

Aus4Reforms Program

TERMS OF REFERENCE

Local consultants for

Economic reforms for effective intellectual property protection in the context of Vietnam's economic integration and digital transformation

1. Background to Aus4Reform

The Australia-Viet Nam Economic Reform (Aus4Reform) Program works with the Vietnamese Government to boost productivity and competitiveness in Vietnam. The program supports the development of quality policies, laws, and institutions through advocacy, consultation, and by strengthening the evidence base for economic policies - drawing on international experience and expertise, especially from Australia.

Specific outcomes that the Program will contribute to by the end of 2020 include:

- a. An improved and more equitable business enabling environment resulting in the formal registration of at least one million private enterprises by 2020.
- b. More competitive and transparent product and factor markets
- c. Stronger competition law institutions, including an amended competition law, and restructured competition agency and enforcement mechanisms.
- d. Improved evidence base on impact of efforts to accelerate rural restructuring
- e. Increased evidence base and awareness of the links between Women's Economic Empowerment (WEE).

The Program will help the GoV achieve these objectives via four targeted components

- Building more Competitive and Transparent Markets and Business Enabling Environment
- Ensuring Markets Operate Competitively in Consumer and National Economic Interests
- Facilitating the Restructuring of the Rural Economy
- Greater Business and Women's Voice in Investment Climate and Economic Restructuring Issues.

and a Flexible Fund to Respond to Emerging Bottlenecks to Productivity Growth and Innovation.

2. Activity Objectives and Approach

2.1 Context

Since the initiation of Doi Moi (Renovation) in 1986, Viet Nam has embarked on bold and comprehensive economic reforms. Accordingly, the country has made an array of socio-economic achievements. Economic growth has generally been high and continuous, reaching almost 7.0% per annum on average during 1990–2010, about 6.1% per annum on average during 2011–2016, and almost 7.0% per annum in 2017-2019. However, Viet Nam is currently facing several challenges including: (i) prolonged COVID-19 pandemic, which stagnates the economy and could probably lead to an economic recession (in 2020, GDP growth of Viet Nam was 2.91% only); (ii) Viet Nam’s economic model that relies heavily on cheap labors and natural resources is losing its competitive advantages; (iii) the risk of middle income trap and (iv) the risk of aging population. These challenges require Viet Nam to discover new growth models for the economy.

One of the Government’s views for economic development, stipulated in Resolution 01/NQ-CP, is to expand and diversify import and export market, and effectively implemented signed FTAs. The new-generation FTAs that have recently taken effect such as CPTPP and EVFTA are significant growth engine for Vietnam. They play an important role in boosting export, attracting more investment and accelerating domestic reforms. However, these new-generation FTAs include a variety of binding commitments that Vietnam must comply. One important area of such commitments is intellectual property (IP). The level of commitment on IP in CPTPP and EVFTA is significantly above that of the WTO/TRIPS (i.e. TRIPS-plus), even beyond the scope of Vietnamese law. In this context, Vietnam has to supplement and amend the law and regulations regarding IP to comply with the international commitments. Although IP regulations in the CPTPP and EVFTA are progressively applied to Vietnam, the review of a large number of legal documents on IP calls for Vietnam’s prompt and urgent conduct on researches, law drafting, law amendment and comment collection.

The amendment and supplement of legislation on IP is not only meaningful for international integration but also for the country’s digital transformation. The digitalization of the economy requires the State to take measures to protect the intellectual property rights of digital products, which are often easily copied and distributed on the internet. In addition, the improved regulations on IP would positively promote the development of Industry 4.0 technologies such as AI, blockchain, big data, etc. The extension of the grace period for filling patent applications will protect the novelty of inventions and create motivation for the research and development of complex technologies.

Moreover, the amendment and supplement of legislation on IP is likely to have positive implications for women-owned businesses (WOBs). Several surveys and studies have

shown a rising number of women doing business online. IP law can protect their creative work, thus helping female entrepreneurs increase economic opportunities.

Since the CPTPP's official effect date (January 14th, 2019), Vietnam has had to immediately comply with a number of new commitments on IP. The National Office of Intellectual Property issued Notice No. 1926/TB-SHTT dated February 1st, 2019 on the implementation of a number of new provisions on IP. On June 14th, 2019, the National Assembly passed the amended Intellectual Property Law. However, the new law must continue to be updated and revised from now until 2022 to add more relevant provisions in accordance with the international commitments. At the same time, building capacity for firms to adapt to new IP standards remain crucial. Various studies (such as CIEM 2020) assert that enhancing IP protection is essential in the COVID-19 context, such as for digital economy development. For this reason, the CIEM proposes to conduct the study *"Economic reforms for effective intellectual property protection in the context of Vietnam's economic integration and digital transformation"*.

2.2 Objectives

Overarching objective: To comment on a number of articles in the Draft amendment of Law on Intellectual property and suggest policies relevant to the context of economic integration and digital transformation.

Specific objectives:

- To assess issues of intellectual property related to Vietnam's economic development;
- To analyze the requirements regarding intellectual property stipulated in CPTPP and EVFTA;
- To analyze international good practice in harmonizing the country's benefits with international commitments regarding intellectual property;
- To comment on a number of articles in the Draft amendment of Law on Intellectual property and give some suggestions for example on cybersquatting and/or detailed regulations on copyright infringement of intermediate platforms on the internet; and
- To recommend on the amendment and implementation of Vietnam's intellectual property commitments while ensuring the economic interests of the country.

2.3 Scope and approach

Recruitment of six (06) local consultants including: 03 junior consultants and 03 senior ones, in addition to one Australian expert.

(1) 01 local consultant: to prepare a report on "Trends in international protection of intellectual property rights".

- Methodology: desk study, expert review
- Tentative outline (will be elaborated by consultant after signing contract)
 - + *Introduce the purpose, methodology and scope of the study;*

- + *Analyze the shifting in international of intellectual property rights (forum shifting from WTO to more advanced FTAs such as CPTPP, EVFTA);*
 - + *Policy implications for Vietnam;*
 - + *Conclusion.*
 - 20 working days
- (2) 01 local consultant: to prepare a report on “Impacts of CPTPP and EVFTA on Vietnam’s intellectual property law”.
- Methodology: desk study, expert review with MOIT and NOIP
 - Tentative outline (will be elaborated by consultant after signing contract)
 - + *Introduce the purpose, methodology and scope of the study;*
 - + *Important integration milestones of Vietnam that have the effect of changing intellectual property law*
 - + *Analyze the requirements of CPTPP and EVFTA on intellectual property (IP) rights;*
 - + *Analyze the articles stipulated in the Draft amendment of the Law on Intellectual property;*
 - + *Compare the international requirements with Vietnam’s current law;*
 - + *Analyze the advantages and disadvantages for Vietnam when complying with new IP requirements;*
 - + *Conclusion.*
 - 20 working days
- (3) 01 local consultant: to prepare a report on “The impact of intellectual property rights on growth in some Asian countries and policy implications for Vietnam”.
- Methodology: desk study, expert review
 - Tentative outline (will be elaborated by consultant after signing contract)
 - + *Introduce the purpose, methodology and scope of the study;*
 - + *Literature overview on the link between IP rights and economic development;*
 - + *Asian countries’ implementation of IP rights and their growth;*
 - + *Policy implications for Vietnam;*
 - + *Conclusion.*
 - 20 working days
- (4) 01 local consultant: to prepare a report on “Requirements of intellectual property law improvement in the context of digital transformation in Vietnam”.
- Methodology: desk study, expert review with MOST and NOIP, review with a few startups
 - Tentative outline (will be elaborated by consultant after signing contract)
 - + *Introduce the purpose, methodology and scope of the study;*
 - + *Analyze the digital transformation process in Vietnam;*
 - + *A few cases of IP loophole that create loss for inventors, startup companies etc.;*
 - + *Policy recommendations;*
 - + *Conclusion.*

- 20 working days
- (5) 01 local consultant: to prepare a report on “Principle of balancing interests between parties in the protection of intellectual property rights: A perspective from Vietnamese law”.
 - Methodology: desk study, expert review
 - Tentative outline (will be elaborated by consultant after signing contract)
 - + *Introduce the purpose, methodology and scope of the study;*
 - + *The role of Intellectual Property Law in ensuring balance of benefits between parties;*
 - + *Balance protection issues in the activities of the World Intellectual Property Organization (WIPO);*
 - + *The principle of balancing interests between parties in some agreements in comparison with Vietnam’s laws;*
 - + *Conclusion.*
 - 20 working days
- (6) 01 local consultant: to prepare a report on “Protecting intellectual property rights for digital products under Vietnamese law: practice and challenges”.
 - Methodology: desk study, expert review with some app and/or software developers
 - Tentative outline (will be elaborated by consultant after signing contract)
 - + *Introduce the purpose, methodology and scope of the study;*
 - + *Digital product protection mechanism according to international regulations in comparison with Vietnam;*
 - + *Case study on IP protection for computer programs/digital products in Vietnam;*
 - + *Limitations and conclusion.*
 - 20 working days.
- (7) 01 Australia consultant: to prepare a report on “Australian experiences of settling IP cases in FTAs”.
 - Methodology: desk study, consultation with Vietnamese experts.
 - Tentative outline (will be elaborated by consultant after signing contract)
 - + *Introduce the purpose, methodology and scope of the study;*
 - + *Australian experiences of settling IP cases in FTAs;*
 - + *Lessons to Vietnam.*
 - + *Limitations and conclusion.*
 - 05 working days.

2.4 Deliverables

- Final report should include: (i) The process of reforming intellectual property law in Vietnam according to international commitments; (ii) trends in international protection of intellectual property rights; (iii) Impacts of CPTPP and EVFTA on Vietnam’s intellectual property law; (iv) Requirements of intellectual property law improvement in the context of digital transformation in Vietnam; (v) International and domestic case studies in applying

intellectual property rights; (vi) Balancing interests between parties in the protection of intellectual property rights and (vii) Policy implications and recommendations, including capacity building and technical assistance requirements.

- Policy brief: a summarized version of the final report that will be submitted to ministries, branches (Ministry of Planning and Investment, Ministry of Industry and Trade, Ministry of Foreign Affairs, Ministry of Science and Technology, etc.

2.5 Specific requirements from consultants

*** *Local junior consultants***

Requirements:

- University or postgraduate and have more than 05 years' experience in economics or economic management.
- Knowledge of economics, trade, law, business operations, intellectual property.
- Ability to use at least one common foreign language to search and refer to foreign documents.

Consultants responsibilities:

- Prepare a report based on the requirements on the content, quality and deadline in the TOR.
- Consultation with CIEM and related agencies and experts (if any).

*** *Local senior consultants***

Requirements:

- Graduated with a master's degree or above and have more than 10 years' experience in economics or economic management.
- Knowledge of economic policy analysis and research, experience on intellectual property (i.e. experience to work as researchers, lawyers or policy makers on IPR).
- Understand the trade and investment institutions in Viet Nam, economic integration and IPR legal issues.
- Ability to use at least one common foreign language to search and refer to foreign documents.

Responsibilities:

- Prepare drafts of reports according to the content, quality and deadline in the TOR.
- Coordinate and use intermediate reports of national experts, consultations with CIEM and relevant agencies and experts (if any).
- Acquire comments and complete the report.
- Advise CIEM on related issues

*** *Australian consultant***

Requirements:

- Graduated with a master's degree or above and have more than 10 years' experience in IP issues, preferably settling IP cases related to FTA commitments.

- Knowledge of economic policy analysis and research, experience on intellectual property (i.e. experience to work as researchers, lawyers or policy makers on IPR).
- Understand the trade and investment institutions in Viet Nam.

Responsibilities:

- Prepare drafts of reports according to the content, quality and deadline in the TOR.
- Coordinate and use intermediate reports of national experts, consultations with CIEM and relevant agencies and experts (if any).
- Acquire comments and complete the report.
- Advise CIEM on related issues

*** Application of consultants**

- CV of consultants;
- Detailed contacts of consultants

3. Timing

From January 2021 to June 2021.

4. Direction

- All reports must be submitted to Office for Aus4reforms Project in both hard-copy and soft-copy by PDF or WORD.
- The consultants will be responsible to the Aus4reforms Project Director, the Project Management Board will support the consultants.
- The use of documents, research results for other purposes not within the scope of activities should be approved by the Project.

5. Resources needed

Requested resources including:

- Consultant 1: 20 working days (local);
- Consultant 2: 20 working days (local);
- Consultant 3: 20 working days (local);
- Consultant 4: 20 working days (local);
- Consultant 5: 20 working days (local);
- Consultant 6: 20 working days (local);
- Consultant 7: 5 working days (Australian).