

Note: Re-advertisement of the call for national consultancy only. Please refer to relevant sections below.

Terms of Reference

Support the development of labour dispute related regulations and training programme for Mongolia

1. Background

New labour law

The Parliament of Mongolia has approved the revision of the Labour Law on 2 July 2021. The new (revised) Labour Law, having been published in the government gazette will come into effect from 1 January 2022. This concludes more than a decade of effort, on-and-off and at times concerted efforts, involving many rounds of drafts, and work of many dedicated bodies involving the Ministry of Labour, social partners, the Parliament, and experts and civil society, and engagement by the ILO.

The new Labour Law introduces numerous changes, including, in particular, new provisions for labour dispute resolution.

The revised Labour Law introduces major changes in the procedures and mechanisms/institutions for resolution of various types of labour disputes.

Various dispute resolution procedures and mechanisms

a) Interest disputes

- When a process of collective bargaining is deadlocked (interest dispute arises), then the parties are
 - Required to undergo a mediation process supported by a labour mediator (Article 148.1; Article 148.5, 148.6)
 - May request arbitration, otherwise can carry out industrial action (strike, lock-out)
 - Request for arbitration is to be submitted to local tripartite committee for labour and social partnership, which appoints an arbitration board consisting of 3 members within 3 working days

- While it is prohibited to strike in the period the dispute resolution procedures are being undertaken, the failure/refusal to start the collective bargaining process or failure to take part in the mediation procedures is the legitimate grounds to undertake a strike action
- b) **Collective rights disputes:** dispute over implementation/interpretation of collective contracts or collective agreements
- The parties are
 - Required to make use of company-level “Labour Dispute Settlement Commission”
 - Labour mediators and arbitration (as in collective interest disputes) – Article 154.10
- c) **Individual rights disputes**
- In companies where “labour dispute settlement commission” is established, a dispute shall undergo “conciliation” procedure at the commission [Article 154.1]
 - In companies where a “labour dispute settlement commission” is NOT established, or in disputes between “individuals”, the dispute shall be submitted for “conciliation” procedure by the local “Tripartite Labour Rights Dispute Settlement Committee” [Article 154.2]
 - In case for failure to resolve the dispute through “conciliation” procedures – above – a dispute can be submitted to the “Tripartite Labour Rights Dispute Settlement Committee” for “decision” (for settlement) [Article 154.6]
 - In case of “disagreement” with the decision of “Tripartite Labour Rights Dispute Settlement Committee”, a disputing party may take the case to the court [completing the Tripartite Labour Rights Dispute Settlement Committee” decision procedure is pre-requisite for taking a case (for most issues) to the court [Article 158.1]

The changes in procedures and new mechanisms and institutions introduced in the revised Labour Law reflects greatly an extensive review of the current practices – including some ad hoc initiatives and shortcomings – and the fact that the scope of application of the Labour Law is expanded, in particular, now making labour dispute resolution procedures to workers outside the formal employment sectors. The revision process was informed by and benefitted from a series of review exercises, which culminated in the publication of An Assessment of Mongolia’s Labour Dispute Resolution System by the Ministry of Labour and Social Protection in 2020 (the assessment was supported by the ILO and an international expert consultant).

With the adoption of the revised Labour Law, and the new Law scheduled to come into effect from 1 January 2022, the Ministry of Labour and Social Protection faces an urgent challenge to develop and adopt various implementation mechanisms – such as, implementation regulations, operational guidelines, templates, and forms – for effective operation of the overhauled labour dispute resolution system. In particular, the fact that procedures and mechanisms for “individual labour rights disputes” are now to be available to workers in micro and small enterprises with less than 20 employees and outside the strictly defined scope of formal economy -- for whom these procedures and mechanisms would be the only accessible avenue/channel for remedy (apart from more costly route of litigation at the courts) - it is of a paramount importance to put in place the necessary operational rules to ensure that the new procedures and mechanisms become capable of meeting the expectations of the new target beneficiaries.

At the same time, as local level “tripartite labour rights dispute settlement committee” provides three “services”, namely, “conciliation” and “decision”, which are pre-requisite for accessing the court system for “final” satisfaction, and prevention support through training, counselling, information, and advocacy to workplace-level industrial relations actors (Article 155.1.1), the new committees and their members, and the labour administration office personnel responsible for the administration of the new procedures, face an urgent need for capacity building training to administer the procedure and mandate effectively.

As new institutions, procedures, and mechanisms are established by the revised Labour Law, it will be critical to support the persons who will work as the mediators, arbitrators, and the members of the Tripartite Labour Rights Dispute Settlement Committees, and the local labour administration office personnel who have the responsibility to manage, administer, and coordinate the various procedures, mechanisms, and practitioners to develop good knowledge and expertise and operational requirements.

In view of the importance and urgency of the challenge facing the establishment and operation of the new labour dispute resolution system in Mongolia, the Ministry of Labour and Social Protection has requested the ILO support in developing the various regulatory documents as specified in the revised Labour Law, and designing a capacity building training programme. This work will be supported by ILO RBSA project on Promoting formal employment for inclusive and diversified economic growth in Mongolia” (MNG/18/01/RBS) and the ILO/EU project on Sustaining Strengthened National Capacities to Improve ILS Compliance and Reporting in Mongolia– Trade for Decent Work (GLO/18/30/EUR).

2. Objective of the assignment

The objective of this consultancy is to support the development of labour dispute related regulations and training programme for Mongolia based on the following:

- ▶ the stipulation of the revised Labour Law
- ▶ knowledge of the current operational experience of the existing labour dispute resolution institutions and procedures in Mongolia
- ▶ best practices in comparative international experience.

For this purpose, a team of consultants (an international expert consultant and a local consultancy team/firm composed of national experts) will be recruited and will work together to coordinate their activities and achieve the objective of this consultation.

3. Scope of the work

Under the overall technical guidance of the ILO Senior Specialist on International Labour Standard and Labour Law in Bangkok and Senior Specialist on Social Dialogue and Industrial Relations in Beijing, the consultants will be tasked to develop the various regulatory documents for the operation of the dispute resolution mechanisms and procedures, and develop the basic training programme and modules for the “practitioners” of the dispute resolution bodies, within the timeframe detailed below.

The national consultant team will carry out necessary activities at the national level under the technical guidance and leadership of the international consultant.

This activity will be carried out in close collaboration with the Ministry of Labour and Social Protection, the tripartite working group and the ILO. The work of the consultants will be reviewed by the Tripartite Working Group for final adoption.

The consultants are expected to perform the following tasks:

- ▶ Define key elements, processes and issues for the “establishment” and “operationalization” of the various labour dispute resolution institutions, procedures and mechanisms;
- ▶ Draft six regulations for the following labour dispute resolution institutions and mechanisms in line with the Mongolian government regulatory template:
 - Labour mediators
 - Arbitrators (arbitration board)
 - Company-level “Labour Dispute Settlement Commission”
 - Tripartite Labour Rights Dispute Settlement Committee at soum and district level – for conciliation, and for “decision”
- ▶ Engage with the tripartite working group including presentations and participation in its discussions;
- ▶ Ensure technical support to the tripartite working group during the validation process of the rules and regulations;
- ▶ Design the capacity training programme and the essential training modules:

Capacity building training programmes and training modules will address the needs of each groups of persons working in the various aspects of the new labour dispute resolution system, such as:

- Labour administration office in charge of managing the various labour dispute resolution mechanisms (for example, “appointment” of labour mediators – Article 149.4, Article 149.5)
- Labour mediators, labour arbitrators
- Members of the local Tripartite Labour Rights Dispute Settlement Committee (who will actually preside over the “conciliation” procedure and the “decision” procedure)
- Members of the company-level Labour Dispute Settlement Commission

The training programme may consist of a number of “modules” focusing on, but, not limited to, some specific aspects and procedures, such as, “case management”, “conciliation work”, “decision work”; and the different “institutions”, such as, the Tripartite Labour Rights Dispute Resolution Commission, labour mediators, Labour Dispute Resolution Commission (company-level mechanism), etc.

- ▶ Deliver two pilot trainings for mainly members of Tripartite Labour Rights Dispute Settlement Committee at soum and district level with a view to testing and finalizing the training programme and modules.

4. Deliverables

The following deliverables and timeline are expected:

- ▶ Output 1- Methodological note defining the methodological approach, steps and deadlines; and matrix of outlines of all the regulations to be developed, to be delivered by **15 September 2021**
- ▶ Output 2 – Draft regulation of the Tripartite Labour Rights Dispute Settlement Committee at soum and district level, to be delivered **by 11 October 2021**
 - Regulations regarding its establishment
 - Composition, representation, selection, appointment of members
 - Qualification, etc. of members for appointment
 - Code of conduct
 - Operational regulation
 - Conciliation procedure
 - Decision procedure
 - Various forms and templates to be used in the course of the Committee process
- ▶ Output 3 – Draft regulation of the Labour Rights Dispute Settlement Commission (at the enterprise level), to be delivered by **21 October 2021**
 - Basic guidance regulation for the establishment and operation
- ▶ Output 4 – Draft regulation of Labour interest dispute resolution through mediation; and Regulation of Labour arbitration, to be delivered by **5 November 2021**
 - Regulations regarding the “establishment” of a system of labour mediators and arbitration
 - Appointment of labour mediators, including qualification, etc.
 - Management of labour mediators, including maintenance of the registry/list of labour mediators
 - Assignment of mediators: voluntary selection of mediators, mandatory assignment of mediators
 - Operational regulation for the mediation procedure, also including...
 - Standard form for Proposal for mediation (voluntary mediation)
 - Form for request for mediation (appointment of mediator by the authority)
 - Template for mediation conclusion statement
- ▶ Output 5 – Draft code of conduct/ethics for mediators; and draft code of conduct/ethics for arbiters, members of the Tripartite Committee to be delivered by **22 November 2021**
- ▶ Output 6 - Capacity building training programme including various training modules, to be delivered by **6 December 2021**
 - For members and administrators of the Tripartite Labour Rights Dispute Settlement Committee
 - For administration personnel and mediators in the mediation procedures

- ▶ Output 7 - Preparation, organisation, and execution (including presentations at sessions) of two pilot trainings, to be delivered by **15 December 2021**
- ▶ Output 8 – Brief report on two pilot trainings including recommendations for further improvements, to be delivered by **22 December 2021**

5. Duties and responsibilities of consultants:

International consultant:

The international consultant will lead the work and provide the technical expertise needed to successfully achieve the objectives of this consultancy. He/She will guide the national consultant team and provide technical oversight as needed. He/she will work with the national consultant team to collaborate as needed with the Ministry of Labour and Social Protection, the tripartite working group and other relevant stakeholders. Tasks he/she is responsible for:

- ▶ Prepare a methodological note in collaboration with the national consultant team (3 days)
- ▶ Conduct meetings and interviews as required
- ▶ Elaborate of a matrix of outlines of all the regulations to be developed
- ▶ Provide technical support and guidance on a continuous basis to the national consultant team during the assignment
- ▶ Provide technical review of the draft documents developed by the national consultant team
- ▶ Draft the following documents in line with agreed outline:
 - Code of conduct/ethics for mediators;
 - Code of conduct/ethics for arbiters.
- ▶ Participate in discussions with the tripartite working group as required
- ▶ Address relevant comments from the tripartite working group, and prepare final draft documents
- ▶ Design the training programme including modules in collaboration with the national consultant team
- ▶ Provide guidance to the national consultant team in organizing pilot trainings; and deliver sessions.

Given the ongoing pandemic situation and the ban on non-critical travel by the ILO, the consultation will be conducted remotely.

National consultant team:

The national consultant team will work under the technical guidance and leadership of the international consultant. The tasks the national consultant team is responsible for include:

- ▶ Support the international consultant in the process of elaboration of the methodological note and the matrix of outlines of all the regulations to be developed;
- ▶ Conduct a desk review to identify, under the supervision of the international consultant, the pertinent documents and information gaps for this consultancy;
- ▶ Collect required information including through interviews and focus group discussions;
- ▶ Prepare preliminary drafts of the following regulations in line with agreed outlines:

- Regulation of the Tripartite Labour Rights Dispute Settlement Committee at soum and district level;
 - Regulation of the Labour Rights Dispute Settlement Commission;
 - Regulation of Labour interest dispute resolution through mediation;
 - Regulation of Labour arbitration;
- ▶ Support the international consultant in the process of elaboration and finalization of the draft regulations, and provide comments and written inputs as required;
 - ▶ Organize relevant meetings and interviews required by the international consultant;
 - ▶ Support technical exchanges between the international consultant, the Ministry, the tripartite working group and national stakeholders;
 - ▶ Provide interpretation and translation of documents as required;
 - ▶ Support the international consultant in the process of designing the training programme and modules;
 - ▶ Develop training materials under the guidance and supervision of the international consultant;
 - ▶ Organize pilot trainings in collaboration with the Ministry of Labour and Social Protection and the international consultant, help facilitate and deliver sessions;
 - ▶ Ensure the quality and accuracy of the draft and final documents, in the Mongolian language, including regulations and training materials.

The national consultant team will use the most appropriate ways of organising meetings, consultation and training strictly following practices in compliance with the COVID-19 related rules and regulations of the government or local authorities.

6. Time frame and estimated number of working days

The assignment is expected to be undertaken for September- December 2021.

No of work days: International consultant- up to 60 working days;
National consultant/national consultant team –up to 60 working days.

7. Required skills/ experiences

Profile of the international expert consultant:

- ▶ Extensive demonstrated expertise on industrial relations and dispute resolution;
- ▶ Proven experiences in developing public policies and regulatory documents in the relevant field
- ▶ Proven experiences in designing and delivering training programmes in the relevant field
- ▶ Excellent knowledge on ILO standards
- ▶ Ability to execute complex tasks in tight deadlines
- ▶ Knowledge and previous experience in Mongolian labour law, industrial relations and dispute resolution systems would be an advantage
- ▶ Excellent oral and written command of English
- ▶ Advanced computer skills including meeting platforms

Profile of experts of the national consultant team:

The national consultant team/firm (to be composed of 2-3 persons to share the above described tasks and responsibilities) must have the following expertise, qualifications and competencies:

- ▶ Extensive knowledge of the labour dispute settlement procedures, mechanisms, and experience/practice in Mongolia
- ▶ Demonstrated experiences in developing legal or regulatory documents
- ▶ Experience in designing training materials in the relevant field and delivering training sessions
- ▶ Excellent oral and written command of English and Mongolian
- ▶ Good communication skills and teamworking
- ▶ Capacity to work in a multi-cultural and multi-stakeholder environment
- ▶ Ability to execute tasks in tight deadlines
- ▶ Advanced computer skills including meeting platforms

8. 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), 15 September 2021, Wednesday. Questions on this call and the application shall be electronically delivered to ulaanbaatar@ilo.org.