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Labor Unions and the Right to Strike under Cambodian Labor Law

1. Introduction

Labor Unions which are legally established have a number of rights under Cambodian law. One of the important rights is the right to strike which has been increasingly exercised by Labor Unions. Strike has become an instrument for workers to demand from employers and the government the improvement of working conditions in general and an increased minimum wage in particular. The recent strikes conducted by workers at the end of 2013 and early 2014 against the decision of the Labor Advisory Committee to increase the minimum wage 100 dollars instead of 160 dollars as demanded by the workers have drawn attention to the right to strike in Cambodia from the international community and investors.

2. What are the legal conditions for the formation of labor union?

An union can be established by employees. The founders of Union must submit a request, the statute and lists of names of those responsible for management and administration to the Ministry of Labor and Vocational Training for registration. In the case that the Ministry of Labor and Vocational Training does not reply within two months after receiving the application form, the union is considered legally registered. A copy of the submitted documents shall be sent to Department of Labor Inspection, the Office of the Council of Ministers, the Ministry of Justice and to the Ministry of Interior.



Following increased strikes and the clashes with the police and the protests which caused deaths and injuries, the government suspended the creation of labor unions until a new trade union law is adopted and implemented¹ expected by the end of 2014. The suspension of the freedom of association by the government until the new law on trade union may be a sign of tighter regulation of unions under the new law on trade unions.

The opponents to the current draft of law on Trade Unions argue that it imposes strict conditions for the creation of Unions and the suspension and de-registration of unions by the government² if their activities are deemed illegal.

In contrast, the proponents of the current draft law claim that the new law will comply with the ILO's Convention 87 on the Freedom of Association and improve the current industrial relation³.

The new law on Trade Union will set out conditions, procedure for the formation of labor unions and rights and obligations of labor unions⁴.

This law may be an instrument to adjust the existing power relation between employer and employees through tighter control of labor union by the government.

3. Is the right to strike of Labor Union recognized as fundamental right under Cambodian law?

ILO Convention No. 87 on Freedom of Association and Protection of the Right to Organize ratified by Cambodia highlights only "the right to freedom of association" of employers and employees. There are different interpretations regarding whether the right to strike as covered by the Convention No.87 and this is fundamental.

The head of GMAC claimed in a statement on 18 December 2013 that the right to strike is not fundamental based on the fact that Convention No.87 and others conventions do not explicitly set out the right to strike.

¹ "Gov't Suspends Freedom of Association for Unions", Cambodia Daily published on February 27, 2014.

² "Cambodia Must Make Union Draft Law Public: Right Group", RFA, April 17, 2014.

³ "Government's Trade Union Law May Limit Freedom of Association", Cambodia Daily published on March 13, 2014.

⁴ Draft law on Trade Unions prepared by the Ministry of Labor and Vocational Training.

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ILO International experts in Bangkok argued that although the right to strike is not stated explicitly in this convention, the ILO itself, other conventions and recommendations acknowledge it as a fundamental right that cannot be violated⁵.

Although there are contradictory views on the right to strike, it is generally accepted that the right to strike is inalienable from the right to freedom of association and the right to organize, protected by Convention 87. Therefore, it must be guaranteed by both the ILO constitution and national law.

In Cambodia, the right to strike is guaranteed by article 37 of the Constitution. Although the right to strike is a constitutional right, there are a few texts regulating this right. In absence of legal texts and decisions of the court to affirm this right, the fundamental principle of the right to strike is interpreted differently. Whatever the case, the constitutional nature of the right to strike is a key element of the protection guaranteed to strikers.

4. Are there legal procedures for a legal strike to take place?

Under article 318 of Labor Law, a strike is a concerted work stoppage by a group of workers that takes place within an enterprise for the purpose of obtaining the satisfaction of their demand from the employer as a condition of their return to work.

Although the right to strike is guaranteed by the Constitution and the labor law, it is not without limits. According to article 320 of Labor Law, the right to strike can be exercised by the union representing the workers if it aims to enforce compliance with a collective agreement or with the law and to defend the economic and socio-occupational interests of workers.

Article 323 of Labor Law requires that a strike shall be declared according to the procedures set out in the union's statutes, which must state that the decision to strike must be adopted by secret ballot. The right to strike is lawful only after all amicable means for setting the dispute with the employer have been exhausted and it must not be violently exerted.

Prior notice of at least seven working days must have been given to the employer or to the employer's association (i.e. Garment Manufacturers Association in Cambodia (GMAC) and the Cambodian Federation of Employers and Business Associations (CAMFEBA) if the strike affects an industry or a sector of activity. The prior notice must clearly state the reason for the strike. If the strike affects an essential service (for example hospitals, electricity or water supply) the notice

period is 15 working days.

⁵ "Cambodia: Right to strike "fundamental", ILO says", Phnom Penh Post published on 30 January 2014.

period is 15 working days.

Prior notice must also be sent to the Minister of Labor and Vocational Training which must conduct the negotiation or conciliation or mediation between the parties within 15 days. If mediation fails, the parties are obliged to submit their disputes to arbitration in compliance with arbitration procedure of the collective agreement. A decision from the Council must be issued within 15 days of the dispute being referred to it.

A minimum service shall be organized by the employer and employees before the beginning of the strike. If the agreement cannot be reached, the Ministry of Labor and Vocational Training shall determine services in question. The determination of essential services by the Ministry of Labor and Vocational Training is discretionary.

5. Are strikes currently conducted by labor union legal in Cambodia industrial relations?

According to article 337 of Labor Law, only the courts have sole jurisdiction to determine the legality of a strike in a case which the employer challenges a strike's legality. If the court declares that a strike is illegal, the strikers must return to work within 48 hours of being notified of this decision. In current practice, there is no case that the court declared a strike legal. However, to understand the reality of the current situation of strikes in Cambodia, it is crucial to analyze the legality of the strike from two points of view.

From the employer and government's perspective, the recent strikes have a purely political nature. The strikes have been incited by political parties to gain the political benefits during an intense political crisis and do not follow the non-violent principle of strikes and the legal procedures set out by labor law⁶ particularly the non-respect of the vote rule on the strike by the unions⁷.

From the employee and union's perspective, most of the strikes were conducted to demand the improvement of working conditions particularly the increase of the minimum wage which according to article 104 of Labor Law must ensure every worker of "a decent standard of living compatible with human dignity". Successive failures of the tripartite Labor Advisor Committee (LAC) to address the minimum wage of employees in accordance with the labor law and the exclusion of marginalized and anti-government unions in LAC also led to employee's protests. The labor Advisor Committee is a tripartite body which consists of representatives from the Ministry of Labor and

⁶ Statement of GMAC dated of 18th December 2013 on the Right to Strike.
⁷ "ILO names Factories with Poor Conditions", Cambodia Daily published on 14 March 2014.

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Vocational Training, employer's association and unions. The function of this committee is to provide the recommendation with regards to guaranteed rate of minimum salary. The Ministry of Labor and Vocational Training has issued, on January 02, 2014, an instructive circular to increase the minimum wage for workers/employees from 80 dollars to 100 dollars. However, they have not been satisfied with this increased minimum wage.

6. What are the measures dealing with strikes?

Some practical measures below should be taken to prevent strikes:

- Substantive and procedural regulations should be formulated to promote the relationship between employers and employees.
- Space for the employers and employees in discussing labor issues should be created in order to protect their mutual interests.
- All relevant stakeholders particularly workers, their representatives and trade union federations must be included in decision making process through a real and transparent dialogue.
- Improving working conditions must be seriously taken into account by the government and the employers.

Conclusion

While investors should evaluate the strike issues discussed above, they should be not pessimistic about the right to form labor unions. The formation of labor unions in enterprises and factories can improve the existing industrial relation through collective bargaining and open discussion between employer and employees. This in turn can increase productivity.

Addition to Our Team

Ms. Sopheap Tep

Legal Advisor

Ms. Sopheap Tep is a Legal Associate in the Real Estate Practice Group. Sopheap holds a Master of Land and Patrimony Law from University of Lumière Lyon 3 and the Royal University of Law and Economics. She also holds Bachelor of French Private Law and a Bachelor of Cambodian Law under a joint curriculum between Lumière Lyon 2 University, France and Royal University of Law and Economics, Cambodia.

Previously, she was a legal assistant to National and International Judges at the Supreme Court

Chamber of the Extraordinary Chambers in the Courts of Cambodia. At BNG Legal, her areas of practice includes: land law and commercial law.

Sopheap speaks Khmer, English and French.

Law Update

Prakas No. 571 dated 21 May 2014 on Payment on Tax Liability by Installment

General Director of General Department of Taxation is authorized to approve on the requesting of Tax Liability payment by installment on the amount equal or less than 4,000,000,000 Riel (1,000,000 USD). If the liability is more than 4,000,000,000 Riel, GDT has to request the approval from Minister of Ministry of Economy and Finance.

Installment Procedure:

- Maximum payment period is 3 years.
- If the installment within 1 year, there is no interest charge.
- If the installment more than 1 year, no interest charge for first year, on second year the market interest rate will be used for the interest charge calculation, and on third year the interest rate of 2% per month will be used for the interest charge calculation.

To define the tax payer with tax liability that can make payment by installment, GDT must:

1. Analyze the ability of Tax Payer to make an one off payment or not.
2. Review the historical practice of law and regulation related to taxation of Tax Payer.
3. Review the financial situation of Tax Payer.

After received the requesting letter, GDT must:

1. Review the proposal.
2. Inspect the Business location or accommodation of requester.