

DRAFT QUESTIONNAIRES TO ASEAN MEMBER COUNTRIES

1. Background and rationale:

ASEAN is considered as the most dynamic region with vibrant business sector and gorgeous workforce with high density of foreign direct investment inflow thanks to the flexibility of labour legislation and practices of ASEAN member countries.

By 2015, it is scheduled that established ASEAN Community will facilitate migration of skilled workers among ASEAN countries. Thus it would be useful of a comparative study on labour legislation and practice might be made for reference of the ASEAN labour administrators, workers and employers and legal advisors, especially for CLMV countries in the effort to narrow the legal development gap with more advanced ones...

2. Objective:

- a. To compare labour legislation and practice among ASEAN countries;
- b. To determine the way to revise and amend possible labour legislation and practices in the effort to integrate the ASEAN region;

3. Scope of the study at this stage

Due to limited time and resources for conducting the study, it is advised by ILO specialists that the first attempts should be concentrated on the following issues:

- (a) employment contracts (including in particular the conditions under which an employment relationship must be recognized; and the regulation of trial periods or probation);
- (b) the regulation of fixed-term contracts;
- (c) the regulation on temporary work (including restrictions on temporary work, restrictions on subcontracting/outsourcing and the regulation of temporary work agencies);
- (d) valid reasons, procedures and compensation (both severance pay and compensation for unfair dismissal) for individual termination of employment by the employer; and
- (e) procedures and compensation for collective dismissal.
- (f) Labour inspection (functions, power and structure)

4. Questionnaires

ASEAN member countries are kindly requested to answer the questions by providing the detailed content of national legal instrument(s) that regulates the issue in each question as well as to assess its compliance with ILO's respective standards using the format provided bellows.

Your answers much be reached Department for International Cooperation, MOLISA by 28 February as the latest in order to give us sufficient time for drafting a report which will be presented at a workshop in late March 2010.

Detailed and concrete answers are highly appreciated.

PART I. GENERAL INFORMATION

A. Could you please describe briefly the labour legislation system in your country?

B. What subjects are covered by your national labor laws?

PART II. SOME SPECIFIC SUBJECTS

A. Employment contracts (including in particular the conditions under which an employment relationship must be recognized; and the regulation of trial periods or probation)

1. Does your national law require employers and employees to negotiate an employment contract and issue a written employment contract when establishing an employment relationship?
2. Which types of employment contract does your national labour law recognize? Is there a type of employment contract that the law will automatically assume to exist when no written contract has been issued?
3. What are the conditions under which an employment relationship must be recognized?
4. Is there any regulation on trial period or probation? If yes, please specify it
5. *What are Problems and Challenges in the implementation* If yes, please specify it

6. B. The regulation of fixed-term contracts

1. How is fix- term contracts regulated?
2. Is there any restriction of consecutive fix-term contracts ?

Comment [Tim1]: It is more accurate to use the term "employment protection legislation", since labour law is much wider including e.g. industrial relations law or occupational safety and health law.

3. *What are Problems and Challenges in the implementation* If yes, please specify it

C. Regulation on temporary work (including restrictions on temporary work, restrictions on subcontracting/outsourcing and the regulation of temporary work agencies);

1. Does your national law have any definition of a temporary work?
2. Does your national law prohibit discrimination between “permanent” or “regular” workers and “temporary” workers?
3. Does your national law have any definition of subcontracting/outsourcing?
4. Is there any restriction on temporary work/ subcontracting/outsourcing?
5. Is there any regulation (e.g. licensing or other forms of supervision) on a temporary work agency?
6. Is there any restriction on a temporary work agency?
7. Is there any restriction on foreign workers in regard to employment in your country? in term of work? In term of duration?
8. *What are Problems and Challenges in the implementation* If yes, please specify it

D. Valid reasons, procedures and compensation (both severance pay and compensation for unfair dismissal) for individual termination of employment by the employer

1. Does your national law have any regulation on unilateral termination of a labour contract by the employer?
2. What conditions and procedures does the employer have to follow to do so? (valid reasons, notice period, and compensation (both severance pay and compensation for unfair dismissal)
3. *What are Problems and Challenges in the implementation* If yes, please specify it

E. Procedures and compensation for collective dismissal.

1. Does your national law have any regulation on collective dismissal?
2. What conditions and procedures does the employer have to follow to do so? (e.g. authorization of the dismissal by public authorities, mandatory prior consultation and negotiation with workers' organizations, valid reasons, notice period, and compensation?)
3. *What are Problems and Challenges in the implementation* If yes, please specify it

F. Labour inspection (functions, power and structure)

1. Does your national law have any regulation on labour inspection?
2. What are the functions of labour inspection?
3. How is labour inspection organized?
4. How is an Inspector appointed?
5. What are duties of inspectors?
6. What powers does an inspector have?
7. *What are Problems and Challenges facing labour inspection? (if any)*

III. SAMPLE FORMAT FOR ANSWERS

Order	Questions	Content of national law and its reference	Your assessment (as compared to ILO's standards)		
			fully compliance	nearly compliance	not compliance