

CONSOLIDATED COMMENTS ON THE DRAFT DECREE DETAILING THE IMPLEMENTATION OF THE LABOUR CODE ON LABOUR DISPUTE SETTLEMENT

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Vietnam Business Forum

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No.	Reference	Contributor's name	Description	Proposals, recommendations
1	Article 5.1.(d). Dismissal of labour conciliator <i>d) Has 02 consecutive years of being rated as <u>having a poor performance</u> for 2 consecutive years</i>	EuroCham	Article 5.1(d) of the Draft regulates that a labour conciliator shall be dismissed if he/she is rated as having a “ <i>poor performance</i> ” for 2 consecutive years. However, the Draft has not regulated specific criteria to evaluate whether a labour conciliator completes his/her tasks or not.	Suggest supplementing the Draft (or the Circular detailing the implementation of the Decree) with specific criteria to evaluate the performance of labour conciliators.
2	Article 6.1. Competence, order and procedures for appointing labour conciliators <i>1. The appointment of a conciliator performing reconciliation tasks under the management of any level shall be performed by such level.</i>	EuroCham	Labour conciliators are managed at the provincial level (by DOLISAs) or at district-level (by DILISAs). It is unclear as to whether a request for mediation must be submitted to the labour authority at an appropriate level, or the parties can request at either DOLISAs or DILISAs, regardless of the level of the authority.	If there is no difference between district-level conciliators and provincial conciliators, the draft Decree should regulate that only DILISAs will be the point of contact of requests for mediation, to simplify the procedures. If a request is sent to DOLISAs, DOLISAs must advise relevant parties to submit the request at DILISAs instead. We suggest amending Article 6.1. to the effect that “ <i>The Division of Labour, Invalids and Social Affairs at district level is responsible for appointing a conciliator performing reconciliation tasks</i> ”

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3	Article 6.3. Competence, order and procedures for appointing labour conciliators ... <i>Subject to the nature of the case, the Department of Labour - Invalids and Social Affairs or the Division of Labour - Invalids and Social Affairs shall appoint one or several labour conciliators to jointly settle the case...</i>	EuroCham	Article 6.3 of the Draft regulates that “ <i>subject to the nature of the case, the Department of Labour - Invalids and Social Affairs or the Division of Labour - Invalids and Social Affairs shall appoint one or several labour conciliators to jointly settle the case</i> ”. However, the Draft has not regulated any coordination mechanism among the conciliators in case more than one conciliator is appointed. This may lead to conflicts and inconsistencies among the conciliators in their approach and during the settlement process.	Suggest supplementing the Draft (or the Circular detailing the implementation of the Draft) with a coordination mechanism among the conciliators. For example, if there are many conciliators to be appointed, the Department of Labour - Invalids and Social Affairs or the Division of Labour - Invalids and Social Affairs should nominate one conciliator to be the conciliator-in-charge; in case of any conflict among the conciliators, the conciliator-in-charge shall make final decisions.
		EuroCham	<ul style="list-style-type: none"> The draft Decree currently provides that the Department of Labour, Invalids and Social Affairs (“DOLISA”) and the Division of Labour, Invalids and Social Affairs at district level (“DILISA”) have the authority to appoint a labour conciliator to handle a mediation case. However, given that information of labour conciliators is public for employees and employers to know and contact when needed (according to Article 4.4 of the draft Decree), the disputing parties should have the right to choose their labour conciliator. 	Propose allowing the disputing parties to select their labour conciliator. If the parties do not request for a specific conciliator or cannot agree to select a conciliator, DILISAs shall appoint a labour conciliator. We suggest supplementing Article 6 in the effect that “ <i>The parties are allowed to choose their labour conciliator. If the parties do not request for a specific conciliator or cannot agree to select a conciliator, the Division of Labour, Invalids and Social Affairs shall appoint a labour conciliator</i> ”

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			This will simplify procedures for appointing a labour conciliator, and speed up the mediation process accordingly.	
4	Article 9.2. Standards and conditions for labour arbitrators 2. <i>Having university degree or higher, <u>is a knowledgeable person in legal fields</u> and having at least 3 years working in the field related to labor relations.</i>	EuroCham	Article 9.2 of the Draft regulates that a labour arbitrators shall be “ <i>a knowledgeable person in legal fields</i> ”. This regulation is subjective and is difficult to be assessed in practice.	Suggest supplementing this Draft (or the Circular detailing the implementation of the Draft) to clarify how a person could be evaluated as “ <i>a knowledgeable person in legal fields</i> ” (e.g., having law degrees, professional law certificates).
5	Article 9.5. Standards and conditions for labour arbitrators 5. <i>People who are not judges, prosecutors, investigators, executors and civil servants of the People's Courts, the People's Procuracies, investigation authorities, and enforcement authorities.</i>	EuroCham	Article 9.5 also regulates that a labour arbitrator shall not be “ <i>judges, prosecutors, investigators, executors and civil servants of the People's Courts, the People's Procuracies, investigation authorities, and enforcement authorities</i> ”. However, the Draft has not verified whether the persons who no longer hold the above positions are eligible to become labour arbitrators.	Suggest amending Article 9.5 to the effect that “ <i>People who do not <u>hold the positions of judges, prosecutors, investigators, executors and civil servants of the People's Courts, the People's Procuracies, investigation authorities, and enforcement authorities.</u></i> ”
6	Article 10. Appointing labour arbitrators	EuroCham	With respect to the responsibility of employers' representative organizations in a province to nominate labour arbitrators to the Labour	Propose supplementing regulations on employers' representative organisations in a province and regulations on selecting arbitrators to nominate to the Labour Arbitration Council.

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	1. <i>Based on the number of labour arbitrators of the Labour Arbitration Council prescribed in Article 185.2 of the Labour Code and the standards and conditions of a labour arbitrator prescribed in Article 9 this Decree, the Department of Labour, Invalids and Social Affairs, the provincial Confederation of Labour, employers' representative organizations in the province send the nomination dossiers to the Department of Labour, Invalids and Social Affairs</i>		Arbitration Council, how these organizations to coordinate to nominate at least 5 arbitrators?	<p>The draft Decree should include the detailed regulations on:</p> <p>(i) The way the lists of arbitrators to nominate to the Labour Arbitration Council are passed by employers' representative organisations in a province; and</p> <p>(ii) The solutions for situations when there is no employer's representative organisation in a province, guidance how to nominate arbitrators who must be selected by employers' representative organisations</p>
			<p>Nominating labour arbitrators is under a tripartite nomination mechanism, including representatives of state authority, representatives of employers and representatives of employees. The provincial representative organization of employees herein is designated as the provincial Confederation of Labour. We note that under Article 3.3 of the Labour Code 2019, employees' representative organizations include both trade unions and employees' organizations at enterprises.</p> <p>Therefore, the provincial representative organization of employees for the purpose of nominating arbitrators must include both</p>	<p>The provincial representative organization of employees for the purpose of nominating arbitrators must include both representatives of trade unions and representatives of employees' organizations at enterprises. This is to comply with the principles of the Convention on Freedom of Association, which Vietnam pledges to ratify in the EU-VN Free Trade Agreement.</p> <p>We suggest amending the Article 10.1 as “<i>Based on the number of labour arbitrators of the Labour Arbitration Council prescribed in Article 185.2 of the Labour Code and the standards and conditions of a labour arbitrator prescribed in Article 9 this Decree, the Department of Labour, Invalids and</i></p>

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			representatives of trade unions and representatives of employees' organizations at enterprises.	<i>Social Affairs, the provincial Confederation of Labour, trade unions, employees' organizations at enterprises, employers' representative organizations in the province send the nomination dossiers to the Department of Labour, Invalids and Social Affairs.</i> ”
7	Article 9, Article 10 and Article 12	EuroCham	The Draft mentions the “ <i>provincial representative organization of employer</i> ” and its roles during the appointment of labour arbitrators. However, the Draft has not specified which organization that is, established and managed by whom.	Suggest clarifying which “ <i>provincial representative organization of employer</i> ” is in the Draft or in other legislative documents.
8	Article 13.4.(b). Setting up a Labour Arbitration Committee ... <i>- Upon receiving the summons, the disputing parties must give feedback to the Labor Arbitration Committee about the participation in the meeting. If one of the disputing parties cannot attend the meeting at the time and place as stated in the summons due to a justifiable</i>	EuroCham	<ul style="list-style-type: none"> • If one of the disputing parties cannot attend the meeting due to a justifiable reason, they can request to change the time of the meeting. However, the draft Decree does not stipulate a time limit for requesting such change. • The Labour Arbitration Committee has the right to decide the time of the rescheduled meeting and notify the parties. However, the draft does not require an advance notice period. • The draft Decree regulates that the minutes of the dispute resolution meeting must be signed by each arbitrator and the disputing 	<ul style="list-style-type: none"> • Propose adding time limit for requesting the Labour Arbitration Committee to re-schedule the meeting after the parties receive summons from the Labour Arbitration Committee. We suggest supplementing Article 13.4.(b) as follows: “<i>If one of the disputing parties cannot attend the meeting at the time and place as stated in the summons due to a justifiable reason, the party shall send a request in writing to the Labour Arbitration Committee <u>at least 3 working days before the meeting date</u>”.</i>” • Propose clarifying whether any notice period applies when the Labour Arbitration

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	<p><i>reason, the party shall send a request in writing to the Labour Arbitration Committee. The Labour Arbitration Committee has the authority to make the final decision to postpone meeting time and Summons to the rescheduled meeting shall be sent to the parties.</i></p> <p><i>- At the labour dispute resolution meeting, the participation of therepresentative of the parties to the dispute or an authorized person as prescribed is required. In case one of the parties is absent, even if there is a request to postpone the meeting time but it is not accepted, the Labor Arbitration Board will conduct the meeting. In case one of the parties is absent, even if there is a request to postpone the meeting time but it is not accepted, the Labour Arbitration Committee will conduct the meeting.</i></p>		<p>parties attending the meeting. However, if only one party attends the meeting, it is unclear as to whether the signature of the other party is required or not.</p>	<p>Committee decides the time of the rescheduled meeting. We suggest supplementing Article 13.4.(b) as follows: <i>"Summons to the rescheduled meeting shall be sent to the parties at least 3 working days before the meeting date."</i></p> <p>Propose clarifying that the minutes of the labour dispute resolution meeting is fully effective even if one of the parties is absent from the meeting and does not sign the minutes by supplementing Article 13.4.(b). in the effect that <i>"If one of the disputing parties does not attend the meeting, the meeting minutes remains fully effective without the signature of the party not attending the meeting"</i>.</p>

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	- During the meeting, the Labour Arbitration Committee must clearly state the contents proposed by the parties, listen to the parties present in detail on the contents of the case and make a minutes with the signatures of each arbitrator and the disputing parties participating in the meeting.			
9	Article 17	Colin Blackwell	It would be useful to say how companies can appeal to the government to stop strikes.	The proposed legislation is clear about what happens once the process has started, but companies would like to know who to contact when a potential strike happens/ during an active strike.
10	Article 18	Colin Blackwell	When the government is considering stopping a strike, how can the company tell the government their facts and ideas?	We request a mechanism communicated for companies about how they can communicate with who in the government, plus some reassurance that their views will be considered.
11	General comments	Colin Blackwell	A more general concern is the rights of a union manager or labor representative to call strikes by themselves - this could lead to	The majority of workers when polled (preferably anonymously) should agree to a strike before their representative starts the process of the strike. This process should be

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			conflict if the workers do not support the strike.	fair and transparent with the defined process within the law, similar to the other described processes.
12	General comments	EuroCham	It is unclear as to whether the court can accept to resolve the labour dispute during the period of labour dispute settlement by arbitrators.	The draft Decree should clarify whether the court can accept to resolve the labour dispute during the period of labour dispute settlement by arbitrators.
13	General comments	EuroCham	There are not specific regulations on the enforcement of a labour arbitration award.	The draft Decree should specify the mechanism for enforcement of a labour arbitration award. Is the enforcement of a labour arbitration award similar to the enforcement of a court judgement? Propose stipulating that a labour arbitration award has the same value as a valid court judgment.
14	General comments	EuroCham	There are not specific regulations on procedures by which the parties have the right to sue in court and the cases where the parties are allowed to sue in court as per the Law on Commercial Arbitration.	The draft Decree should specify procedures by which the parties have the right to sue in court and the cases where the parties are allowed to sue in court as per the Law on Commercial Arbitration.