

Overview of Labor Legal Issues in Cambodia

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I. Introduction

Labor law compliance in Cambodia has been connected with the growth of garment industry. The modern garment industry emerged in 1993 when foreign investors opened factories for garment exports in Cambodia.¹ Starting from 1999, Cambodia faced with quota restriction on garment exports to the US market when Cambodia and the US signed a bilateral Trade Agreement on Textile and Apparel with effect from 1999 to 2002. This agreement imposed a condition that if apparel companies in Cambodia duly complied with the local labor laws and international labor rights, the quotas would be increased annually. In 2002, the agreement was extended to another three years with effect from 2002 to 31 December 2004. This reflects that most of apparel factories in Cambodia duly comply with labor laws.

Required by the Labor Law in order to realize the workers' rights, the labor arbitration council was established in 2003 under the project of ILO to resolve collective labor disputes.² Since 2003 until 2015, the labor arbitration council has received 2,408 cases and 88% of them belong to garment and footwear industry.³ Through consistent interpretation of laws, the labor arbitration council has developed several arbitrator-made rules that shape labor relations in Cambodia. The awards have been compiled and published on the homepage of the council.⁴

As of 2016, the number of enterprises registered with Ministry of Labor and Vocational Training increased to 11,168 that employed 1,187,227 workers and among which there were 1,107 garment and foot wear enterprises employing 743,615 workers.⁵ It is noted that in addition to garment and foot wear industry, other industries such as banking, transportation, restaurants, drink production, construction, real estates, restaurant, retail stores, training institutes, and NGO have registered with the National Social Security Fund.⁶ With the presence of these industries in the labor market, there has been remarkable development and improvement of working conditions for all workers of all industries through amendment to the existing labor laws and adoption of new laws and regulations.⁷

Notwithstanding the recent development of labor regulations and arbitrator-made rules mentioned

1 Garment Manufacturers Association in Cambodia, 2015 GMAC Bulletin, p.10 (2015), available at <http://www.gmac-cambodia.org/bulletin/2015.pdf>.

2 Law on Labor, Royal Code NS/RKM/0397/001, chap. 12 (1997) (Cambodia) [hereinafter called the Labor Law].

3 The Arbitration Council, 2015 Annual Report, pp.9-10 (2016), available at <https://www.arbitrationcouncil.org/en/media/publications/annual-reports>.

4 The awards of the labor arbitration council are available at <https://www.arbitrationcouncil.org/>.

5 Ministry of Labor and Vocational Training of Cambodia, Notice on Work Results in the Year 2016 and the Targets of the Year 2017 of the Implementation of the Strategic Plans for the Development of Labor and Vocational Training for the Year 2014-2018, p.1 (2017), available at <http://www.mlvt.gov.kh/index.php/en/official-docs/notification-guidelines.html>.

6 The National Social Security Fund of Cambodia, Annual Report on Achieved Works in 2016 and Future Goals, pp.65-67 (2016).

above, there are some legal issues that need to be resolved sooner or later. It is undeniably true that no country has perfect law and if compared to a developed country like Japan, Cambodia still has short history of application of labor laws and newly emerging labor relations. Moreover, although labor arbitration council has been developing many rules, such rules were adopted for collective labor disputes and consequently cannot provide resolutions for all labor issues. This article aims to highlight the legal issues concerning the labor relations in Cambodia. However, before going to the issues, it is important to brief the development of labor laws in Cambodia.

II. Brief development of labor laws in Cambodia

The employment relation in Cambodia was firstly treated as one of the contractual relations under the civil code adopted in 1920 based on the French Civil Code of 1804. After Cambodia had ratified several ILO conventions since 1969 and after Cambodia had become a member of the International Labor Organization in 1971, the civil code that was adopted based on the principle of private autonomy where parties to the contract were treated equally was no longer fit with the employment relation where workers are deemed inferior to employers. Accordingly, there was a call for new mechanism to provide better protection to workers rather than what have been provided in the civil code. Accordingly, the first labor code was adopted in 1972 and enforced until 1975.

During Pol Pot Regime from 1975 to 1979, pre-existing laws and the legal systems were completely destroyed. From 1979 until 1991, Cambodia's political system was based on socialism. However, since 1989, the economic system was changed from planned economy to free market system.⁸ According to Article 15 of the Constitution of 1989, Cambodian citizens had full right to possess, use and inherit the land granted by state for residence and commerce. Cambodia had its second labor code in 1992 until the adoption of the present Labor Law in 1997 in response to the adoption of the present Constitution in 1993 and to the presence of garment industry at the time. In 2007, the Labor Law was firstly amended regarding night work provided in Article 139 and Article 144.⁹

Law on Social Security Schemes for Persons Defined by the Provisions of the Labor Law was promulgated on 25 September 2002 to organize the social security schemes such as pension scheme, occupational risk and other contingencies to be subsequently determined by Sub-Decree based on the actual situation of the national economy.¹⁰ The services that supplement these benefits such as health and social activities are determined by Sub-Decree.¹¹ All above social security schemes are under the management of the National Social Security Fund ("NSSF").¹²

The NSSF, which is the public establishment, was formulated by Sub-decree on the Establishment of National Social Security Fund on 2 March 2007.¹³ Thereafter, the social security scheme on occupational risk was started to provide benefits to workers in the case of work-related accident and occupational disease pursuant to Prakas No.109 on Benefits on Occupational Risk issued by Ministry of Labor and Vocational Training dated 16 June 2008.¹⁴ Employers who employ at least eight workers are required

7 For example, Law on Trade Unions was adopted in 2016; and among the ministerial regulations, it is noted that there was a Joint Prakas on Fine Imposed on Those Who Violate the Labor Law, jointly made by the Ministry of Economy and Finance and the Ministry of Labor and Vocational Training on 6 June 2016. This Joint Prakas provides the list of legal requirements and their punishments, which are convenient to employers and employees for compliance and Labor Inspectors for discharging their duties.

8 Hor Pheng et al., *Introduction to Cambodian Law*, 36-37, (Konrad-Adenauer-Stiftung, 2012).

9 Law on Amendment to Article 139 and Article 144 of the Labor Law, Royal Code NS/RKM/0707/02 (2007) (Cambodia).

10 Law on Social Security Schemes for Persons Defined by the Provisions of the Labor Law, Royal Code NS/RKM/0902/018, art. 1 (2002) (Cambodia).

11 *Id.* art. 2.

12 *Id.* art. 3.

13 The Royal Government of Cambodia Sub-Decree No. 16 ANKr.BK on the Establishment of National Social Security Fund (2007) (Cambodia).

to join the scheme by paying contribution of 0.8% of the monthly average wage of the workers.¹⁵ Since November 2008 until today, 8,731 enterprises comprising of 1,136,271 workers have been registered with the scheme.¹⁶

Based on experience earned from the social security scheme for occupational risk, NSSF began the social security scheme for health care as the second project pursuant to Sub-Decree No. 01 ANKr.BK on Establishment of Social Security Scheme for Health Care for Persons Who Are Defined by the Provisions of Labor Law dated 6 January 2016 issued by the Royal Government of Cambodia and Prakas No. 109 B.K/Br.K on Benefit on Health Care on 17 March 2016 issued by Ministry of Labor and Vocational Training. However, for the first stage of implementation, the social security scheme for health care started from 1 May 2016 and only applies to enterprises located in Phnom Penh, Kandal Province, Kampong Speu Province.¹⁷

Fourteen years after the enforcement of the Labor Law, the Civil Code, adopted in 2007 with the support of Japanese government through Japan International Cooperation Agency, came into force in 2011.¹⁸ To harmonize with preexisting labor laws, the Code defines employment contract and the employer's obligation to present specific working conditions and to take care of security of the workers. However, the application of the employment contract shall be in conformity with labor laws unless otherwise specifically written in the Code. Once again, the employment relations are also included in the Civil Code.

On 26 July 2015, Law on Special Lease was promulgated for the purpose of protection of low-income lessees such as laborers and students who lease rooms for residence from lessors who have leasing business.¹⁹ This is because the provisions on lease stipulated under the Civil Code were adopted based on the principle of private autonomy which in principle treats all parties equally; and consequently, they cannot provide much protection to the low-income laborers who are lessees. According to the Law on Special Lease, special lease cannot be less than a period of two years within which lessor cannot increase the lease fee while the lessee has the right to terminate the special lease at any time.²⁰

The Law on Trade Unions was promulgated on 17 May 2016 after the Constitutional Council of Cambodia confirmed the constitutionality of this law on 5 May 2016.²¹ As a supplement and amendment to the existing labor laws and regulations, the Law on Trade Unions particularly deals with formation and participation of professional associations, registration of professional associations, finances of professional associations, dissolution of professional associations, representation of workers in the enterprise, rights and obligations of the workers' unions, rights and obligations of the employers' association, representation by workers' union with most representative status, unfair labor practices by employers, unfair labor practices by workers' unions, special protections for workers and their representatives, collective agreement and

14 Ministry of Labor and Vocational Training Prakas No. 109 KB/Br.K on Benefit on Occupational Risk, (2008) (Cambodia); Ministry of Labor and Vocational Training Prakas No.104 KB/Br.K on Amendment to Article 7 and Article 9 of Prakas No. 109 on Benefits on Occupational Risk (2010) (Cambodia); Ministry of Labor and Vocational Training Prakas No.233 KB/Br.K on Amendment to Article 8 and Article 10 of Prakas No. 109 on Benefits on Occupational Risk (2011) (Cambodia).

15 Ministry of Labor and Vocational Training Prakas No. 108 KB/Br.K on Determination on Contribution Rate and Contribution Payment for Occupational Risk, art. 2 (2008) (Cambodia); Ministry of Labor and Vocational Training Prakas No. 294 KB/Br.K on Amendment to Article 3 and Article 4 of Prakas No. 108 on Determination on Contribution Rate and Contribution Payment for Occupational Risk (2014) (Cambodia).

16 Annual Report on Achieved Works in 2016 and Future Goal, *supra* note 6, p. 2.

17 Ministry of Labor and Vocational Training Prakas No. 093/16 K.B/Br.K on Determination of stage and Date of Implementation of Social Security Scheme on Health, (2006) (Cambodia).

18 Law on Application of the Civil Code, Royal Code NS/RKM/0511/007, art. 56 (2011) (Cambodia).

19 Law on Special Lease, Royal Code NS/RKM/0715/009 (2015) (Cambodia).

20 *Id.* art.6, 8&9.

21 The Constitutional Council of Cambodia, Decision No. 160/002/2016 dated 05 May 2015, available at http://www.ccc.gov.kh/khmer/decision/2016/dec_002.pdf.

collective bargaining, resolution of professional organization's disputes, sanction and penalties.

The Law on Trade Unions categorizes the unions into three types. Enterprise-based union is formed by at least 10 workers in an enterprise or establishment. Federal union is created by at least seven registered enterprise-based unions. United unions or league of unions is created by at least five registered federal unions. As of December 2016, there were 3,497 enterprise-based unions, 103 federal unions, and 18 united unions registered with the Ministry of Labor and Vocational Training.²² Pursuant to Article 54 of the Law on Trade Unions, only the union with the most representative status can represent workers to negotiate and to conclude the collective bargaining agreement with the employer and to represent workers in the collective labor disputes.²³

III. Labor legal issues

1. Unclear employment contract

There are two main types of employment contracts under the Labor Law of Cambodia. They are fixed duration contract and undetermined duration contract. Undetermined duration contract is concluded with undetermined duration. It can be verbal or written agreement. Fixed duration contract is concluded for a specific duration and must contain a precise finishing date.²⁴ Any violation to this rule leads the contract to become employment contract of undetermined duration.²⁵ Furthermore, fixed duration contract must be written. If not, the labor contract will become undetermined duration contract.²⁶

In addition to above rules governing contract transformation, Article 67(2) of Labor Law reads, "The labor contract signed for a specific duration cannot be for a period longer than two years. It can be renewed one or more times, as long as the renewal does not surpass the maximum duration of two years. Any violation of this rule means that the contract shall be renegotiated as a labor contract of undetermined duration." Furthermore, Article 73 (5) of the same law reads, "If the contract has a duration of more than six months, the employee must be informed of the expiration of the contract or of its non-renewal ten days in advance. This is increased to two weeks for contracts exceeding one year. If this is not done, the contract is extended for a length of time equal to its initial duration or redefined as a contract of unspecified duration if its total length exceeds the limit allowed in Article 67."

The purpose of the transformation rules is to avoid the employer's excessive use of fixed duration contracts to replace the undetermined duration contract for continuous or long-term employment relation. However, the lack of clarity in the Labor Law makes this transformation confusing for employers and employees to determine the status of their contracts. There are two main different interpretations on Article 67 (2). The word "renewal" in Article 67 (2) is not clear and understood differently. On the one hand, the word "renewal" is understood as "duration of each renewed contract." In this sense, as long as the duration of each contract does not exceed two years, the contract can be renewed many times and the total duration may exceed two years. On the other hand, the word "renewal" is interpreted as the "act of the total length of the employment contract including the initial contract and all subsequent extensions." Accordingly, the contracts of fixed duration must automatically be transformed to undetermined duration contracts where the total duration of the employment contract (including the period of the initial contract and any renewals) exceeds two years. The labor arbitration council upholds the second interpretation.²⁷

Amendment to the Labor Law is important to deal with unclear practice of the types of employment

22 Notice on Work Results in the Year 2016 and the Targets of the Year 2017 of the Implementation of the Strategic Plans for the Development of Labor and Vocational Training for the Year 2014-2018, *supra* note 5, p.3.

23 Law on Trade Unions, Royal Code NS/RKM/0516/007, art. 54 (2016) (Cambodia).

24 Law on Labor, *supra* note 2, art. 67-1.

25 Law on Labor, *supra* note 2, art. 67-2.

26 Law on Labor, *supra* note 2, art. 67-7.

27 Arbitration Council, Arbitration Award Case Number 10/03, July 23, 2003.

contracts.²⁸ The amendment may be a challenge for the drafters since it is not easy to satisfy all stakeholders. In addition, they may find it hard to decide whether the draft amendment should be adopted based on the rule of the labor arbitration council or other approaches. The arbitrator-made rule was developed for resolving collective labor disputes mostly arising in garment and footwear factories. It may not be fit with other industries that have different working styles. However, it is noted that the interpretation by labor arbitration council has been applied since the outset of the establishment of the council in 2003.

2. Limited determination of minimum wage

Under the Labor Law, wage must be at least equal to the guaranteed minimum wage that must ensure every worker of a decent standard of living compatible with human dignity.²⁹ Any written or verbal agreement that would remunerate the worker at a rate less than the guaranteed minimum wage shall be void.³⁰ Furthermore, the minimum wage is established without distinction among professions or jobs. It may vary according to region based on economic factors that determine the standard of living. Minimum wage is set by Prakas (proclamation) of the ministry in charge of labor after receiving recommendation from the Labor Advisor Committee. The wage is adjusted from time to time in accordance with the evolution of economic conditions and the cost of living.³¹

Since 1997 until the present, only minimum wage for workers at garment and footwear industry has been determined by ministry in charge of labor while there has been no minimum wage determination for workers in other industries. In 1997, the Ministry of Social Affairs, Labor and Veterans³² issued a Notice No. 06 dated 3 March 1997 to set minimum wage for workers at \$40 per month. This amount was determined based on the negotiation between representatives of employers and employees in the textile and footwear industry. In 2000, the minimum wage was increased to \$45 per month by the Labor Advisory Committee composing of representatives of employers, employees, and ministry in charge of labor.³³ In 2006, the minimum wage was increased to \$50 per month.³⁴ In 2010, the minimum wage was increased to \$56 per month.³⁵ Since 2011, the minimum wage has been determined on annual basis. The minimum wage for the year 2017 was increased to \$153 per month.³⁶

From a practical point of view, employers would determine wage of their workers in a rate at least equal to minimum wage of the workers in the garment and footwear sector if they want to recruit new workers and retain their existing ones. Therefore, it can be said that minimum wage of workers in the garment and footwear sector is also used as reference for negotiation as well as determination of wages and other working conditions by employers and workers in other sectors. However, from a legal point of view, Prakas on minimum wage of workers in the garment and footwear sector does not apply to workers of other sectors.

28 The Ministry of Labor and Vocational Training also determined that amendment types of employment contract as one of its targets for the year 2017 of the implementation of the strategic plans for the development of labor and vocational training for the year 2014-2018, Notice on Work Results in the Year 2016 and the Targets of the Year 2017 of the Implementation of the Strategic Plans for the Development of Labor and Vocational Training for the Year 2014-2018, *supra* note 5, p.6.

29 Law on Labor, *supra* note 2, art. 104.

30 Law on Labor, *supra* note 2, art. 105.

31 Law on Labor, *supra* note 2, art. 107.

32 In 2005, the government of Cambodia established the Ministry of Labor and Vocational Training to be the ministry which is in charge of labor issues and vocational training. Law on Establishment of Ministry of Labor and Vocational Training, Royal Code, NS/RKM/0105/003 (2005) (Cambodia).

33 Ministry of Social Affairs, Labor and Veteran Affairs, Notice No. 017, dated 18 July 2000.

34 Ministry of Labor and Vocational Training, Notice No. 745, dated 23 October 2003.

35 Ministry of Labor and Vocational Training, Notice No. 049/10, dated 09 July 2010.

36 The Ministry of Labor and Vocational Training Prakas No. 414 KB/Br.K on Minimum Wage Determination for Workers in Textile, Garment and Footwear Industry for year 2017, (2016) (Cambodia).

The Labor Law specified the elements for determining the minimum wage, which include (a) the needs of workers and their families in relation to the general level of salary in the country, the cost of living, social security allowances, and the comparative standard of living of other social groups; and b) economic factors, including the requirements of economic development, productivity, and the advantages of achieving and maintaining a high level of employment.³⁷ In addition to the elements listed above, participants in the tripartite workshop conducted in April 2014 agreed to take the following elements in consideration when determining the future minimum wage adjustment. These elements include (1) needs of workers and their families; (2) cost of living; (3) inflation; (4) productivity; (5) competitiveness; (6) labor market/employment; and (7) profitability of the sector.³⁸ It is worth noticing that currently the Ministry of Labor and Vocational Training is preparing a draft law on minimum wage which aims to adjust minimum wage annually.

3. Absence of labor court

The Labor Law specifically mentions about the role of the Labor Court regarding the application of Labor Law. For example, the Labor Court has the jurisdiction to determine the magnitude of offenses other than the serious misconducts included in Article 83-B.³⁹ The Labor Court has sole jurisdiction to determine the legality or illegality of a strike.⁴⁰ The dissolution of the professional organization or the union of professional organizations must be pronounced by the Labor Court in the event of those organizations committing the wrongdoing as stated in the Labor Law or in case of serious, repeated violation of the laws and regulations, particularly in the area of industrial relations.⁴¹

The Labor Law provides that Labor Court must be created to have jurisdiction over the individual disputes occurring between workers and employers regarding the execution of the labor contract or the apprenticeship contract.⁴² The Labor Court not only has jurisdiction over the individual labor disputes but also all other issues relating to the application of the Labor Law.⁴³ There must be separate law determining the organization and functioning of the Labor Court.⁴⁴ However, since 1997 until the present, the Labor Court is not established. In addition, the Labor Law does not precisely mention whether the Labor Court should be separately established from the common courts or attached to the common courts. To deal with the absence of the Labor Court, the Labor Law provides that in the absence of the Labor Court, all labor issues relating to application of Labor Law must be submitted to common courts.

Law on Organization of Courts adopted in 2014 requires each court of first instance to be comprised of specialized courts, such as civil court, criminal court, commercial court and labor court.⁴⁵ The said labor court has competence to hear all cases relating to labor in accordance with the provisions on the labor procedures.⁴⁶ When hearing the cases, the labor court consists of one judge, accompanied by two labor advisors, among whom one is the worker and the other is the employer; and the judgment is rendered by a judge after the consultation with labor advisors. The labor advisors carry out their functions at the invitation extended by the president of labor court.⁴⁷ The procedure of electing and carrying out duty of

37 Law on Labor, *supra* note 2, art.107-3.

38 International Labor Organization, Cambodian Garment and Footwear Sector Bulletin, Issue 3, March 2016, available at http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/publication/wcms_463849.pdf.

39 Law on Labor, *supra* note 2, art. 84.

40 Law on Labor, *supra* note 2, art. 337.

41 Law on Labor, *supra* note 2, art. 378.

42 Law on Labor, *supra* note 2, art. 387.

43 Law on Labor, *supra* note 2, art. 389.

44 Law on Labor, *supra* note 2, art. 388.

45 Law on Organization of the Courts, Royal Code NS/RKM/0714/015, art. 14 (2014) (Cambodia).

46 *Id.* art. 25.

47 *Id.* art. 26.

labor advisor shall be determined by a Sub-Decree upon the request of the Minister of Justice following the consultation with the Minister in charge of labor sector.⁴⁸ Currently, the above rules are not implemented and labor court which is a specialized court attached to the court of first instance is not established.

The Law on Trade Unions adopted in 2016 has reaffirmed the importance of the Labor Court in relation to the collective rights of the workers. For example, Article 29 of the same law mentions about the reasons that the Labor Court can dissolve unions or employers' association. Article 47 of the same law provides that any dispute in relation to the election, eligibility and fairness of election of shop stewards shall be referred to the Labor Court. Under Article 92 of the same law, illegal strike is the strike conducted after the Labor Court decides that such strike is illegal. Article 83 provides that illegal lock-out is the lock-out conducted after the Labor Court decides that such lock-out is illegal. Article 98 of Law on Trade Unions provides that in the absence of Labor Court, all disputes arising from the application of the Law on Trade Union shall be submitted to the common courts.

In the National Employment Policy 2015-2025, strengthening the labor dispute settlement mechanisms and creating the Labor Court is one of the measures to harmonize the industrial relations and to strengthen wage-setting mechanisms in order to enhance the labor market governance.⁴⁹ The Ministry of Labor and Vocational Training has been mandated to take charge of implementing this measure within the period from 2016 to 2025.⁵⁰ Presently, the common courts have jurisdiction over the labor disputes during the period within which the Labor Court is not yet established and the Code of Civil Procedure has been applied as the procedural rule.

IV. Conclusion

Along with the increase of enterprises of other sectors with newly emerging labor relations and working styles in addition to garment and footwear sector, there has been remarkable development of labor laws in Cambodia. Laws, Sub-Decrees, ministerial regulations and arbitrator-made rules have been adopted to protect and promote the rights and working conditions of workers in all sectors. However, there remain some labor legal issues such as unclear types of employment contracts, limited determination of minimum wage and absence of Labor Court. To resolve the above problems, political and social stability along with economic growth in Cambodia together with great effort and active cooperation of all stakeholders are the key factors to reach solutions.

48 *Id.* art. 28.

49 Royal Government of Cambodia, National Employment Policy 2015-2025, p.14 (2015).

50 *Id.* p.34.