ENHANCING THE QUALITY OF COLLECTIVE BARGAINING - A VITAL REQUIREMENT FOR IMPROVING WORKERS’ LIFE IN VIETNAM IN THE CONTEXT OF A HIGHLY COMPETITIVE ECONOMY AND GLOBALIZATION

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ABSTRACT:

Collective bargaining has traditionally been regarded as the essential means of setting wages and working conditions, but it has not developed well in Vietnam. As bargaining quality remains poor, most collective agreements so far signed have been of limited value, since they have been formalistic, containing nothing more than the minimum standards provided for by state regulation. The wage market has also become worse because of high inflation and because the State’s minimum wage always lags behind. In addition to low pay, poor working conditions are also widespread. This situation affects workers’ lives adversely and hinders foreign trade transactions. It also creates numerous difficulties for economic development.

The newly-amended Labor Code of 2012 was expected to address many of the problems inherent in the labor legislation and to give an effective boost to the development of collective bargaining. Were the amendments sufficiently well-designed to achieve this end? This article will look at the development of collective bargaining legislation in Vietnam, its achievements and the remaining restrictions in the new Labor Code. It will also put forward recommendations on measures to improve the current collective bargaining situation in Vietnam.

1. The development of collective bargaining legislation and collective bargaining in Vietnam

Collective bargaining came into existence in Vietnam relatively late, after the launch of a market economy in 1986. The Vietnamese Trade Union, as a party to collective bargaining, was formed in the 1920s, but for historical reasons, did not perform many of the functions of a conventional trade union, including collective bargaining, until the late 1980s. Despite this, the legal documents dealing with labor matters and collective bargaining were enacted in the 1940s soon after the establishment of the new Government of the Democratic Republic of Vietnam.¹

The first body of law addressing collective bargaining is Ordinance No 29/SL (1947), which was signed by President Ho Chi Minh. The Ordinance introduced a set of rules that

¹ The Democratic Republic of Vietnam was proclaimed in Hanoi on September 2, 1945.
regulated the labor relations of *a genuine market economy*, provided for various impressively progressive and practical regulations, the like of which have rarely been seen in any subsequent legal documents. Unfortunately, it could never be implemented in the context of a prolonged war and political and socio-economic unrest, and no collective bargaining has ever been conducted during this period.\(^2\)

In 1954, the Geneva Conference ended the war in the North of Vietnam; the country was temporarily partitioned into 2 states. In the North, reconstruction was started while in the South, war continued. In this new context, the North played the role of the “rear”, giving support to the South Vietnamese fighting against the army of the Republic of Vietnam, the new government in the South\(^3\) and, later, American troops. In order to mobilize financial and other material resources for supporting the South, a centrally-planned economy was established. Almost all undertakings within the territory were under the direct governance of the state. Private businesses were excluded from the economy.\(^4\)

In order to govern and co-ordinate individual employees' activities at work so as to fulfill production plans, collective contracts were one of the various means which were resorted to. In 1957, a Trade Union Law was passed. The law stated that "...trade unions, on behalf of the labor force of the company ... may conclude collective contracts with the head of the company."\(^5\) Also on this basis, in 1963 Decree No 172 on collective contracts which applied to employees in State enterprises was issued.

The Decree defined the principles governing collective contracts as voluntariness and socialist co-operation between the director and the trade union of the enterprise. Collective contracts had to be established based on the actual conditions and circumstances of the enterprise, with the aim of fulfilling production plans and obtaining increased quantities.\(^6\) Collective contracts covered production targets; occupational safety and health; company responsibility for supporting employees in improving their political awareness, academic knowledge and occupational skills.\(^7\)

In the early stages of a centrally planned economy, the collective contract mechanism did contribute to promote co-operation between labor and management in state-owned enterprises. However, it suffered a relatively serious limitation: they were politicized and could not serve as a tool for resolving differences and balancing the interests of the involved parties. Due to this shortcoming, the conclusion and implementation of collective contracts soon became formalistic.\(^8\) Collective contracts were signed for form's sake only and had very little meaning.

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\(^2\) Vietnamese labor law 2009, Hanoi Law university student book, at Chapter VIII: Collective agreements, Section 2.1 Collective agreements of a centrally planned economy and the necessity of a change.

\(^3\) After the country was politically divided in 1954, the two regions adopted different economic ideologies: communism in the North and capitalism in the South.

\(^4\) After the war ended in the North, during the first three years of economic reconstruction 1955-1957, 3.065 private enterprises were established. From 1960-1987, private enterprises were excluded from the economy. All of them were gradually nationalized and transformed into state-owned enterprises. See Cao Ba Khoat, *Uncle Ho's lesson: Treatment to entrepreneurs* (Research Centre for Entrepreneurship Development, 2004).

\(^5\) Article 6 of the Trade Union Law 1957.

\(^6\) See Article 2 of the Temporary Regulation on Conclusion of Collective contracts in State-owned Enterprises.

\(^7\) *Ibid.*, Article 2.

\(^8\) Diep Thanh Nguyen, *Basic knowledge on labor law*, student book (Can Tho University, 2005), at 48 [Diep].
for enterprises\(^9\). Any movement towards the development of collective bargaining had been declining since at least 1978 and soon fell into total oblivion\(^10\).

In the South, interestingly, under the new economic mechanism, collective bargaining was conducted fairly actively, including within the petroleum industry (1968), rubber industry (1960) and electrical industry (1971)\(^11\).

After the reunification of the nation in 1975, the planned economy model was maintained until 1986. The government introduced several plans for socio-economic development, but the economy remained stagnant\(^12\). Realizing that socio-economic development policies, which had functioned effectively in the war period, were no longer fully appropriate to apply in peacetime, Vietnam launched a political and economic renewal in 1986, shifting from a centralized economy to a "socialist-oriented market" one\(^13\).

After the 1986 proclamation of economic reform, labor relations started to change their character. In this new context, where enterprises of all types have to compete and where there is a constant fluctuation of demand for and supply of labor, differences in position (and interests) between labor and management have become manifest; the relationship between "master" and "servant" is now more conflictive, complicated and difficult to manage. Decree No 18 on collective bargaining, among other governmental legal documents, was introduced in 1992 in order to meet the demand of the newly launched market economy. The scope of application of the Decree was not limited to the public sector but also included the private sector\(^14\). The Trade union Law 1990, which was enacted during the same period, also recognized the trade union's right to collective bargaining\(^15\).

Collective bargaining, under the new regulation, was seen as a means of balancing the rights, interests and obligations of both parties in the labor relations. The issues covered by collective bargaining were also extended, including wages, employment and employment security, working time, social insurance, working conditions, occupational safety and health\(^16\).

After the introduction of Decree No 18, collective bargaining was increasingly organized at plant level. In 1993, bargaining was conducted in 53 enterprises in Ho Chi Minh City and 17 enterprises in Ha Noi\(^17\). In 1994, about 250 company collective agreements were concluded in the country\(^18\).

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\(^9\) The fact that there was no real collective bargaining in this period can be explained by the problem of ownership. In a state-owned enterprise, the employer was not the real owner of the enterprise estate. This is also the reason why state-owned enterprises, in many instances, function ineffectively.

\(^10\) Diep, supra note 8.

\(^11\) Ibid.

\(^12\) During this period, two five-year development plans were introduced: the Second Five-Year Plan (1976-1981) and the Third Five-Year Plan (1981-1985). They set very high goals for annual growth rates; however, the Plan's aims were not achieved. For further details, see Tuyet L. Cosslett & William R. Shaw, Vietnam country study: Chapter 3—The Economy (Washington, DC: Library of Congress Federal Research Division, 1987) at Section 3: The Economic Roles of the Party and the Government.


\(^14\) See Article 2 of the Regulation enclosed to the Decree.

\(^15\) See Article 10, section 2 of the Trade Union Law 1992.

\(^16\) See Article 7 of the Regulation.


\(^18\) Ibid.
Decree No 18 covered most subject matters of collective bargaining, but it remained sketchy and was soon replaced by the Labor Code 1994. Following the issuance of the Labor Code, a number of supplementary documents were enacted\(^{19}\).

The Labor Code 1994 was amended several times (in 2002, 2006 and 2007), and this involved some small changes to chapter V on collective agreement\(^{20}\). Despite introducing more concrete regulation, the Labor Code 1994 and Trade Union Law 1990 (together with the documents guiding the implementation of these two statutes) failed to improve the bargaining system. The fundamental conditions for a sound development of the collective bargaining were still lacking. The fatal shortcomings that remained were:

1) The workers’ right to form their representative bodies (trade unions) at their choice was not guaranteed\(^ {21}\).

Both the Labor Code and Trade Union Law restricted the workers’ rights to establish and joint trade union within the framework of Vietnam General Confederation of Labor (VGCL). Article 153 of the Labor Code and Article 16 of the Trade Union Law prescribed the upper trade unions’ responsibility for establishing trade union organizations at plant level. Decree 96/2006/ND-CP and VGCL Constitution 2008 repeated this\(^ {22}\). As a result, all new trade unions can only be created within VGCL’s structure. Outside it, they have no position to act as workers' representative agencies, and naturally they have no power to take part in collective bargaining even if they were established voluntarily by workers. As a result, no union multiplicity existed. In reality, only a small part of the workforce was organized. In the non-state sectors, enterprises with grassroots trade unions accounted for only 20%\(^ {23}\). Trade union membership has slightly increased in the recent years but remains very low in proportion to the overall workforce. There were only 7.5 million trade-union members in 2011\(^ {24}\), 7.7 million in 2012\(^ {25}\) and 8.0 million in 2013\(^ {26}\), within a work force of 51 million\(^ {27}\), 52.5 million\(^ {28}\) and 53 million\(^ {29}\), respectively. Due to this poor unionization, collective bargaining was largely abandoned in the labor market.

\(^{19}\) In the collective bargaining sector, we note Decree No 196/CP dated 31 December 1994 (detailing and guiding the implementation of a number of articles of the Labor Code on collective bargaining), Decree No 93/2002/ND-CP dated 11 November 2002 (amending some Articles in the Decree No 196/CP) and Decree No 113/ND-CP dated 16 April 2004 (providing administrative corrective measures and liabilities for labor law infringements, including breaches of collective bargaining. This document was just replaced by Decree No. 47/2010/ND-CP dated May 06, 2010).

\(^{20}\) Some adjustments have been made: the number of representatives of two sides for bargaining are not necessarily to be equal as before (Article 45), the day on which a collective bargaining comes into effect is the signatory day, if the two parties have not agreed to another day (Article 47), and a collective bargaining remains valid irrespective of whether it has been registered (Article 48).

\(^{21}\) In fact, the right to freedom of association (this included the right to form the trade union at workers’ will) is recognized by Constitution (Article 69 Constitution 1992), but these statutes disabled that right.

\(^{22}\) See Article 4 of Decree 96/2006/ND-CP and Article 16 VGCL Constitution.


\(^{24}\) According to the annual report of the VGCL 2011.


\(^{26}\) See online: Vietnam General Confederation of Labor


\(^{28}\) Ibid.
2) The law failed to provide an express solution for when a collective bargaining falls into a deadlock\(^ {30} \). This lack of regulation created a false impression that there was no connection between collective bargaining and the right to take industrial action. This is unusual. While it has been known worldwide that a bargaining deadlock can be released by a collective action (e.g. a strike), this function of industrial action has never been fully understood by Vietnamese workers. Because of this, strikes have not been properly. Subsequently, workers lacked such a supportive means for collective bargaining activity to be conducted soundly. This incorrect impression was unfortunately exaggerated by a regulation mentioning the possibility to exert an industrial action to solve labor disputes in a totally different case where collective bargaining has been successfully conducted (!!!)\(^ {31} \). Regrettably, this regulation simultaneously created other problematic processes dealing with labor disputes over rights, incorporating industrial actions into a process where they play no role (!!!)\(^ {32} \).

In the Labour Code, there were articles (such as Articles 157 and 171) whose joint reading would support an interpretation that should the bargaining process reach a deadlock, a strike could be used\(^ {33} \). However, this interpretation remained too vague to be understood by unprofessional persons. As a consequence, over the last 27 years since the launch of the market economy, thousands of strikes have been conducted, but none of them has been used with the view of ending bargaining deadlock.

While those provisions encouraged a greater use of collective bargaining in Vietnam, only a small part of the market resorted to it. Furthermore, the collective agreements signed were of poor quality as they simply reproduced the statutory provisions and complied with the minimum standards laid down therein. This contributed to an expansion and normalization of low salaries and poor working conditions.\(^ {34} \)

The Labor Code 2012 was built in a context when the former labor legislation had proved defective and outdated, and failed to meet the requirements of a market that had become increasingly competitive. Various government websites turned into forums for public consultation and discussion on the proposed amendments. There is a great expectation that the new Labor Code, together with the new 2012 Trade Union Law, will be an important tool to improve working conditions.

Enacted on 18\(^ {\text{th}} \) June 2012 and coming into force on 1 May 2013, the new Labor Code was the result of considerable efforts to improve the former legislation by codifying the guidelines on the implementation of the former Labor Code (in the form of circulars, decrees, or official letters

\(^{29}\) Ibid.

\(^{30}\) Article 46 and 47 were about the collective bargaining process, but left out the case of bargaining deadlock.

\(^{31}\) Article 49 (Para 3) mentioned the possibility to exert a procedure of dispute settlement (this includes industrial actions) in case a collective agreement was alleged to be violated (a dispute over rights). This means the industrial action is used after a collective bargaining has been successfully conducted because only in this case has a collective agreement been signed.

\(^{32}\) In labor disputes over rights, dispute settlement bodies have adequate legal basis to solve the conflict—there is no need to use industrial actions to put pressure on the related employer.

\(^{33}\) Article 157 defined labor dispute over interests (bargaining deadlock) and Article 171 (3) offered the possibility to use a strike as a means to solve a collective dispute over interests in case all available dispute settlement options have been exhausted.

\(^{34}\) For further information, see VGCL (2009), Resolution No. 01/NQ-DCT. Reforming, improving quality of negotiation, conclusion and implementation of collective labour agreements, dated 18 June 2009 at p 3. See also VGCL (2010) Report No. 17/BC-TLD assessment of 19 years of implementation of the Trade Union Law, dated 9 March 2010 at p 10.
etc.), amending and supplementing some provisions of the 1994 Labor Code and introducing new provisions (e.g. on labor outsourcing, dialogues in the workplace, collective negotiation). The Trade Union Act 1990 was also amended by the 2012 Trade Union Act to align it with the new Labor Code.

2. Collective bargaining under the new Labor Code 2012, achievements and remaining problems

The new Labor Code contains more provisions with regard to collective bargaining—33 Articles were introduced, as compared to 15 Articles in the former Labor Code. These provisions cover the issues of social dialogue, collective bargaining, collective agreement and trade union.

- Articles 63 to 65 set out the purposes and forms of dialogue at the workplace, its object, and frequency.
- Articles 66 to 72 deal with purposes of collective bargaining, its principles\(^\text{35}\), the right to request collective bargaining\(^\text{36}\), the parties to collective bargaining\(^\text{37}\), the object of the bargaining\(^\text{38}\), and the procedure\(^\text{39}\).
- Collective agreements are covered by Articles 73 to 89. These deal with the definition of a collective agreement, the conditions under which a collective agreement can be signed, the date from which a collective agreement produces legal effects, duration of collective agreements, amendment of collective agreements, the causes of invalidity of collective agreements, the competent bodies that are in charge of declaring a collective agreement null and void, and corrective solutions following such declaration, etc.
- Articles 188 to 193 deal with trade union establishment, its role, prohibited acts relating to trade unions, employer’s responsibilities to trade unions etc.

**What are the achievements** of the new labor legislation on collective bargaining?

A new feature of the Labor Code 2012 is the recognition of sectorial collective agreements, which paves a way for greater development of sectorial collective bargaining. A sectorial collective agreement will, within its constituency, have precedence over companies’ collective agreements, work-rules or other regulation set within companies (those documents provide workers with poorer employment terms and conditions). As such, a collective agreement at sectorial level plays the role of a safety net for the workers’ wages and working conditions in the workplace.

The second achievement of the new Labor Code is a mechanism to end bargaining deadlocks\(^\text{40}\). From now on, the role of industrial actions is to resolve collective labor disputes.

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\(^{35}\) Article 67 provides that collective bargaining is to be conducted on the basis of goodwill, equality, cooperation, openness and transparency, periodicity and regularity.

\(^{36}\) Under Article 68, each party has the right to request collective bargaining.

\(^{37}\) Under Article 69, the manager of the company and the trade union representing the company’s employees are the parties to collective bargaining at company level. In case of sectorial collective bargaining, the parties are represented by their respective organizations.

\(^{38}\) Article 70 defines the subject matters for collective bargaining as wages, working conditions and any other matters which relate to the labor relations.

\(^{39}\) Articles 71 and 74 deal with meetings, the taking and keeping of minutes during the course of the bargaining process, the communication of draft collective agreement to workers in order to get their suggestions and approval, the occurrence of a deadlock and the signing of the collective agreement.
over interests, rather than collective labor disputes over rights, as was the case previously\textsuperscript{41}. The new legal regime better clarifies the role of industrial action as the means to support collective bargaining. It also simplifies the complex and problematic procedure of settlement of collective labor disputes over rights under the Labor Code 1994.

Finally, the new Labor Code 2012 provides a solution to improve working conditions in companies where there is no grassroots trade union. In this case, the related upper body of the trade union will directly undertake the tasks of a grassroots union in the companies concerned and this may include conducting collective bargaining on behalf of the companies' employees.

**What are the shortcomings** of the new legislation on collective bargaining?

Despite these achievements, the new Labor Code and Trade union Law fail to address fully some of the problems that existed under the old collective bargaining regime.

First, the right to form trade unions at workers' choice is not guaranteed. The new Labor Code has made some adjustment in the way a grassroots trade union can be created. Upper-level trade unions no longer have the exclusive right to create company trade unions and now have a supportive role only. For example, they have the right to encourage workers to join or to form a trade union within their company but the workers remain free to decide to do so or not\textsuperscript{42}. This procedural amendment seems to give workers more freedom, but in reality it makes no sense. The problem still exists because no new option for the workers has been introduced. A newly-established trade union can only be recognized and have position to act if it is part of the VGCL structure. And, as we have discussed, because the existing system of trade union is subject to various limitations, activities of the new union will unavoidably be constrained by all those factors.

Second, there remain problematic provisions that limit the self-reliance of the trade union, which is necessary in order for the trade union to act as an independent and powerful representative body of the workers. These provisions consist of those enabling deep intervention from the state and/or employers in the trade union organizational structure\textsuperscript{43}, those imposing a trade union levy on employers\textsuperscript{44}, and the regulation centralizing the ownership of all trade union assets under the VGCL\textsuperscript{45}. Under these regulations the trade union will continue its adhering to the state arrangement, state budget and the revenue from employers' contribution. This more or less weakens the linkage and interrelation between the trade union and the workers in the workplace and this is not a positive element to improve the trade union's motive to act for the workers.

Third, some of the basic rights and obligations of the trade union have not been settled properly, which partly causes the union to be weak. This includes the insufficient stipulation on

\textsuperscript{40}See Article 67 of the Labor Code 2012.
\textsuperscript{41}See Article 209 of the Labor Code 2012.
\textsuperscript{42}See Article 189 (2) of the Labor Code 2012.
\textsuperscript{43}Article 23 Trade Union Law 2012 provides that the trade union (VGCL) enjoys an organizational and personnel guarantee (by the State) to perform the functions, rights and responsibilities as prescribed by law.
\textsuperscript{44}A two per cent trade union contribution is imposed on an employer based on the employer's total payroll as used to determine social insurance contribution, regardless of whether the enterprise has grassroots trade union or not. See Article 26 Trade Union Law 2012.
\textsuperscript{45}The former Union Law vested the ownership of trade union assets in the individual company trade union. However, the New Union Law centralizes the ownership of all trade union assets under the VGCL. See Article 16 of Trade Union Law 1990 and Article 28, 29 of Trade Union Law 2012, respectively.
the right, obligation and responsibility to supervise labor law implementation and represent workers in the process of dispute settlement; the absence of economic incentive for the trade union to actively perform this task; the absence of liability imposed on the trade union for illegal strikes conducted by its members, etc.46

Fourth, there remains a lack of regulation allowing workers to use their typical weapon—a strike—on a larger scale, in order to support collective bargaining at the sectorial level.

3. Improving quality of collective bargaining in Vietnam

The existence of a sound collective bargaining is essential for building up a fair and dynamic labor market and developing a healthy economy. Nowadays, it is more widely recognized that mere economic success is not the only target of national development and cannot even be obtained in isolation while social aspects such as equality, fairness and a decent working life are ignored. In the context of globalization, ensuring decent working conditions and the fundamental rights of workers becomes a competitive value and has a strong impact on commercial activities between countries. The country will gain practical benefits from making its labor legislation internationally compatible. First, it will promote production capacity (by harmonizing labor relations and establishing a healthy labor market) and second, it will promote trade with foreign business partners (by meeting demands of international trade market regulation). From this standpoint, some solutions for improving the bargaining system could be put forward.

3. 1. Immediate corrective measures

3.1.1. Innovating the existing trade union

Why does the existing trade union need to be innovated?

The way the Vietnamese trade union works today is closely linked with a long history of the trade union’s role in the political system as the agency mobilizing and gathering the strength of the working class for the Vietnamese revolutionary movement.

In the planned economy, terms and conditions of employment were decided by the State. The trade union assisted in welfare matters and sometimes played a supervisory role, but never a bargaining one. After the innovation was launched, the trade union has still not been separated from the state. It continues to assume political tasks and actively care for community interests but its role in protecting workers’ rights remains passive and weak47. As a result, the international trade union community has not regarded it as a bona fide trade union48.

Obviously, it is no longer appropriate to fashion a union’s activities in such a way. The capitalist market economy with conflicting interests of the market parties demands more of the

46 See 3.1.1. below for details.
trade union. It should be now regarded as a business entity, relaxed from its political role and functioning under the rules governing market economy.

Specific solutions for improving the trade union well-being

- First, innovating trade union organizational structure.
  This is a most fundamental factor, but also a sensitive topic to discuss. The biggest challenge is that neither the Party-State nor the VGCL has a strong motive to change. However, union innovation is a pressing need. There has been increasing criticism of the union system and change is only in a matter of time. In order to help the existing trade union adapt to a new environment, the solution could be to cut down the staffing and state budget for the trade union and let it gradually integrate into the market as a self-financing institution. The procedure for union reform is more or less similar to those applied in privatizing state-owned business, or in transforming a public non-profit professional institution into a self-financing one. Once this budget is cut down, other sources of revenue for the trade union, such as from membership contribution, will develop (see below).

- Second, innovating trade union financial affairs.
  As the trade union provides more and better quality services, it has to bear a higher cost and handle more financial problems. To have a better financial power, the Vietnam trade union should enrich its fund in reasonable ways, and use the fund effectively.
  Membership fees, which are the key portion of the union’s income, have to be pegged at a level that would ensure that the union has the financial ability to fulfill its tasks. There are also some practical (and significant) ways to improve the economic situation of the trade union (as they have never been mentioned in the laws, I will refer to them in the Third solution below).
  Besides, the trade union fund must be used in a more pragmatic way. The current spending of the trade unions tends to provide minor, unimportant and miscellaneous welfare for workers. This needs to be adjusted to focus on the basic tasks of a genuine trade union. A trade union should also be pragmatic in its specific activities, to ensure that the targets of the union could be met at the smallest cost possible. In a typical situation, for example, a strike, the trade union should mobilize only a few key persons to go out in strike, but make it sufficient to freeze the company’s activities and cause the employer as much trouble as possible. This ensures no great cost suffered by the union. In this case, the union only has to cover income losses of a few employees, leaving the employer to pay for the remainder of the company’s workface. It is obvious that this is not only an economical solution for the trade union, but also a wise method to put greater pressure on the employer in order to get his concession in the bargaining.

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49 The Party-State does not wish to relax its control over the union, and the union officials may enjoy a comfortable existence continuing to work in a traditional way. For detailed discussions, see Clark & Pringle, *ibid* at 88.

50 For details, see Decision No 1375/QD-TLD of VGCL dated October 16, 2007 regarding the Regulation on the contents and levels of the collection and spending of primary organization fund; Decision No 212/QD-TLD of VGCL dated February 16, 2009 regarding the Regulation on the contents and levels of the collection and spending of primary organization fund in FDI enterprises.

51 This is a good lesson from the Swedish trade union. See Adlercreutz, A./Nyström, B., *Sweden, ELL* (2009) at para 582.

52 The trade union can make use of the current regulation of the Labor Code for the bargaining purpose. See Article 218 on the salary and other legal interests of the employee during the strike.
- Third, innovating the legal framework for the trade union to act.

Efforts to reform trade union organizational structure should go along with renewal of the content of their work. The existing regulation remains defective: some basic activities of a true trade union have never even been mentioned in the law. Further, the law overemphasizes the aspect of welfare for workers, gearing the activities of the trade union towards culture and entertainment rather than fighting to protect workers’ rights. Thus, there is a need to make the law concentrate on the economic functions of trade unions. At least, these rights and obligations of the trade union should be added:

+ Right to sue the employer for damage.
Current law allows the trade union to supervise employer's fulfillment of labor duties but gives the trade union too little power to improve the situation. Once a violation is detected, the trade union, under the law, only has the right to make recommendations and submit proposals to fix the situation. This is necessary but not enough; the trade unions should be provided with more power, in particular, suing the employer for damage in case the above measures have not helped correct the violation properly.

+ Right to take part actively in resolving labor disputes and enjoy proper compensation.
The current law only emphasizes the trade union role as a representative body in the case of collective labor disputes. The consequence is that the trade union neglects representing workers in individual cases. This is unreasonable because the worker is in the most vulnerable situation where he deals individually with the employer. The law should explicitly state this obligation of the trade union in order to give individual employees better protection. By dealing with individual labor disputes, the trade union could also identify more problems to discuss with the employer in collective negotiation later on.

When the labor dispute is solved, the trade union must be entitled to proper damages. Once it is found that the employer had violated the rights of workers, both the trade union and the aggrieved employees should be entitled to compensation. The level of compensation should be determined by taking into account all costs the trade union and the employees have to bear for the case to be settled and the need to prevent repetitions in the future. On the one hand, such a regulation benefits the union's finance and tightens the link between the trade union and its members etc., and on the other hand, it limits violations of the law by the employer.

Where an upper-level trade union undertakes this task, it will be entitled to this compensation.

+ Being liable for illegal strike by members.

At present, labor law has not yet provided for such liability on the part of trade unions in case the trade union lets its members conduct an illegal strike. To build sound labor relations, this liability should be supported by the law.

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53 See Article 14 (2) of Trade Union Law 2012.
54 See Article 10 of the Trade Union Law on representing and protecting rights and legitimate benefits of the workers. In this Article, only the right to represent labor collective are mentioned (at paras 8-9).
55 According to the Vietnamese labor law (see Article 179 Labor Code 1994 and Article 233(1) - Labor Code 2012), liability for an illegal strike will not apply to a trade union if it did not lead the strike. The consequence of this regulation is that all trade union bodies have been very passive. To avoid problems, they kept being an "outsider", leaving workers alone deal with the employer themselves.
3.1.2. Amending relevant regulation on collective bargaining

3.1.2.1. Recognizing more bargaining actors on the employee side

Currently, trade union bodies belonging to VGCL are the only employees' representative body that has the right to collective bargaining. The Labor Code 2012 gives workers another opportunity by empowering upper-level trade unions to undertake grass-root trade union tasks (which include collective bargaining) once the labor collective in an enterprise has requested it.

To support collective bargaining in many enterprises, labor representatives should also be involved in collective bargaining. Since labor representatives have close contact with and receive strong support from workers, it would be meaningful for them to conduct collective bargaining. This presence of labor representatives also creates a competitive climate for the trade union in the field of collective bargaining.

There are cases where bargaining is conducted completely independently by a group of employees without trade union or any support from outside. Negotiation of this kind is often limited in its content, but it should still be encouraged, as it does provide an immediate resolution to conflicts between workers and employers. What follows is a case reported in a processing zone in Ho Chi Minh City in October 2007:

"I heard that leaflets were passed around one day before, calling for strikes. The next day, at exactly 7.30 a.m. all the workers gathered in front of the company’s gate. They queued up in several orderly lines. No violence, no yelling. They all looked cheerful. A piece of paper containing the workers’ demands was given to the guard who passed it to the director. Security guards stood around the strikers but there was no tension. They even chatted and laughed loudly. One hour later, the director came out to talk to the strikers. He is Korean and cannot speak Vietnamese; neither can workers speak Korean or English. Workers demanded an increase of 300 thousand dong by raising three fingers. The director shook his head and showed one finger. The silent bargaining continued until the director raised two fingers (VND 200,000) and workers applauded. They dispersed peacefully and returned to work the next day." 56

Having more bargaining actors will help limit formalistic collective bargaining.

3.1.2.2. Using strikes to support collective bargaining

To date, industrial actions have not been used in support of collective bargaining in Vietnam. A clear provision of the right to strike in support of bargaining in Chapter V (on social dialogue, collective bargaining and collective agreement) would be meaningful and would guide workers' actions.

At present, collective bargaining has been recognized at industry level, but strikes could not be conducted or organized beyond single enterprises 57. This is an inconsistent regulation of labor law and should be amended.

3. 2. Long term solution

To develop a sound collective bargaining system in the long term, it is essential to set up a mechanism for all unions to develop freely. Experiences from many advanced economies prove that freedom of association is the primary element for collective bargaining and socio-economic development. Nowadays freedom of association and trade unions have been universally

57 See Article 215 (2) of 2012 Labor Code.
recognized and become a core subject matter in various international legal instruments of different levels in order for national law and businesses activities to comply with. Numerous academic works discuss this. An ILO publication, named *Collective Bargaining Negotiation*, written by De Silva, listed "Pluralism and the freedom of association" in the first place among different conditions for successful collective bargaining. De Silva wrote: "Freedom of association is the sine qua non because without the right of association the interest groups in a society would be unable to function effectively..." and “there can be no meaningful collective bargaining without the freedom of association accorded to both employers and workers”.

The ILO regards Conventions No 98 on the Right to Organize and Collective Bargaining, 1949 (No 98) and the Convention on Collective Bargaining, 1981 (No 154) as the key instruments in this field. They are helpful reference sources for national laws on collective bargaining, even if the nation has not ratified these conventions.

Establishing a new legislative system in favor of collective bargaining in Vietnam is not a simple question, but it is possible to achieve if suitable steps are taken. Making the Vietnam trade union independent (see 3.1.1. above) could be the first significant step.

At the starting point of functioning as an autonomous and self-financing institution, the Vietnam trade union would have to struggle for survival. This period would be the most challenging time for the trade union but it would also help the trade union to develop healthily and become a more pragmatic, creative, dynamic, responsive, flexible and resilient labor market partner. Notably, a monopoly position and a non-competitive environment that is totally safe for the union is not sustainable in the long term. This will erode its motive to keep being active. This is why at a suitable moment, it is necessary to open up opportunities for new unions to exist outside the structure of VGCL.

But who will be the expected driving force behind the reform? It is believed that the driving force underlying trade union reform will be independent worker activism. The existing trade union may not play the most active role because its subordination to the Party-State implies

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58 Currently (Nov. 2013), Freedom of Association is mentioned in the following documents:
- International Covenant on Civil and Political Rights (ICCPR)(1966): Art. 22 (1).
- ILO Constitution 1919 (The Preamble).
- Declaration of Philadelphia 1944 (part I, the second principle (b)).
- ILO Workers Representatives Convention (C135, 1973), Arts. 1, 2.
- OECD Guidelines for MNEs, part V , paras 1 (a) and (b).
- Global Compact Principles: principle 3.
- ISO 27001:2013, 6.3.10.3.
- ETI Base Code, standard 2.

that it enjoys the political support of the Party-State in its attempts at reform, and this support is constrained by various political concerns.

4. **Final remarks**

The innovation of labor legislation in Vietnam is underway, but as it is conducted under the political leadership of a single Party, in some aspects, the innovation has proceeded cautiously.

Notably, a market economy consists of various types of cooperatives, collectives or autonomous agencies. Adopting it implies the admission of all rules governing a market economy for it to function properly. In the labor relation sector, it is necessary to admit collective labor relations whose features consist of independent trade unions, collective bargaining and collective actions. What has happened in the Vietnamese labor market proves that an ignorance of a suitable representative mechanism leads to a lot of misery for workers. A synchronous innovation is obviously a requirement in order to achieve the targets of socio-economic development without a greater cost.