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What Employers Need to Know About the Cambodian Labor Law

Recent entrants to the world of business in Cambodia often find it difficult to navigate the sometimes murky waters of the Cambodian Labor Law. Even if an employment contract was negotiated and signed abroad, if the work is performed in Cambodia, the Cambodian Labor Law must be followed. It serves as both a guarantor of minimum rights for employees, and enforcer of regulations for employers. This is not a comprehensive summary of the Labor Law, but it does highlight important areas that may differ from practices in other countries.

Opening Your Organization

There are procedures that must be followed in order to be compliant with the Cambodian Labor Law, and avoid future obstacles. If you are opening a business, a declaration must be made to the Ministry of Labor. The timeframe to make the declaration will depend on the number of workers employed by the organization. It is important to be proactive in making your declaration, as the Labor Inspector can make surprise visits and give you a fine for failure to properly make the declaration.

Hiring Employees

In the likely event that you will be hiring foreigners, be sure to observe the documentation requirements imposed

by the Labor Law in order to protect your organization and employees. For foreigners to work in Cambodia, they must obtain a work permit from the Ministry of Labor, consisting of a Work Book and a Work Card. They must hold a valid passport, visa, and residence permit. Additionally, they must obtain a health certificate from the Ministry of Labor's Health Department, confirming that they do not have any contagious diseases and are physically fit to perform the job assigned.

Classifying Employees

Under the Labor Law, contracts for employment are defined either as fixed duration contracts (FDC), or unspecified duration contracts (UDC). A FDC is formed if the contract states precise commencement and termination dates, and the duration does not exceed two years. All other labor contracts are UDCs. The distinction may not seem of great importance, but it determines such issues as the notice required to terminate an employee, severance, indemnities, and damages. These issues will be dealt with later in the article.

Businesses and NGOs often hire volunteers or interns for short term periods. If a volunteer or intern is performing work, under the direction of a supervisor, in exchange for any remuneration, the Labor Law makes no distinction between them and regular employees; thus entitling them to the same benefits and protections as permanent staff. If you are considering compensation for short term staff, be prepared to also provide the same benefits and protections as your other employees.

Additionally, organizations regularly hire independent consultants to help on particular projects, or offer assessments on a variety of issues. While hiring outside consultants to perform specific tasks is a great way to give an organization flexibility and expertise, the Labor Law may view consultants the same as regular employees, thus entitling them to the



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ABOUT US

BNG Legal is a leading Cambodian law firm providing comprehensive legal services to foreign and local clients.

Registered with the Bar Association of the Kingdom of Cambodia, our legal professionals combine international standards with local expertise.

We differentiate ourselves by coupling a deep understanding of the local business environment with international professionalism and integrity.

We facilitate business, investment and trade between Cambodia and the rest of the world through innovative and cost-effective legal services.

Superior knowledge of local protocol, local procedure, and local people is necessary for any business to succeed in Cambodia.

Conducting daily business in Cambodia, BNG Legal is up to date with the newest procedures and requirements, helping clients efficiently and successfully complete any project.

same benefits and protections as regular employees. The Labor Law does not specifically refer to consultants, but rather “labor contractors” and differentiates between them and regular employees by the direction and supervision an organization gives them. Therefore, if you are hiring independent consultants, specify the task you want done and let them be independent, otherwise the Labor Law is likely to view them as regular employees rather than “labor contractors”.

Holidays, Leave, and Benefits

By the standards of some countries, the Labor Law is generous in the amount of days off it grants to employees. Each year, the Ministry of Labor determines the number of paid public holidays, and while that number can vary, in recent years it has been around 26 days per year. In addition, organizations are required to give their employees 1.5 days of paid leave per month, for a total of 18 days per year.

The Labor Law also allows employees to request up to 7 days of “special leave” per year for such things as weddings, child birth, or death in the family. In the event of special leave, the organization may deduct the time off from the employee’s annual leave. If they do not have any remaining annual leave days, the organization can require them to work overtime, as long as it does not exceed 10 hours per day, or 54 hours per week.

In regards to sick leave, the Law is generally silent on the matter, other than requiring an organization to suspend a labor contract for up to six months, without pay, in case of illness. However, the Arbitration Council and certain Prakas have found that organizations must include provisions for sick leave within their internal regulations. They recommend a scale where wages should be paid at a rate of 100% for the first month of illness, 60% for the second and third, and nothing for the fourth and beyond.

The Labor Law addresses the concern of receiving wages during paid leave by requiring organizations to pay their employees in advance when taking leave. The allowance is calculated by the average wages (benefits, bonuses, indemnities) that the employee had earned during the previous 12 months, and cannot under any circumstances be less than

what would have been earned had the employee worked.

Hours, Overtime, and Wages

In Cambodia, the Law allows for 48 hour work weeks. The standard work week is 8 hours per day, 6 days per week. An alternative schedule may be adopted, as long as work does not exceed 48 hours per week, or 10 hours per day, over the course of 12 weeks.

In exceptional circumstances, employees may be asked to work overtime, but this is always voluntary and subject to the approval of the Labor Inspector. In the case of overtime, wages must be paid at a rate of 150% of the normal rate if the work is completed prior to 10 pm, in cases where work is scheduled past 10 pm, on Sundays, or public holidays, wages must be paid at a rate of 200% the normal rate.

As a general matter, wages must be paid to the employee directly, unless agreed otherwise. Manual laborers must be paid at least twice per month, not to exceed 16 day intervals. Regular employees must be paid at least once per month. Employees working on a commission basis must be paid at least every 3 months. Fining or deducting an employee’s wage is generally prohibited, except for the cost of equipment an employee does not return upon departure, or for other monies owed to the company.

Disciplinary Action and Dismissal

The Labor Law is very precise about what actions an employer can take against unruly employees. Employers can discipline only if they have evidence of misconduct, and the disciplinary action taken must be proportional to the misconduct. Of course, proportionality is subjective, so be careful when deciding what disciplinary actions to take, because it is not subject to your judgment, but to the Labor Inspector’s. Further, once misconduct is discovered you only have 15 days to impose disciplinary action, otherwise the right is waived under the Law.

There may be instances of serious misconduct that warrant immediate dismissal of an employee, such as, embezzlement, fraud, workplace violence, among others. In cases of serious misconduct, dismissal must be within 7 days of discovery, otherwise the right is waived.

BNG Legal believes expanding access to legal information is crucial to rule of law. To that end, several of our legal professionals will be writing a blog discussing recent developments in the legal landscape. Several of our recent posts cover:

- Overtime Rules under the Labor Law
- Pitfalls to Avoid in Setting Up a Business
- Foreign Corrupt Practices Act
- Special Economic Zones
- Changes to Internet Structure

Notice Requirements, Severance, Indemnities, and Damages

The Labor Law frowns upon surprise termination of labor contracts, and requires periods of notice when terminating labor contracts. The notice period required depends upon whether the contract is a FDC or an UDC, and the length of employment.

At the expiration of FDCs, employees are entitled to a severance of at least 5% of the wages paid during the contract period. Employees on an UDC who are dismissed for reasons other than misconduct are entitled to an indemnity payment that is determined by length of service. Termination of a labor contract, by either employee or employer, without valid reasons, entitles the other party to seek damages.

Conclusion

The Cambodian Labor Law may seem ambiguous at times, but it does provide a good foundation for protecting the Kingdom's workers from possible exploitation. Further, as the Cambodian government continues to develop and decide important labor issues, the Law will become clearer and more navigable. It is important to read through the Labor Law and become familiar with it so that you do not unknowingly violate it.

Recent Additions to Our Team

SHERAZADE DELHOUME

Ms. Sherazade DELHOUME is a French legal consultant at BNG Legal. Sherazade holds a Diplôme d'Etude Approfondi (Mphil degree) of Town Planning and Environmental Law from the CRIDEAU in Limoges (France) and a Master's degree in business and International Law (Limoges, France). She has a Certificate of Professional Aptitude in Insurance from the Business School of Lille (France) and she received a Certificate focused on Exporting in an Emerging Global Market from the Asian Productivity Organization and National Productivity Center of Cambodia in Phnom Penh.

Before working at BNG Legal, Sherazade worked as a business and legal consultant for an investment company and a media communication center in Phnom Penh. Sherazade previously worked as a consultant in asset management and real estate

in France (CREDIT AGRICOLE, GROUPE PAMA). She also worked as a legal consultant in the Court of Appeal in Limoges and for the International Office of Water.

Her current areas of interest include international law, real estate law, environmental law, insurance law and business development. Sherazade speaks French, English and Spanish, and has some knowledge of Portuguese and basic Khmer language.

BUNTHON HIN

Mr. Bunthon Hin is a legal assistant at BNG Legal. He has completed his coursework at Pannasastra University of Cambodia and will receive his Bachelor's Degree of Law after completing his senior project. Prior to working at BNG Legal, Bunthon interned at Legal Support for Women and Children (LSCW), a local NGO. His current areas of practice include commercial law, intellectual property, and civil law. Bunthon speaks Khmer and English.

Monthly Legal Updates

The following is a selection of the most important business-related laws promulgated since our last newsletter. For a complete list and summary of recent laws, please refer to our website:

<http://www.bnglegal.com/our-library.html>

Instructive Circular No. 006 (MEF), December 29, 2009: Tax on Profits and Salaries of Insurance Enterprises (L&R/Tax/2009/Khm) (Ogs, Year 10, No. 01, January 04, 2010)

This Instructive Circular summarizes tax rates for insurance companies as prescribed in the Taxation Law of February 24, 1997, and the Law on Amendments of Taxation Law. For an enterprise whose principal business activity is the insurance of life, property, or other risks, the tax rate is fixed at 5% of the gross premiums received in the tax year. For business activities, other than insurance the tax rate is 20% of profits. Insurance companies are obligated to make monthly prepayments of taxes on business activities that are not insurance at the rate of 1% of turnover inclusive of all types of taxes realized in the previous

Cambodia is rapidly filling in the gaps in its legal system, passing important legislation all the time. To keep abreast of these developments, this tracker will monitor drafts as they progress through the legislative process. Only laws and the most important sub-decrees and regulations will be reported.

month, and for taxes on gross premiums received in the previous month, at a rate of 5%.

Sub Decree No. 11 (RGC), January 15, 2010: The Modification of Special Tax Rates and Tax Rates for Certain Exported Goods (L&R/Tax/2010/Khm) (Ogs, Year 10, No. 08, January 31, 2010)

According to this Sub-Decree, the tax rate was increased for certain imported goods such as:

- Beer;
- Motor vehicles for the transport of goods;
- Special purpose motor vehicles, other than those principally designed for the transport of persons or goods (for example, breakdown lorries, crane lorries, fire fighting vehicles, concrete mixer lorries, road sweeper lorries, spraying lorries, mobile workshops, mobile radiological units).

The tax rate for exported chemical products also increased from 0% to 10%.

Circular No. 01 (MoI) dated February 11, 2010 on Publication for Business (L&R/Adv/2010/Khm) (Ogs, Year 10, No. 13, February 19, 2010)

With the growth of publications in the Kingdom for economical, educational, research, and entertaining purposes, this Circular aims to steer the owners of small and medium-size businesses to comply with the copyright law. It covers all kinds of publications and photocopying businesses. This Circular aims to warn business owners not to re-publish or copy all kinds of books or other documents related to literature, history, art, science and education as these activities gravely affect the principle authors, are contrary to the copyright law, and shall be punished. It aims to ban the publication and copying businesses which do not abide by the copyright law.

Prakas No. 001 (SECC) dated January 15, 2010 on Public Issuance of Equity Securities (L&R/Bsn/2010/Khm) (Royal Gazette, Year 10, No. 17, March 04, 2010)

This Prakas sets the process, procedure, mechanism and approval for the issuance of equity securities in Cambodia. The

Prakas differentiates between private issuances and public offerings by setting out two criteria: the total number of people to whom the offer is made (if it is more than 30 people, it is a public offering) and public advertisement (private issuances cannot be publicly advertised). The detailed requirements for public offerings can be found under various articles of the Prakas, including the disclosure of all related corporate information, technical information and financial information. The submission for registration can be approved or rejected by the Director General of SECC.

Prakas No. 009 (SECC) dated November 18, 2009 on Licensing of Securities Firms and Securities Representatives (L&R/Bsn/2009/Khm) (Royal Gazette, Year 10, No. 18, March 08, 2010)

The purpose of this Prakas is to prescribe the rules and regulations for granting or renewing a license to securities firms and securities representatives. It also determines business activities of the securities firms and securities representatives, including securities underwriting business, securities dealing business and securities brokerage business. According to this Prakas, the validation of a license of a securities firm, a securities representative and an investment advisor is 2 years from the date of its issuance and it is renewable for another period of 3 years from the date of the expiration. There are fixed processing fees of 2,000,000 riels for licensing a securities firm and different fees regarding different business activities of the firm.

The applicant shall satisfy the following requirements regarding:

- Capital required;
- Lodging at NBC a security bond and/or security instruments determined by the SECC;
- Human resources (qualification, experience, etc);
- Physical facilities;
- Business plan;
- Risk management and internal control;
- Applicable and updated risk management;
- No involvement with procedures such as bankruptcy, liquidation, or other similar

BNGLaw is a legal database website developed by the expertise of the Legal Research and Documentation Department (LRD) of BNG Legal. It is a complete database containing the existing laws and regulations of Cambodia from 1920 to the present, as well as international instruments applied in the Kingdom of Cambodia. LRD continuously updates the information to stay current with the law. This website was created to provide wider access to Cambodian law and to serve as a global resource so that all may have a deeper understanding of the legal system in Cambodia.

proceeding.

Various sanctions are also prescribed by this Prakas, including a fine for the late submission of the extension request. Transactional fines can also be pronounced in case of non-compliance with any direction issued by the Director General of the SECC.

Prakas No. 102 (MoEF) dated February 18, 2010 on Licensing Independent Engineering Companies for the Management of Real Estate Development Business (L&R/Bsn/2010/Khm) (Royal Gazettes, Year 10, No. 19, March 12, 2010)

This Prakas regulates the license application, related fees, validation of a license, state control and sanctions. Based on this Prakas, an eligible candidate can apply for a license to operate an independent engineering company at the Secretariat of the Inter-ministerial working group for real estate development related business of the Office of Management of Real Estate Commercialization of the Ministry of Industry, Mine and Energy. The application fee is 2,000,000 riels. This license is valid for 3 years from the date of the signing of this license and is subject to an extension. It can be suspended or revoked by the said working group on grounds of non-compliance with the required conditions.

Prakas No. 011 (SECC) dated December 01, 2009 on the Authorization to be the Operator of a Securities Market, the Operator of a Clearance and Settlement Facility, and the Operator of a Securities Depository (L&R/Bsn/2010/Khm) (Royal Gazettes, Year 10, No. 19, March 12, 2010)

This Prakas aims to prescribe requirements and procedures to grant an approval to conduct activities as an operator of a securities market, an operator of a clearance and settlement facility, and an operator of a securities depository; and to determine obligations of each operator in accordance with the Law on the Issuance and Trading of Non-Government Securities and the Anukret on the Implementation of the law on the Issuance and Trading of Non-Government Securities. It should be noted that the applicant must be a company incorporated and registered

in accordance with law on Commercial Enterprises or Law on the General Statute of Public Enterprise of the Kingdom of Cambodia. Once all the requirements are fulfilled, the SECC shall make its decision on the application no later than 6 months from the date of the lodgment of the application. The approval of an applicant is valid for an indefinite period. The operators must start their business operations within 6 months of the issue date of the approval. Most of the provisions are referred to the Law and Anukret on issuance and trading of Non-Government Securities.

Instruction No 009 Sor Nor Noor dated March 25 2010 on the management of the present number of foreigners in Kingdom of Cambodia issued by the Ministry of Interior.

This Instruction's purpose is to manage efficaciously the present number of foreigners and administrative work, assure the safety, security and public order of foreigners who are resident in Cambodia.

The ministry has mentioned some recommendations as follows:

- Possessors of residences, business places and non business places, shall inform the present number of foreigners who reside in their location to the Post Police office within 24 hours. In case the foreigners themselves possess the residence or business office, they must also report their presence and other foreigners from the date of residence and date of business commencement.

- The possessor shall immediately report to the authority on the movement, the extension, and any further incidence effected by the foreigners;

- Any possessors who have not reported on the presence of foreigners as determined by this instruction will be punished in accordance with the law on immigration.

Royal Kram NS/RKM/0210/003 dated February 26, 2010 on the Promulgation of the Law on Expropriation (L&R/L&P/2010/Khm) (Royal Gazettes, Year 10, No. 19, March 12, 2010)

The Law on Expropriation was adopted on 29 December 2009. The purpose of this Law is:

- to ensure the legality of private property deprivation, in a fair and just manner;
- to ensure pre-compensation in a fair and just manner;
- to serve the public and national interests;
- to develop the public physical infrastructure.

Article 4 of the Law defines expropriation as “the deprivation of right over immovable property or real right over immovable property of natural person, of private legal entity and public legal entity, including land, construction, plants for serving the development, the restoration and the broadening of public physical infrastructure that serves the public interests and the national interests and needs to provide a prior fair and just compensation.” The Law provides for the pre-process procedure, the process procedure and certain important principles on how to calculate the compensation for expropriated land. The Law also stipulates the mechanisms of the expropriation, its dispute resolution and the detention of the immovable property during the provisional period of the expropriation.

On the horizon...

The following draft laws were recently proposed or debated in the National Assembly. For the most current status of any of these bills, check the Legislation Tracker at

<http://cambodianlaw.wordpress.com/legislation-tracker/>

RECRUITMENT AGENCIES

Draft published by the Ministry of Labor. [8/2010]

Prohibits recruitment centers from detaining recruits or loaning them money. Also requires approval of advertisements and agreement contracts by the Ministry of Labor.

EQUAL OPPORTUNITY

Sub-decree approved by Council of Ministers. [8/2010]

Requires businesses in both the public and private sectors to employ disabled persons. Must meet quota within 3 years after adoption of the sub-decree.

PENAL CODE FOR JUVENILES

Council of Ministers currently drafting law. [7/2010]

Procedural rules for criminal suspects under age 18. Will establish separate detention facilities, set maximum penalties, allow for criminal record to be expunged in adulthood, and prevent criminal charges against suspects under 14.

FOREIGNERS CAN OWN 70 PERCENT OF BUILDINGS

Sub-decree approved by Council of Ministers. [7/2010]

Allows non-Cambodians to own up to 70% of condominium buildings under the newly passed foreign ownership law.