

Terms of Reference for a national consultant
to provide support in the drafting of the revision of the Trade Union Law

1. Background

The State Great Khural (Parliament of Mongolia) has adopted the revised Labour Law on the 2nd of July 2021. The new Labour Law is in effect from the 1st of January 2022. The newly revised Labour law has introduced many new provisions which ensure fundamental principles and rights at work including freedom of associations and collective bargaining.

In accordance with the Law on Legislation (<https://legalinfo.mn/mn/detail/11119>), law revision process should follow the steps described below:

- a) Conduct implementation assessment of the existing law, and define needs for such/proposed revision
- b) Develop concept note of the proposed revision of the law
- c) Law text is drafted
- d) Conduct impact assessment of the legislation
- e) Conduct economic and/or cost implication assessment of the legislation
- f) Organize public discussion
- g) Receive comments from respective government and non-government organizations, as well as professional and research institutes, and reflect them in the draft text

The guidelines/procedures to be used in the above-mentioned assessments have been approved by the Government, provided here, <https://legalinfo.mn/mn/detail?lawId=11993>.

Moreover, the Parliament of Mongolia has issued resolution No.12/202 “Basic guidelines for improving the legislation of Mongolia in 2024” and “Measures to be taken in relation to the Law” in September 2021. This resolution endorsed a list of laws to be revised or newly developed by the Government of Mongolia until 2024 for Parliament’s deliberation and decision. The Law on Trade Union Rights (Trade Union Law) is included in this list of laws to be revised with the aim to be aligned with the newly revised Labour Law.

As the responsible Government body to revise the Trade Union Law, the Ministry of Labour and Social Protection (MLSP) has established a working group led by the Minister for Labour and Social Protection and consisting of representatives of the Mongolian Employers’ Federation (MONEF) and Confederation of Mongolian Trade Unions (CMTU) and technical officers of MLSP, National Human Rights Commission of Mongolia and Ministry of Justice and Internal Affairs in September 2021.

The MLSP has sought technical support from the ILO in the revision of the Trade Union Law. In connection with this, the ILO project “Trade for Decent Work” funded by the EU seeks a qualified

national consultant. The national consultant will be undertaking the assignment under the guidance of the ILO and Labour Relations Department of the MLSP.

Trade Union Law

The “Trade Union Law” of Mongolia, a relatively short law with 10 articles, was first enacted on 26 April 1991, and came into force on 1 July 1991, in the early days of Mongolia’s transition toward a market economy, as the new Constitution was being developed (eventually adopted in 1992) and the other transformation was taking place, including the transformation of the Mongolian People’s Revolutionary Party. Since then, the law was amended on three occasions, in 1993, 2003, and 2015. Much of the revision focused on the Article 4, and is related issues of registration of trade unions, dissolution, and deregistration of trade unions. Other issues that were subject to amendment were Article 2 and Article 9 (See the details of the history of revision from the Attachment 1 of this ToR).

According to regulations related to making and/or revising laws, the Government, which makes the proposal regarding new legislative enactment, is required to prepare and present – in addition to the text of the law itself – an “impact assessment”, which outlines the changes that would be brought about by the new law (proposed changes in the law), in terms of practice, relations with other laws, etc.; and an assessment of budgetary requirements that would have to be shouldered by the Government for the effective implementation of the new law (changes in the law), for creating, building, and enhancing programmes, capacities, and institutions that would be responsible for the implementation and/or enforcement of the new law (proposed changes in the law).

In undertaking a revision of the Trade Union Law, it would be necessary to identify the clear need for revision. This “need” may arise from the need to accommodate or ensure conformity with the recently revised Labour Law, which contains many new changes affecting the work of trade union, collective bargaining, dispute resolution, and “social partnership”. At the same time, the need may arise from changes taking place on the “ground” – for example, challenges of “multiple trade unions” in relations to representation, collective bargaining, social dialogue. Or, there may be new thoughts related to the issues addressed by Article 4 that have been the main focus of amendments in 1993, 2003, and 2015. The fact that the text of the law refers to “People’s Republic of Mongolia” in a number of Articles may itself be an important reason for revision.

The identification of the “need” can be clarified through a detailed study of the actual reality and practice, and consultation with the related practitioners, constituents, stakeholders, and other interested or concerned parties, especially in view of the fact that “Trade Union Law” will have an effect on the workings of trade unions, operation of collective bargaining, industrial relations (relations among the various parties involved or interested in industrial relations), and that it relates to fundamental rights of people.

Clear identification of the “need” for revision is critical in developing the orientation and substance of revision. The development of the orientation and substance of revision calls for close and dynamic consultation with the actors who will be affected by them, as they will affect how they exist, operate, and are related to each other. The current Trade Union Law, adopted in 1991, differ considerably from the similar laws in other market economy countries; it can be said the current law shares similarities with Trade Union Laws in countries such as China and Viet Nam as well as market economy countries. The “need” for revision may also stem from Mongolia’s transition toward market economy. In this regard, it may be important to develop a clear understanding of the features of Trade Union Laws in other countries. At the same time, as “Trade Union Law” is a crucial legislative instrument that gives effect to the principles of rights of freedom of association and right to bargain collectively, the revision work needs to be actively informed by and be in conformity with requirements of international labour standards.

2. Objective of the assignment

The objective of the assignment is to support the work of the MLSP in developing the proposals for the revision of the Trade Union Law, in identifying the need for the revision, the orientation of revision, and to identify challenges in aligning the law with the international labour standards and the newly revised Labour Law, and other relevant laws.

3. Scope of Work

The national consultant will assist and support the MLSP in preparing the revision work, in particular the essential elements of the revision work identified above.

- Identifying the need for the revision
- Identifying the orientation and substance of the revision
- Preparation of the text of the revision
- Development of substantial “impact assessment”
- Development of budgetary requirement for the implementation of changes

The primary work of the national consultant would focus on organizing, supporting, and carrying out (1) various processes of consultation to identify and to build broad consensus on the need for revision; (2) various processes of consultation to identify and to build broad-based understanding of the orientation and substance of the revision; (3) various process of developing the proposal and text of revision based on consultation with stakeholders, review of similar efforts in other countries, and study of the requirements of the international labour standards in the area of freedom of association and the right to collective bargaining.

In view of the above broad outline and principles for preparing the revision work, the consultant will be required to execute some basic tasks, including, but, not limited to the followings:

- (1) Develop a time-table for revision of the Trade Union Law;
- (2) Conduct a rapid assessment of implementation of the current TU law, and conduct needs assessment for revision of the law, based on desk review and in consultation with concerned parties including CMTU and MONEF,
- (3) Carry out a comparative review of Trade Union Laws in similar and/or other countries (China, Viet Nam, South Korea, Indonesia, etc. – market-oriented socialist countries and market economy countries), with a view to identifying the specific needs for the Trade Union Law in Mongolia, to contribute to the development of the “concept note” for the revision of the Trade Union Law;
- (4) Support the tripartite working group to develop a concept note of the revision of the law
- (5) Organise a tripartite workshop involving the key stakeholders and interested/concerned parties to agree on the concept note for revision, while introducing the key findings of the implementation and needs assessments;
- (6) Support the tripartite working groups to draft the revision text of the law, based on international labour standards, the concept note, and consultation with tripartite partners and other stakeholders, as well as experiences in other countries. This will include:
 - Identifying the key issues to be revised;
 - Presentation of the concerns related to each of the key issues
 - Examination of the comparative experience of other countries in relation to each of the key issues
 - Presentation of international labour standards in relation to the each of the key issues
- (7) Organise a series of tripartite discussions on the revised text of the law
- (8) Organize a public discussion on the revised text of the law
- (9) Develop impact assessment of the law
- (10) Develop economic and cost implications of the revision of the law

- (11) Organize a workshop to introduce the findings of the impact assessment and economic and cost implication analysis, and have endorsement on the law text from the tripartite constituents;

4. Deliverables

Output 1: Outline and timetable of the process of revising Trade Union Law (1 day)

Output 2: Implementation and needs assessment report: This includes desk review, consultative discussions and report writing. (15 days)

Output 3: Comparative review of the features of Trade Union Laws in China and/or Viet Nam and South Korea and/or Indonesia (market-oriented socialist countries and market-economy countries (8 days)

Output 4: Draft Concept Note of the Law. This includes supporting the working group and drafting the concept note (10 days for supporting the working group and 5 days for the drafting of the concept note)

Output 5: Consultative discussion report on the concept note. (2 days)

Output 6: Draft Text of the Trade Union Law, as proposed (10 days)

Output 7: Translation of the draft text of TU law into English (based on number of pages, tentatively 3 days, if a consultant agrees)

Output 8: Translation of ILO comments for draft TU law into Mongolian ((based on number of pages, tentatively 3 days, if a consultant agrees)

Output 9: Report of consultative tripartite discussions of the draft text of the TU Law (10 days of participation in and organisation of the consultative tripartite discussions on the revised law text including a public discussion, and 2 days for report writing)

Output 10: Comparison table of the final draft of TU law and ILO comments (2 days)

Output 11: Report of Impact Assessment of the proposed revision of the TU law (10 days)

Output 12 Report of economic and cost implications of the proposed revision of the TU law (7 days)

Output 13: Organisation of the final workshop. This includes the preparation and organisation of the workshop (2 days)

5. Time frame and estimated number of working days

The assignment is expected to be undertaken for 18 April- 1 December 2022.

The number of workdays: up to 90 working days.

6. Required skills/ experiences

The national consultant must have the following qualifications and competencies:

- ▶ Master's degree in social science, law or related disciplines
- ▶ At least 15 years of policy making, research, or practical experience in the labour and industrial relations field
- ▶ High-level of law-making, research and communication skills
- ▶ Capacity to work with multi-stakeholder environment
- ▶ Advanced computer skills
- ▶ Fluency in Mongolian and English

7. How to apply

Interested candidates should send:

- Letter of Confirmation of Interest and Availability including a brief description why they consider themselves the most suitable for the assignment;
- Personal CV(s) indicating qualifications and all past professional experience/assignments of similar nature and the contact details of at least two referees;
- Sample reports from prior assignments of similar nature;
- Daily professional fee expressed in USD.

The deadline to submit an application is by 12:00 PM (Ulaanbaatar time), 12 April 2022, Tuesday. Questions on this call and the application shall be electronically delivered to ulaanbaatar@ilo.org.

Attachment1:

History of revision:

Articles subject to amendment

- Article 2 / This article was amended according to the law dated January 29, 2015 /
- Article 4 on registration / This article was added by the law of November 2, 1993 and repealed by the law of May 23, 2003 /
- Article 4 on appeal regarding decision on registration / This article was added by the law of November 2, 1993 and repealed by the law of May 23, 2003 /
- Article 4 on registration / The above Article 43 was added by the law in January 29, 2015 /
- Article 4 on dissolution / This article was added by the law in November 2, 1993 / // / This article and article number were amended according to the law dated January 29, 2015 /
- Article 4 on deregistration This article was added by the law in November 2, 1993 / / This article and article number were amended according to the law dated January 29, 2015 /
- Article 9 on sanctions / This article was re-edited by the Law of December 4, 2015 /

Enactment history

- Adopted by the Congress of the People's Republic of Mongolia, on April 26, 1991
 - Came into force, for the first time: on 1 July 1991
- Amended by the law of November 2, 1993 (adding some provisions)
- Amended by the law of May 23, 2003 (repealing some provisions – the 1993 insertions)
- Amended according to the law dated January 29, 2015