-KL/TW dated 7 April 2014 on continuation of the implementation of Directive No. 22-CT/TW

Resolution No. 97/ND-CP dated 26 December 2014 of the Prime Minister issuing the Implementation Plan for Conclusion No. 96-KL/TW

Directive No. 37-CT/TW dated 3 September 2019

Decision No. 416/QĐ-TTg dated 25 March 2020 of the Prime Minister issuing the Implementation Plan for Directive No. 37-CT/TW

In the process of deep integration and participation in new generation free trade agreements, many issues arise on the institutional system and industrial relations institutions that need to be resolved, including the completion of the labour dispute resolution system.

In Directive 37-CT/TW dated September 3, 2019 the Party's Secretariat has issued a policy to continue building harmonious, stable and progressive industrial relations in the new context, contributing to promoting production and business development, while maintaining security, politics, social order and safety.

One of the five key issues that the Party's Secretariat directs is to **"effectively resolve labour disputes and strikes"**, with four specific tasks related to the consolidation and improvement of the performance of the system of labour dispute settlement mechanisms and institutions. Directive 37-CT/TW

also specifically emphasizes the task of promoting the role of labour mediation and arbitration institutions in preventing and minimizing labour disputes, and at the same time well implementing the task of supporting industrial relations development (this task has also been institutionalized in Article 184 of the Labour Code 2019).

In order to ensure prompt implementation, on March 25, 2020, the Prime Minister issued Decision No.416/QĐ-TTg outlining the implementation plan for Directive 37-CT/TW of the Secretariat, with specific tasks and measures as follows:

#### 1. Improve the legal system on labour dispute resolution

The Ministry of Labour, Invalids and Social Affairs is responsible for developing and submitting to the Prime Minister, the Government and promulgating documents detailing the implementation of the Labour Code 2019 under its authority, and at the same time organizing effective

implementation of the Labour Code and its guiding documents. In particular, the improvement of the system of mechanisms, institutions, processes and procedures for labour dispute resolution must ensure that labour disputes are settled quickly, smoothly, effectively and in accordance with law.

#### 2. Strengthen state management as well as effectively implement policies to build and support industrial relations in general and resolve labour disputes in particular

##### 2.1. The Ministry of Labour, Invalids and Social Affairs

Develop plans for retraining, training and professional improvement for the contingent of civil servants, officers, workers, labour mediators, labour arbitrators to meet the requirements and responsibility of state management, support the development of industrial relations,

manage worker's representative organizations, perform the tasks of resolving labour disputes, strikes, promote the development of industrial relations in accordance with the requirements of the Labour Code 2019 and Directive No. 37-CT/TW.

### 2.2. People's Committees of provinces and municipalities

(1) *reinforce and consolidate the organization and activities of state management on industrial relations* in accordance with Resolution No. 18-NQ/TW dated October 25, 2017 of the 12<sup>th</sup> Central Executive Committee;

(2) *arrange full-time staff to perform the tasks of managing worker's representative organizations, supporting the development of industrial relations* at the local labour authority according to regulations;

(3) *study and develop staff plans to pilot the model of labour dispute settlement* with the arrangement of a number of full-time labour mediators and arbitrators specializing in settling disputes and supporting the development of industrial relations; and

(4) *formulate flexible tripartite consultation mechanisms* to advise and support state agencies in policy making and resolving local industrial relations issues.

### 3. Better resolve labour disputes and strikes

Accordingly, the Prime Minister assigned the Ministry of Labour - Invalids and Social Affairs, the Ministry of Public Security, People's Committees of provinces and municipalities and (proposed) the Vietnam General Confederation of Labour to carry out the following tasks:

(1) Consolidating and

### improving the performance of labour mediation and arbitration institutions

Including: i) consolidate the contingent of labour mediators and arbitrators; ii) improve the performance of labour mediation and labour arbitration institutions; iii) promote the role of labour mediation and labour arbitration institutions in supporting the development of industrial relations, preventing and minimizing labour disputes; and iv) promote the role of the institutions supporting state agencies in managing worker's organizations in enterprises.

(2) *Provisions on the regime to encourage* people with capacity, morality and prestige to act as labour mediators and labour arbitrators.

(3) *Training, fostering, improving capacity and providing appropriate remuneration* for mediators and arbitrators participating in the settlement of labour disputes and supporting the development of industrial relations.

(4) *Ensuring national security, social order and safety* in economic zones, industrial parks, and workers-concentrated areas; promptly detect and combat, prevent and handle acts of abusing, manipulating, inciting and forcing workers to disrupt security and order.

(5) *Ensuring the establishment and operation of worker's organizations* in accordance with the principles and purposes prescribed by law.

(6) *Piloting a model of labour dispute resolution* with the arrangement of a number of full-time labour mediators and arbitrators who shall not only perform labour dispute settlement but also support the development of industrial relations (for provinces and cities with a large number of workers, enterprises, and industrial zones in key economic regions where there are lots of labour disputes).

(7) Strengthening the labour disputes

and strikes settlement mechanism in accordance with local conditions, step by step making collective labour disputes and strikes comply with the stipulated order and procedures to ensure quick, timely, lawful resolution and guarantee the interest of all parties.

(8) *Trade Unions shall to play more active role* in labour dispute and strike settlement, and find measures to minimize labour disputes and strikes arising in the area.

### 4. To organize the implementation of the tasks

1) Ministries, ministerial-level agencies, Government agencies, People's Committees of municipalities and provinces and relevant agencies and organizations according to their assigned functions and tasks: i) Promulgate and organize the implementation of plans, strengthen the building of harmonious, stable and progressive industrial relations in the new situation, promote the development of production and business, maintain security and social order; ii) Report annually on the implementation progress to the Ministry of Labour, Invalids and Social Affairs before November 15 for consolidation and reporting to the Prime Minister.

2) The Ministry of Labour, Invalids and Social Affairs shall monitor, urge and inspect the implementation of this Plan; annually review the implementation results and report to the Prime Minister in December.

3) The Central Committee of Vietnam Fatherland Front, Vietnam General Confederation of Labour, Vietnam Chamber of Commerce and Industry, Vietnam Cooperative Alliance, Vietnam Association of Small and Medium Enterprises and related organizations shall coordinate with relevant agencies in the process of implementing the Plan (Plan No. 416/QĐ-TTg mentioned above).





### Enhancing the effectiveness of labour dispute resolution

One of the major problems in industrial relations in general and in labour dispute settlement in particular is how to get the IR mechanisms provided by law to be implemented effectively in reality.

The Labour Code 2019 has amended, supplemented and created a complete legal corridor with regulations on the labour dispute resolution system. The next challenge is how to deploy and improve the effectiveness in implementing the Labour Code 2019 provisions.

#### 1. A number of solutions to improve the effectiveness in implementing legal policies on labour dispute resolution

Building harmonious, stable and progressive industrial relations in the new context must ensure: to develop progressive institution; enhance

the effectiveness of institutions and strengthen the role of state management; and assign specific tasks to state agencies.

In order to well implement the Labour Code 2019, it is necessary to quickly deploy the following solutions:

##### *\* At the central level*

1. Continue to improve legal policies and guidances to create a complete legal corridor to implement the task of preventing and resolving labour disputes at the central and local levels.
2. Research and promulgate guidelines to consolidate the entire mechanism, arrange and assign personnel, define the tasks of each local industrial relations-related position, ensure timely and effective implementation of the Labour Code 2019.

3. Develop training programs for mediators and arbitrators focusing on knowledge and skills in resolving labour disputes and supporting industrial relations.

4. Develop and consolidate supporting tools for the development of industrial relations in general and for effective labour dispute resolution in particular, including specific solutions:

(1) Strengthen and enhance the industrial relations supporting role of tripartite mechanisms and institutions: Industrial Relations Committee, National Wage Council, local tripartite mechanisms;

(2) Consolidate and strengthen the industrial relations supporting role of the Center for Industrial Relation Development in order to well perform the state's supporting function in develop harmonious, stable and progressive industrial relations; and

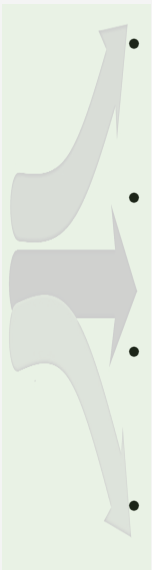
(3) Strengthen the system of information necessary for mediators and arbitrators in resolving labour disputes.

5. Establish appropriate supporting mechanisms to be applied in complex labour dispute cases, where there are non-industrial relations factors which may harm industrial relations, social order and national security.

##### *\* At the local level, the tasks that need to be implemented immediately include*

1. Consolidate and strengthen

#### The shortcomings of the current labour dispute settlement in Vietnam

- 
- Collective labour disputes do not follow the order prescribed by laws and the disputing parties do not utilize the labour mediation and arbitration institutions.
  - The support, prevent and resolve system for labour dispute settlement is mostly inactive and is not functioning properly in accordance with regulations.
  - Labour dispute is increased or decreased due to external factors while the roles of institutions is unclear when assessing the effectiveness of labour dispute settlement.
  - There is an unofficial mechanism to resolve collective labour disputes, that is, an inter-sectoral task force is the first one to deal with wildcat strikes.



the contingent of mediators and the Labour Arbitration Council in accordance with the provisions of the Labour Code 2019.

- 2. Ensure sufficient personnel for the Arbitration Council, especially the Arbitration Council's Secretariat.
- 3. Immediately assign a focal point to receive labour dispute resolution requests as prescribed in Clause 3 Article 181 of the Labour Code 2019. This division should soon be strengthened and consolidated in terms of: personnel, mechanism, contacts, the process of accessing and processing information, focusing on the application of information technology, ensuring the labour dispute resolution is performed in accordance with the legal process in a timely and prompt manner.

- 4. Provide the necessary knowledge and skills for the contingent of mediators and arbitrators: Training for the contingent of mediators and arbitrators to have professional knowledge and working skills, to become persons trusted by workers and employers when they need support in settling as well as preventing labour disputes.
- 5. Study the appointment of full-time mediators and assignment of work to them (e.g. the following tasks: conducting mediation of labour disputes, vocational training contract disputes, and supporting industrial relations development (including responsibility to: (1) prevent and minimize labour disputes, (2) monitor and support the workers' organizations in enterprises, following the

direction of the Party in Directive No. 37-CT/TW and the direction of the Prime Minister in Decision No. 416/QĐ-TTg).

- 6. Promulgate a regulation on the management of labour mediators to create favourable conditions for the operation of the contingent of labour mediators.

2. Other specific solutions

- 1. Better communication to workers and employers about the newly improved LDR system including the contingent of mediators and arbitrators, so that workers and employers know and can access them when they need support in resolving labour disputes.
- 2. Establish monitoring frameworks for the contingent of mediators and arbitrators to operate in a transparent manner, without losing trust of the industrial relations actors.
- 3. The central agencies should provide specific and necessary support, including: guidance on the necessary processes, skills, and knowledge for local officials, labour mediators and arbitrators.
- 4. Design regular and annual professional training programs to update knowledge and skills to resolve labour disputes, ensure the contingent of labour mediators and arbitrators always have sufficient knowledge, qualifications and skills to perform duties.
- 5. Pilot a model where mediators resolve individual and collective labour disputes separately according to legal processes.
- 6. Conduct assessment and continue to improve the labour dispute settlement system in line with the actual situation.

Challenges for the labour dispute resolution system in the current context



- Wildcat strikes remains the main mechanism of workers.
- The current legal provisions on labour dispute settlement have just been promulgated and come into effect, therefore, more time is needed to deploy at all levels.
- The labour dispute resolution mechanism, especially labour mediators and the Labour Arbitration Council, are to properly operate according to their roles, functions and duties in supporting labour dispute resolution and industrial relations in line with the provisions of the Labour Code 2019.
- The contingent of labour mediators and Labour Arbitration Council are yet to become reliable institutions for employers and workers to request for support should disputes arise.
- There are still shortcomings regarding the local investment for labour dispute resolution system.

### Ensuring an effective labour dispute resolution system in Viet Nam

*The Labour Code, adopted on November 20, 2019 effective from January 1, 2021, is considered progressive, creating a more comprehensive legal framework for employment relations in general and for the labour dispute resolution system in particular. The challenge for the current labour dispute resolution system is to function effectively, the contingent of mediators and arbitrators to perform well two important tasks of resolving labour disputes and building industrial relations.*

The International Labour Organization (ILO) has made suggestions to ensure that the labour dispute resolution system operates and functions effectively when the Labour Code 2019 comes into effect.

#### **Firstly, build mechanisms and institutions to resolve labour dispute as a national system**

Countries in general and Viet Nam in particular needs to build a labour dispute resolution system under the nationwide coordination and unification.

The support system for labour disputes resolution should be developed at the provincial level and coordinated at the Central level. Specifically in Vietnam, there should be a national agency to be responsible for managing the labour dispute resolution system, possibly a unit under Ministry of Labour, Invalids and Social Affairs (MOLISA), which will be in charge of connecting and coordinating the labour dispute resolution systems of all provinces/cities in the country.

This agency should perform the following tasks: 1) Design and implement national policies on labour disputes; 2) Monitor trends and solutions in labour disputes on a nation-wide basis through a shared and unified data management system

of labour dispute cases; 3) Develop and organize capacity building activities for mediators and arbitrators; and 4) Provide operational guidance for Labour Arbitration Councils and on mediation mechanism at local level.

#### **Secondly, a distinction should be made between state management/ system management tasks and mediation/arbitration services.**

**- Mediation and arbitration services** are performed by the appointed mediators and arbitrators, ideally the personnel recruited from outside of government agencies. In the next few years, the mediation and arbitration tasks can be handled by a number of part-time government staff and full-time non-government mediators and arbitrators who are independent experts.

**- The state management system on labour** (MOLISA and DOLISA) should focus on policy development, monitoring, support and adjustment of the labour dispute resolution system.

**- It is necessary to coordinate two systems** of state management on labour and of mediation/arbitration services to support workers and employers in preventing and resolving labour disputes. The effective coordination and operation of these two systems will contribute

to gradually reducing and ending the pattern of strikes that do not follow the prescribed procedures, especially in the context of new workers' organizations to be established in enterprises.

#### **Thirdly, the labour dispute resolution system require different processes to resolve different types of disputes.**

Labour disputes need to be resolved by mediation and arbitration to the maximum extent before being brought to the Court. Each type of labour dispute requires different focus when determining processes and policies.

#### **Fourthly, consolidate and promote the mediation role of mediators in the new industrial relations system according to the Labour Code 2019**

##### **- Consolidate the contingent of mediators**

Mediators will play an important role, especially in resolving interest-based collective labour disputes (mediation is a mandatory procedure in the process of resolving interest-based collective labour disputes- clause 2 Article 195).

However, the contingent of existing mediators is organized in a





fragmented and unstable way, and with a majority of mediators who are not well trained or have yet acquired practical experience in resolving collective labour disputes. And most cannot invest much in their mediation work as they have heavy workload in their "normal" duties.

Therefore, it is critical to pay attention to strengthen the contingent of mediators for them having sufficient capacity, qualities and opportunities to perform well their roles as labour mediators in resolving labour disputes.

### **- Appreciate the effective mediation of mediators**

Mediation is the first step in all labour dispute resolution procedures. This will be the most important factor in deciding how the new labour disputes resolution system would be activated in reality. No matter of what result of mediation process would bring, either successful or not, it helps to promote practices in complying with the LDR's legal provisions.

**Fifthly, recruit experienced mediators and arbitrators and support capacity building for this contingent.**

### **- The important factor to ensure the effective operation of the new labour dispute settlement system is to choose the right people**

*\* For mediators*

Mediators are to be appointed by the Chairperson of Provincial People's Committees (Clause 1, Article 184 of the Labour Code 2019). Accordingly, the State has full power to choose and appoint capable persons to act as mediators.

During the appointment, it is necessary to separate two types: Mediators specializing in individual labour disputes and mediators specializing in collective labour disputes.

#### *\* For arbitrators*

Arbitrators are to be nominated by three parties (Clause 2 Article 185 of the Labour Code 2019). Accordingly, the State shall not influence the choice and nomination of arbitrators by the Trade Union and the employers' representative organizations.

Regarding the remaining arbitrators accounting for one third of the Arbitration Council, the Department of Labour, Invalids and Social Affairs is responsible for selecting and appointing them.

Arbitrators must have the qualifications and capacity to make good decisions based on a clear and strong understanding of the law, ensuring the trust, approval and voluntary compliance of the parties, minimizing the cases brought to Court.

Therefore, it is necessary to have strong and knowledgeable arbitrators to ensure effective arbitration operation. The State must

rely on arbitrators introduced by Departments of Labour, Invalids and Social Affairs to achieve this goal. Such arbitrators must prove to be professional, expert and unbiased.

Arbitration procedures are applied to 3 types of disputes (individual labour disputes, rights-based collective labour disputes and interest-based collective labour disputes).

### **- Ensuring the effective operation of the labour dispute resolution mechanism**

The new LDR system has 3 important entities: 1) The focal point to receive requests for labour dispute settlement (Clause 3, Article 181 of the Labour Code 2019); 2) The person who manages and coordinates mediators; and 3) Secretariat of the Labour Arbitration Council.

**The central agency that is specialised in labour dispute resolution** can provide support in:

- i) Designing training programs for mediators and arbitrators about emerging labour dispute issues;
- ii) Organising training on mediation and arbitration skills;
- iii) Sharing information and experience among localities and updating knowledge about industrial relations and labour dispute issues; and
- iv) Documentation of labour dispute cases.





### Current situation of the settlement of labour disputes in localities and the implementation of the Labour Code 2019

#### 1. Individual labour disputes experience an upward trend while collective labour disputes show a downward trend

Reports in some provinces and cities<sup>1</sup> show that individual labour disputes in the period of 2015-2020 tended to increase. Most of the disputes are related to the employees' rights in the context of the termination of their employment contracts such as wages, allowances, and validation of records in social insurance books.

Meanwhile, the number of collective labour disputes and strikes is lower than in the period of 2010-2015 and tended to decrease gradually. However, they are more complicated in terms of their nature.

The majority of collective labour disputes and strikes derive from conflicts of interests and at the same time, they include both rights and interest elements. Disputes over employees' Tet bonuses are quite common. Also, employers' failure to promptly handle the requests and questions of the employees about the quality of mid-shift meals, meal allowances, etc. are among the reasons for collective labour disputes and strikes. Most collective labour disputes manifest into collective work stoppages/wildcat strikes.

Meanwhile, many firms continue to violate labour laws, for instance, they do not comply with the policies for employees. There remains a lack of inspectors; the frequency of inspection remains low compared to the number of enterprises under operation.

#### 2. Current situation of labour dispute resolution in localities

- Regarding the settlement of individual labour disputes: According to reports

from localities, labour mediators mainly resolve individual labour disputes. However, the number of individual labour disputes received by mediators accounts for only a small number compared to the actual number of individual labour disputes at the enterprise level (report by Bac Ninh). Moreover, the effectiveness of individual labour dispute resolution remains limited in some provinces and cities (Ho Chi Minh City).

- Regarding the inter-sectoral task force's resolution of collective labour disputes and wildcat strikes

Up to now, it is almost impossible to resolve collective labour disputes and strikes by the stipulated institutions (i.e. mediation, arbitration, state agencies, and courts) or by statutory procedures. Wildcat strikes are first addressed by inter-sectoral task forces which are established in provinces and cities (hereinafter referred to as inter-sectoral task forces).

Collective labour disputes and strikes are always resolved quickly by intervention of administrative agencies, with the aim of protecting workers' interests, stabilizing the enterprise's production and ensuring social order and security. Normally, only after workers launch a work stoppage does the negotiation between the disputing parties begin with the support from the inter-sectoral task force.

The inter-sectoral task force model has brought about certain effects, e.g. quickly stabilizing social order and security. However, in the long run, this kind of administrative interventions are not able to address the root causes of industrial relations-related problems. The mediation and arbitration system remains unable to function properly to resolve labour disputes.

- Role of mediators and Labour

Arbitration Council in resolving collective labour disputes and strikes

In resolving a collective labour dispute, mediators and the Labour Arbitration Council (specifically the secretariat of the Arbitration Council) work as members of the inter-sectoral task force. Its core members include mainly the secretariat of the Labour Arbitration Council and the staff and/or mediators from two agencies and the Department of Labour, Invalids and Social Affairs and the Federation of Labour, who directly participate in resolving the labour disputes.

Regarding the effectiveness of collective labour disputes settlement in recent years, the provinces and cities think that mediators have played an active role. *"In most cases, only a short period of time after a labour dispute or strike takes place or as soon as there are signals, the mediators have actively coordinated with relevant agencies to resolve immediately and prevent any delay or expansion"* - (Binh Duong province).

Given that most mediators are staff of organizations and unions, they are experienced and reputable in the field of labour and social affairs. When disputes occur, they proactively investigate the situation and propose timely solutions which contributes to a significant decrease in the number of labour disputes and strikes compared to previous years.

The organization and activities of the mediator team are also gradually professionalised (as reported by Dong Nai).

Meanwhile, although the Labour Arbitration Council has been established in most provinces and cities, it has not performed

1. Synthesized from reports on labour disputes in the following provinces and cities: Hanoi, Bac Ninh, Quang Ninh, Dong Nai, Binh Duong, and Ho Chi Minh City.



## LOCAL SITUATION

### Resolution of labour disputes in some provinces and cities

Type of dispute	2018		2019		2020	
	Number of filed cases	Number of settled cases	Number of filed cases	Number of settled cases	Number of filed cases	Number of settled cases
<b>Binh Duong</b>						
1 Individual labour disputes	297	297	323	323	404	404
2 Rights-based collective labour disputes	0	0	0	0	0	0
3 Interest-based collective labour disputes	0	0	0	0	0	0
<b>HCMC</b>						
1 Individual labour disputes	744	399	871	362	869	338
2 Rights-based collective labour disputes	15	15	8	8	7	7
3 Interest-based collective labour disputes	5	5	4	4	2	2
4 Mixed collective labour disputes (both rights-based and interest-based)	5	5	3	3	2	2
<b>Dong Nai</b>						
1 Individual labour disputes	409	351	368	321	294	255
2 Rights-based collective labour disputes	24	24	22	22	20	20
3 Interest-based collective labour disputes	6	6	5	5	1	1

its role and function as prescribed by the law.

#### - Difficulties at local level when implementing the Labour Code 2019 regarding labour disputes

Some enterprises have not implemented well the provisions of the labour law. It is challenging to resolve labour disputes due to the lack of good faith between the industrial relations actors (HCMC). Many enterprises are not aware of the benefits of building harmonious, stable and progressive labour relations.

There are a lot of shortcomings in terms of strengthening the contingent of mediators and Labour Arbitration Council in localities.

Mediators and Labour Arbitration Councils are currently working on part-time basis and have to undertake many tasks. Meanwhile, all localities face challenges in arranging staff for the pilot model of full-time mediators and arbitrators who will resolve labour dispute and at the same time, support

the development of industrial relations in accordance with local situation.

Training to enhance the knowledge and capacity for mediators and arbitrators is inadequate due to the rotation of staff at organizations. There are no professional and appropriate materials or curriculum. There is a lack of information on labour relations and related information to support them in resolving labour disputes.

#### 3. Plans and recommendations of provinces and cities to implement the Labour Code 2019 and Decree No. 145/2020/ND-CP dated December 14, 2020

- Keep disseminating and educating the law on labour and labour relations to enterprises and workers in the area.

- Review and develop a plan to select and appoint mediators in accordance with the local characteristics, consolidate Labour Arbitration Councils in accordance with the regulations.

- Develop a training plan for mediators and arbitrators according to new regulations.

- Provinces and cities also propose to

the Ministry of Labour, Invalids and Social Affairs to provide guidance on some necessary issues as follows:

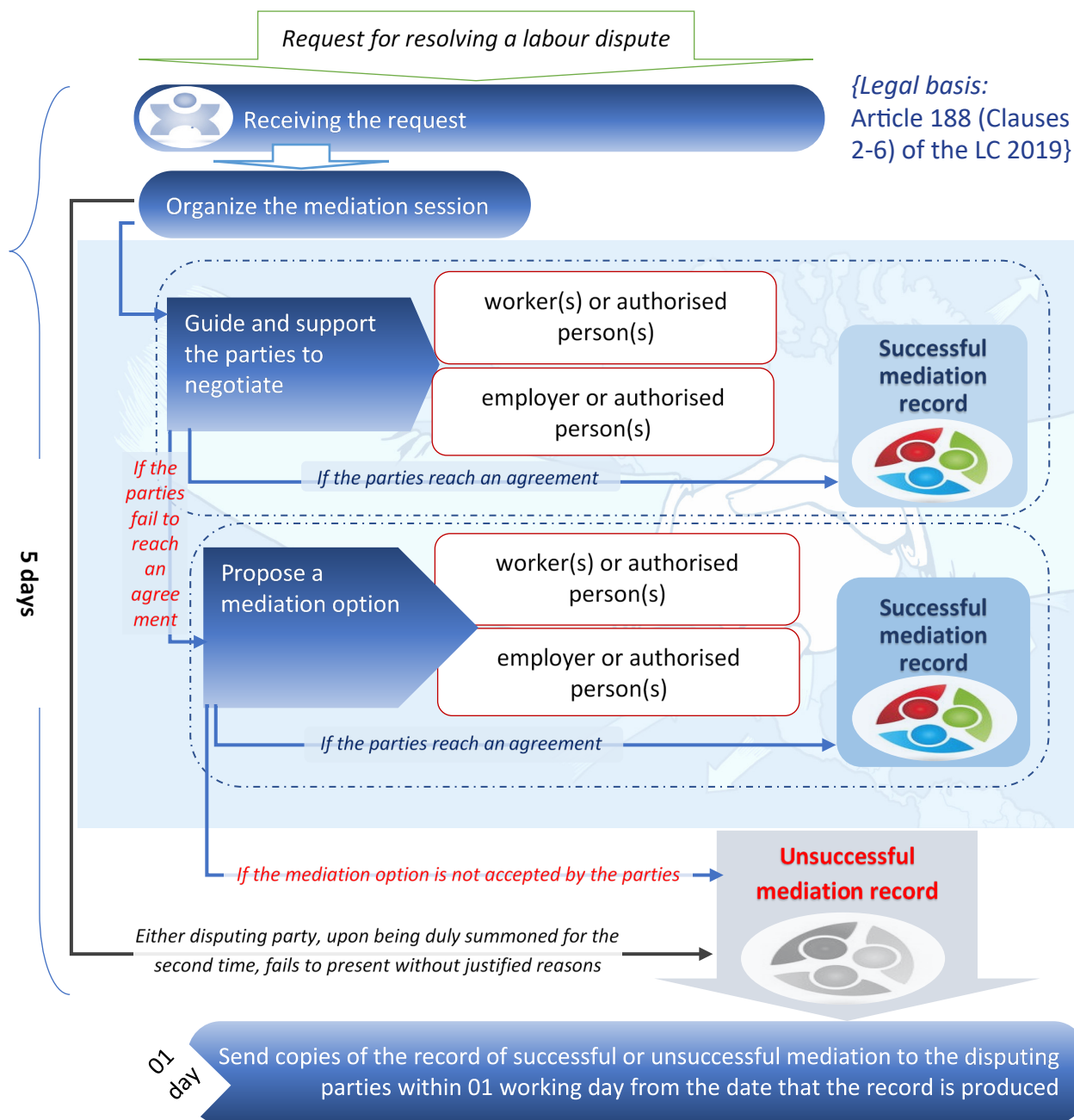
+ A framework (a Form) regulating the management and functioning of mediators and labour arbitration councils so that provinces/cities can develop their own regulations in accordance with local situation in an appropriate and effective manner.

+ How to pilot full-time mediators and arbitrators for labour dispute settlement in the direction that they resolve labour dispute and at the same time, support the development of industrial relations in accordance with the law, which should be applicable to each locality.

+ Organization of training for labour state management staff, mediators and arbitrators to meet the requirements of state management, support the development of labour relations, manage workers' representative organizations, resolve labour disputes and strikes and build industrial relations in accordance with the requirements set out in the Labour Code 2019 and the Party's Directive No. 37-CT/TW.



## Order and procedures for mediating a labour dispute by a labour mediator



**Types of labour disputes which must go through mediation by labour mediators before any request is made for resolution by the Labour Arbitration Council or the Court**

- (1) Individual labour disputes (*except for those stipulated in Article 188.1 of the LC 2019*).
- (2) Rights-based collective labour disputes (*Article 192.1 of the LC 2019*).
- (3) Interest-based collective labour disputes (*Article 195.1 of the LC 2019*).



Order and procedures for settling a labour dispute by the Labour Arbitration Council

The labour disputes to be resolved by the LAC



Individual labour dispute

- those for which mediation is not mandatory (Article 188.1 of the LC 2019)
- The labour mediator fails to conduct mediation (Article 188.2 of the LC 2019)
- Unsuccessful mediation (Article 188.4 of the LC 2019)



Rights-based collective labour dispute

(Article 193.1 of the LC2019)

- Unsuccessful mediation
- The labour mediator fails to conduct mediation
- Either party fails to perform the agreement in the successful mediation record



Interest-based collective labour dispute

(Article 197.1 of the LC2019)

- Unsuccessful mediation
- The labour mediator fails to conduct mediation
- Either party fails to perform the agreement in the successful mediation record

The disputing parties, based on consensus, request for resolution by the LAC

Trong vòng  
7 ngày

The Arbitration Council  
Establishes

The Arbitration Panel

Investigate the case, collect evidence...  
(Article 183 of the LC 2019)

Set up a plan to resolve  
theo labour dispute

Organize a meeting to resolve the labour dispute  
(point b of the Article 102.4 Decree No. 145/2020/ND-CP)

A summon in writing

A summon in writing

A session to resolve the labour dispute  
(Article 102.5 Decree No. 145/2020/ND-CP)

The Arbitration Panel specifies issues requested by the parties

Listen to the parties' presentation regarding the case in details

Make a minutes with signatures of each arbitrator and the disputing parties who participate in the session

Decision on the dispute resolution  
(Sent to the parties for implementation)

Incases the Decision is not issued

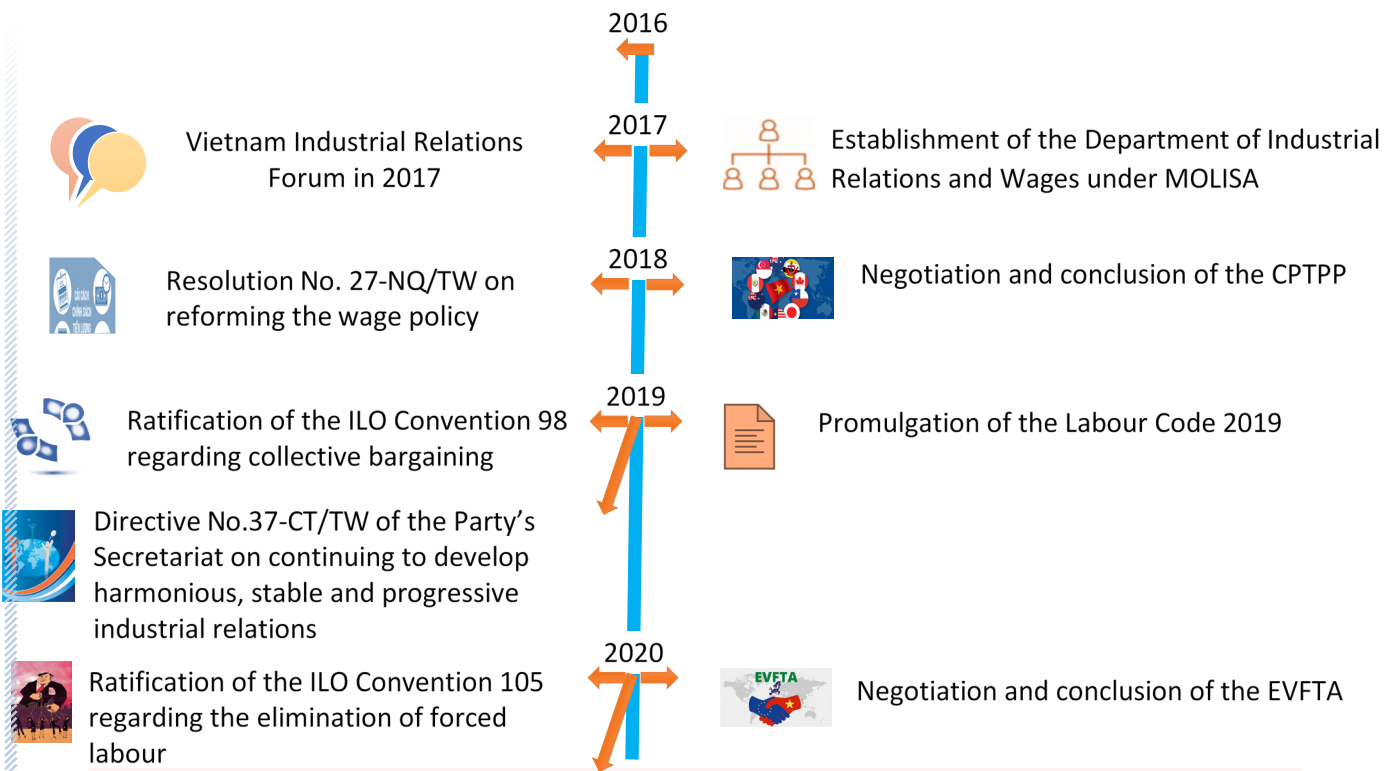
Notice to the disputing parties

Make a Notice for the case of rights-based collective labour disputes (issued at the point b và c of the Article 179.2 LC2019 ) that are determined to have violated the law.  
(Transfer the file to the competent agency for settlement)

Within 30 days

make a decision on the dispute resolution  
(Article 102.4 of the Decree No. 145/2020/ND-CP)

Headline events and achievements in industrial relations  
in the period of 2016-2020



“Industrial relations are increasingly harmonious and progressive, the number of collective labour disputes and strikes gradually decreases year by year”

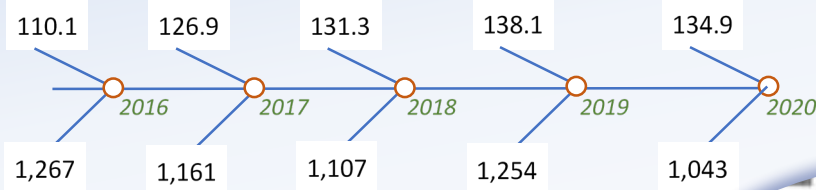
(Draft report on evaluation of results of implementing socio-economic development in the 2016-2020 period; directions and tasks of socio-economic development in the period of 2021-2025)

Labour market and industrial relations developments

Economic growth	2016-2019	6.8%	, 2020	2.91%
CPI	2016-2020	4%		
Labour productivity	2016-2020	5.8%		
Share of the non-state sector		~43%GDP		
Labour market participation rate (from 15 and above)		~85%		

\* Number of newly established enterprises (thousand)

\* Number of newly created jobs (thousand)



Source: Prime Minister Nguyen Xuan Phuc's report on socio-economic development in the period of 2016-2020; Annual report on socio-economic of the Government





## FACTS AND FIGURES

Vietnam's population by 2020; 97.58 million

in which female 48.99 million (50.2%)

Labour force (2016-2020) 50.4 – 54.6 million

Unemployment rate in urban areas (2016-2020) 3.66%

Underemployment rate (2016-2020) 2.69%

*Source: GSO*

Rate of workers in wage employment in Quarter IV 2020 49.76%

Rate of trained workers (2016-2020), 40 - 64.5%

in which rate of trained workers having certificates or degrees (2016-2020) 14.6 -24.5%

Social insurance coverage rate by 2020 32.6%

Average monthly wage of waged workers, 6.6 million

of female workers 6.2 million

*Source: MOLISA's report*



### List of documents on labour and industrial relations promulgated in 2020

#### I. By the Government

- Decree No. 20/2020/ND-CP dated February 17, 2020 of the Government on piloting the management of labour, wage and bonus in a number of state-owned economic groups and corporations.
- Decree No. 74/2020/ND-CP dated July 1, 2020 of the Government amending and supplementing a number of articles of the Government's Decree No. 121/2016/ND-CP dated August 24, 2016 on piloting the management of labour and wages in the Army Telecommunication Industry Corporation in the period of 2016 - 2020.
- Decree No. 145/2020/ND-CP dated December 14, 2020 of the Government detailing and guiding the implementation of the Labour Code regulations on working conditions and industrial relations.

#### II. By the Labour - Invalids and Social Affairs

- Circular No. 04/2020/TT-BLDTBXH dated May 5, 2020 of the Ministry of Labour - Invalids and Social Affairs guiding the implementation of regulations on piece rate unit price and wage fund for workers and Executive Board stipulated in Articles 7 and 8 of Decree No. 20/2020/ND-CP dated February 17, 2020 of the Government on piloting the management of labour, wage and bonus in a number of state-owned economic groups and corporations.

#### III. Decisions by the Prime Minister and the Minister of Labour - Invalids and Social Affairs

- Decision No. 416/QĐ-TTg dated March 25, 2020 of the Prime Minister promulgating the plan to implement Directive No. 37-CT/TW dated September 3, 2019 of the Party's Central Secretariat on strengthening the leadership and direction in building harmonious, stable and progressive industrial relations in the new situation.
- Decision No. 534/QĐ-LĐTBXH dated 15/5/2020 of the Minister of Labour - Invalids and Social Affairs promulgating the plan to implement Decision No. 416/QĐ-TTg dated March 25, 2020 of the Prime Minister which promulgates a plan to implement Directive No. 37-CT/TW dated September 3, 2019 of the Party's Central Secretariat on strengthening leadership and direction in building harmonious, stable and progressive labour relations in the new situation.



## PUBLICATIONS



### PUBLICATIONS BY THE CENTER FOR INDUSTRIAL RELATIONS DEVELOPMENT



#### **50 questions regarding workers' organizations**

The book focuses on answering the most basic questions about the legal framework related to the mandate, purpose, the right to establish, join and operate workers' organizations in the enterprise.

#### **Handbook on building industrial relations in businesses**

It provides basic knowledge about mechanisms and institutions to operate the industrial relations system in enterprises, industrial relations-based business management, and suggests some criteria to evaluate and analyse the industrial relations situation in enterprises.



And some other publications regarding labour, industrial relations and wages.

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