



International Labour Organization (ILO)
INCLUSIVE GROWTH, SOCIAL PROTECTION AND JOBS (VNM/16/54/IRL)

TERMS OF REFERENCE

INTERNATIONAL CONSULTANT TO REVIEW THE SOCIAL PROTECTION LEGAL FRAMEWORK IN VIET NAM

I. Background

Viet Nam has recently embarked on reforms in the social insurance and social assistance areas. The term “social protection” was first officially introduced in the Communist Party’s documents in 2001. It has since evolved over time and now encompasses active labour market policies, social assistance (social transfers, social work and emergency relief), social insurance and basic social services, under the responsibility of the Ministry of Labour, Invalids and Social Affairs (MOLISA). The Social Insurance Law, passed in June 2006 and amended in 2014, covers public and private employees in the event of disability, sickness, maternity, work injury, old-age and survivors on a compulsory basis and old-age and survivorship on a voluntary basis for those not engaged in a formal contractual relationship with an employer.

Social assistance schemes cover a small portion of the population (about 3 per cent in 2013) through nine categorical benefits primarily for vulnerable groups (orphans, single parents, victims of abuse), people with disabilities and a social pension for those aged 80 and over (together with a very narrowly poverty-targeted social pension for those aged 60-79). Decree No 136/2013/ND-CP is the legal framework that regulates the operation of regular social assistance, while MOLISA envisions the need to develop a Social Assistance Law to regulate the policy and administration of the social assistance work. In 2015 the Ministry of Labour, Invalids and Social Affairs also approved a Master Plan on Social Assistance, which provides a vision for the non-contributory system under the leadership of the it’s Department of Social Assistance (DSA).

On the other hand, the Department of Social Insurance (SID) developed a Master Plan on Social Insurance (MPSIR) and in May 2018 the Party promulgated Resolution 28-NQ/TW to guide future social insurance reforms, guided by a commitment to achieve universal coverage through multi-tiered systems. Through this resolution Viet Nam aligns itself with the key international normative references such as the ILO Social Protection Floors Recommendation (No. 102), Social Security (Minimum Standards) Convention (No. 102) and the UN 2030 Sustainable Development Agenda.

As a follow-up on Resolution 28, the current policy debate is now exploring the feasibility of better articulating the social assistance and contributory pensions with the clear goal of achieving universal coverage by 2030. Past operations show that impediments to extending social protection coverage in Viet Nam are complex and inter-related. Adjustments in the policy and legal framework, institutional capacity and governance are needed to translate the recent developments into an effective increase in coverage and strengthened system.

In particular, the MPSIR has identified legal reform a central task of the government “amending and supplementing the Social Insurance Law towards the implementation of universal social insurance; designing multi-tiered social insurance system; ensuring the principles of equity, equality, sharing and sustainability to create a foundation for a commonly legal document on social security including contributory and non-contributory tiers”.

The SID has scheduled to submit the proposal to revise the SI Law to the National Assembly by 2021. A Drafting Committee, including members from 28 ministries and agencies will be created and chaired by the Director General of SID. Between January 2019 and December 2020, the Committee will prepare the following three dossiers:

- i. Assessment of the law’s implementation between 2016 and 2018
- ii. Impact assessment, including a gender analysis
- iii. Proposed revised law

These dossiers will be reviewed and validated by a Steering Committee made up of the heads of the agencies sitting in the Drafting Committee.

Meanwhile, the action plan of the MPSAR also aims to develop a new Law on Social Assistance that ensures that “the social security system is reconceptualised to become a multi-tiered system comprising both social insurance and social assistance transfers”. The rationale for this new law should be well established and submitted to the Minister and then to the Office of the Prime Minister, tentatively in 2019, before it can be submitted to the National Assembly. Yet SAD has not yet developed a detailed schedule for this law. Once the proposal for the new law is approved, a concrete schedule will be developed to submit the full draft law as per the 2008 Law on the Promulgation of Legal Documents.¹

Making a Social Protection Floor (SPF) a reality for all residents of Viet Nam requires rethinking the existing separation of social insurance (for the formal sector) and social assistance (for a small number of the poorest and most vulnerable), which has left most in the informal sector and many among the poor and near-poor without adequate protection. The social protection system has reached a certain level of maturity where linkages or integration between these pillars are necessary to achieve further extension of coverage. As part of this effort, ILO is supporting the Government of Viet Nam in developing policy options for achieving universal access to benefits including with regards to old age, family, maternity and sickness coverage. Options for establishing an integrated system of universal coverage through a multi-tiered system of social insurance contributions and a tax-funded social pension are currently being discussed.

The Government of Viet Nam has gradually built and strengthened its **social health protection** mechanisms over the three past decades. Coverage now culminates at 87% of the population, the highest level achieved so far. The financing of the scheme rely on a mix contributory and non-contributory system. Achievement of such level of coverage in a few years only was made possible through a policy of exemptions and subsidies of contributions for vulnerable, near poor and meritorious population.

Initially governed by decrees, the provision of national health insurance is now guided by Laws, since the enactment of the first Health Insurance Law No 25/2008/QH12 in 2008. The 2008 Health Insurance Law is the first code on Health Insurance, building an essential foundation for the operations of the health sector in order to protect, care and improve the people’s health through health insurance

¹ http://www.moj.gov.vn/vbpq/en/lists/vn%20bn%20php%20lut/view_detail.aspx?itemid=10500

mechanism. In 2014, the National Assembly enacted the Addendum of Health Insurance Law as a mean to address a number of provisions which were deem not relevant to the implementation of the health insurance scheme. Today, the implementation of the current Law on Health Insurance has proved that many constraints towards Universal Health Coverage remain within the Law and prevent the effective management of the HI system.

Therefore, the Ministry of Health has been recently assigned to review and propose a fundamental amendment of the HI law for the National Assembly to consider and adopt. The Ministry of Health is actively working on the preparation of the necessary proposal package to be submitted to the Government to allow a substantial reform of the law. Once the proposal is endorsed by the Government, the revised law will be submitted to the National Assembly, which is tentatively scheduled for March 2020.

II. Objective of the consultancy

The general objective of the consultancy is to do a legal review in order to support the Government of Vietnam to align its legislative framework with the policy reform agenda toward universal social security for all, as enshrined in the MPSIR, MPSAR and SHI Law. This review will serve as discussion paper for SID and SAD in preparation for the development of the respective laws and regulations. The specific objective is to examine all the laws and regulations related to social insurance, social assistance and health protection under the perspective of a multi-tiered social protection system and international labour standards.

The legal review should include:

1. A mapping of the existing national social security legal framework, including laws, decrees, circulars and other documents in the areas of social insurance, social assistance and social health insurance.
2. A review of what areas are well regulated, what areas have overlaps or conflicts among the two systems, what gaps exist in terms of system design and coordination towards an integrated legal system for the multi-tiered system where universal coverage is achieved through a combination of contributory and non-contributory benefits.

III. Specific tasks

For this work, the ILO will contract both an international and two national consultants who will work together. The present set of TORs refer to the international consultant only.

The tasks listed below are comprehensive, specific tasks assigned to the international consultant only are listed in Section IV 'Deliverables and payments', below².

- **Task 1:** A mapping of the social protection legal framework including laws, decrees, circulars and other documents in the areas of social insurance and social assistance, including health protection. The mapping will be accompanied by interviews and consultations of relevant institutions and stakeholders notably SID, SAD, Legal Department of MOLISA, HID, Legal

² Regarding social health insurance, in preparation for the revised law dossier package that will be submitted to the National Assembly, HID with the ILO support will assign an expert team to conduct the preliminary impact assessment of the revised law proposal. This legal review team is expected to coordinate closely with HID's expert team to avoid redundancy or overlaps.

Department of MOH, VSS SI and HI Implementation, VSS SI and HI Implementation Departments, Ministry of Justice, National Assembly, Ministry of Finance, representatives of relevant employers, representatives of relevant workers, representatives of civil society, 3-5 researchers, ILO staff, UNICEF, UNDP, UNFPA, etc.

- **Task 2:** Scoping mission (3-5 days) by the international consultant with a view to being acquainted with the major findings of the mapping by the local consultant and hold consultations with the most relevant national counterparts.
- **Task 3:** An Assessment of the national legal framework and practice in light of international social security standards and best practices which analyzes the social protection legal framework and points out if there are any overlaps, contradictions or gaps in the current social protection legal framework particular with the objective of establishing a comprehensive, coordinated, effective and adequate social protection legal framework. The assessment should also point out to any difficulties concerning the application and interpretation of the social protection legal framework. Key reference for comparisons should be made to VN Resolution No 28 and the national MPSAR, MPSIR, Health Insurance Law, and the international social security standards including ILO’s Social Protection Floors Recommendation, 2012 (No. 202) the Social Security (Minimum Standards) Convention, 1952 (No. 102). Recommendations should also be guided by outcomes of Task 1 and 2. The report should include an annex which contains a comparative matrix between the national legal framework and C102, determining for which social security branches this instrument could be ratified by Vietnam.
- **Task 4:** Preliminary report setting out: A) recommendations to the Government to bring the social protection legal framework in alignment with international social security standards and best practices and B) recommendations and proposals to the government to guide the reform of the social protection legal framework and, in particular, to determine how best to move from a fragmented approach into a unified and coordinated system that progressively ensures universal social protection for all. Tasks 1-3 should serve as inputs as well as other feasibility assessments undertaken notably by the ILO.
- **Task 5:** mission to participate in a consultative workshop and present findings as well as seek feedback (including preparation of powerpoints and the summary of feedback should be part of the consolidated report mentioned as Task 6).
- **Task 6:** A consolidated report which incorporates all the above-mentioned tasks and conclusions incorporating a road map aligned with the Government legal reform agenda and culminates with the tentative introduction in 2021 of new draft legislation on a comprehensive social protection system.

IV. Deliverables and payments

The fees for this service contract will be paid according to the following schedule, upon submission of the corresponding deliverables to the satisfaction of the ILO.

Deliverable	Deadline	Working days
Deliverable 1: as per Task 2 complete a scoping mission.	March 4	3 days
Deliverable 2: as per Task 3, a report containing a Legal Assessment (drafted in consultation with the national consultants and the ILO legal officers)	March 29	10 days

Deliverable 3: as per Task 4, draft Report setting out recommendations for the Government (drafted in consultation with national consultant and the ILO legal officers)		10 days
Deliverable 4: as per Task 5, mission for consultation workshop.	April 15	3 days
Deliverable 5: as per Task 6, submit the Final report	May 31	5 days
TOTAL PAYMENT		

V. Roles and responsibilities

The consultant is responsible for the coordination and final supply of the deliverables listed above. The ILO will provide overall coordination among the different stakeholders, facilitating the consultant's contact with Government officials. The ILO Country office for Viet Nam and the Social Protection Department in Geneva will provide technical backstopping to all tasks.

Government partners (SID, SAD, HID, VSS) and social partners will provide feedback. They will additionally facilitate data and contacts as appropriate. Support from SID, SAD and HID will be particularly important in this respect.

VI. Expertise and qualifications of the consultant

As an international jurist on social protection, the consultant must:

- Be a reputable jurist with a minimum of 10 years of experience in producing high quality legal analytical research and reports;
- Knowledge of social security systems in general, including as regards contributory and non-contributory systems and relevant social and economic policies;
- Experience working with international social security standards;
- Advanced academic degree in the field of law or another relevant field;
- At least 5 years of experience working in international contexts; experience in Asia and South East Asia countries would be an advantage;
- Excellent writing skills in English

VII. Applications

Interested consultants can send their letter of interest and their CVs to dangthihanh@ilo.org and thao@ilo.org by COB 9 December 2018.