THE EMPLOYMENT LAW REVIEW

Thirteenth Edition

Editor
Erika C Collins

THE LAWREVIEWS

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PREFACE

For each of the past 12 years, we have surveyed milestones and significant events in the international employment law space to update and publish *The Employment Law Review*. Every year when I update this book, I reread the Preface that I wrote for the first edition in 2009. In that first edition, I noted that I believed that this type of book was long overdue because multinational corporations must understand and comply with the laws of the various jurisdictions in which they operate. I have been practising international employment law for more than 25 years, and I can say this holds especially true today, as the past 13 years have witnessed progressive shifts in the legal landscape in many jurisdictions. This 13th edition of *The Employment Law Review* is proof of the continuously growing importance of international employment law. It has given me great pride and pleasure to see this publication grow and develop to satisfy its initial purpose: to serve as a tool to help legal practitioners and human resources professionals identify issues that present challenges to their clients and companies. As the various editions of this book have highlighted, changes to the laws of many jurisdictions over the past several years emphasise why we continue to consolidate and review this text to provide readers with an up-to-date reference guide.

Speaking of changes, we have now been living with the covid-19 pandemic for more than two years. In 2020, we entered a new world controlled and dictated by a novel coronavirus, one that spread at a rapid pace and required immense government intervention. The ways in which governments responded (or failed to respond) shed light on how different cultures and societies view, balance and respect government regulation, protection of workers and employee privacy. Employment practitioners around the globe have been thinking about and anticipating the future of work for a decade. But with the onslaught of covid-19, the future of work was foisted upon us. Covid-19 has expedited the next decade of technological advancement and employer–employee relations, causing entire industries and workplaces to change in real time and not over the course of years.

Unsurprisingly, this year's text would not be complete without another global survey of covid-19 that summarises some of the significant legislative and legal issues that the pandemic has presented to employers and employees. The updated chapter highlights how international governments and employers continued to respond to the pandemic during the course of 2021, from shutdowns and closures to remote working and workplaces reopening. Employers around the globe have needed to be nimble to deal with the constantly changing environment.

The other general interest, cross-border chapters have all been updated. The #MeToo movement continues to affect global workforces. The movement took a strong hold in the United States at the end of 2017, as it sought to empower victims of sexual harassment and assault to share their stories on social media so as to bring awareness to the prevalence of this behaviour in the workplace. In this chapter, we look at the movement's success in other

countries and analyse how different cultures and legal landscapes affect the success of the movement (or lack thereof) in a particular jurisdiction. To that end, this chapter analyses the responses to and effects of the #MeToo movement in several nations and concludes with advice to multinational employers.

The chapter on cross-border mergers and acquisitions continues to track the variety of employment-related issues that arise during these transactions. The covid-19 pandemic initially caused significant challenges to mergers and acquisitions (M&A). Deal activity slowed substantially in 2020, negotiations crumbled and closings were delayed. Although uncertainty remains about when merger and acquisition activity will return to pre-pandemic levels, it appears that businesses and financial sponsors once again have begun to pursue transactions. Parties already have begun to re-engage on transactions previously put on hold and potential sellers appear willing to consider offers that provide a full valuation. The content of due diligence may change because the security of supply chains, possible crisis-related special termination rights in key contracts and other issues that were considered low-risk in times of economic growth now may become more important. This chapter, and the relevant country-specific chapters, will aid practitioners and human resources professionals who conduct due diligence and provide other employment-related support in connection with cross-border corporate M&A deals.

Global diversity and inclusion initiatives remained a significant issue in 2021 for multinational employers across the globe. Many countries in Asia, Europe and South America have continued to develop their employment laws to embrace a more inclusive vision of equality. These countries enacted anti-discrimination and anti-harassment legislation, and regulations on gender quotas and pay equity, to ensure that all employees, regardless of gender, sexual orientation or gender identity, among other factors, are empowered and protected in the workplace. Unfortunately, there are still many countries where certain classes of individuals in the workforce remain underprotected and under-represented, and multinational companies still have many challenges with tracking and promoting their diversity and inclusion initiatives and training programmes.

We continue to include a chapter that focuses on social media and mobile device management policies. Mobile devices and social media have a prominent role in, and impact on, both employee recruitment efforts and the interplay between an employer's interest in protecting its business and an employee's right to privacy. Because companies continue to implement bring-your-own-device programmes, this chapter emphasises the issues that multinational employers must contemplate prior to unveiling such a policy. Particularly in the time of covid-19 and remote working, bring-your-own-device issues remain at the forefront of employment law as more and more jurisdictions pass, or consider passing, privacy legislation that places significant restrictions on the processing of employees' personal data. This chapter both addresses practice pointers that employers must bear in mind when monitoring employees' use of social media at work, and provides advance planning processes to consider prior to making an employment decision based on information found on social media.

Our final general interest chapter discusses the interplay between religion and employment law. Religion has a significant status in societies throughout the world, and the chapter not only underscores how the workplace is affected by religious beliefs but also examines how the legal environment has adapted to them. The chapter explores how several nations manage and integrate religion in the workplace, in particular by examining headscarf bans and religious discrimination.

In addition to the six general interest chapters, this edition of *The Employment Law Review* includes country-specific chapters that detail the legal environment and developments of 38 jurisdictions around the world.

Covid-19 aside, in 2022, and looking into the future, global employers continue to face growing market complexities, from legislative changes and compliance challenges, to technological and societal forces that are transforming the future of work. Whether solving global mobility issues, designing employee equity incentives, addressing social media issues, negotiating collective bargaining agreements or responding to increasing public attention on harassment or equal pay issues, workforce issues can affect a company's ability to attract and retain talent, or damage its reputation and market value in an instant. These issues have created a confluence of legal and business challenges that no longer can be separated or dealt with in isolation. As a result, every company requires business advisers who can address the combined business and legal issues relating to its multinational workforce. It is my hope that this text provides legal practitioners and human resources professionals with some guidance, best practices and comprehensive solutions to significant workforce issues that affect a company's market position, strategy, innovation and culture.

A special thank you to the legal practitioners across the globe who have contributed to this volume for the first time, as well as those who have been contributing from the first year. This edition has once again been the product of excellent collaboration, and I wish to thank our publisher. I also wish to thank all our contributors and my Faegre Drinker associates, Katherine Gordon, Caroline Guensberg, Charlotte Marshall and Kerry Zaroogian, and my law partners, Alex Denny, Nicole Truso and Jill Zender, for their invaluable efforts in bringing this 13th edition to fruition.

Erika C Collins
Faegre Drinker Biddle & Reath LLP
New York
February 2022

Chapter 14

CAMBODIA

Vansok Khem, Samnangvathana Sor and Raksa Chan[1]

I INTRODUCTION

The employment relationship in Cambodia is governed by a number of legal instruments such as the Constitution,[2] the Civil Code,[3] the Labour Law,[4] the Law on Minimum Wages,[5] the Law on Social Security Schemes,[6] the Law on Trade Unions,[7] international treaties incorporated as part of Cambodian law through parliamentary enactments, and other labour-related rules and regulations. These are periodically issued by the Royal Government of Cambodia (RGC) and concerned ministries or departments such as the Ministry of Labour and Vocational Training (MLVT). Legal practitioners can also refer to arbitral awards of the Arbitration Council (AC), which is vested with the authority to preside over and resolve collective and individual disputes. Arbitral awards issued by the AC are the most reliable decisions that may be used as a persuasive authority for interpretation by the courts.

The MLVT and the Department of Labour and Vocational Training (DLVT) at the municipal and provincial levels are empowered to administer and enforce the Labour Law.[8] Labour inspectors are responsible for labour inspections[9] and must ensure and monitor enforcement of the current Labour Law and other labour-related rules and regulations not yet officially codified.[10]

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1 Vansok Khem is a partner, and Samnangvathana Sor and Raksa Chan are senior consultants at DFDL Mekong (Cambodia) Co Ltd.

2 The Constitution of the Kingdom of Cambodia, promulgated in 1993.

3 Cambodian Civil Code, promulgated on 8 December 2007 and fully implemented in late 2011.

4 Labour Law dated 13 March 1997, as amended on 20 July 2007, on 26 June 2018 and on 5 October 2021. The latest amendment of the Labour Law on 5 October 2021 (Amended Labour Law) expands the jurisdiction of the AC to resolve individual labour disputes. The formalities and procedures for proceedings at the AC will be determined by a Prakas of the Minister of Labour and Vocational Training. To date, the MLVT is yet to issue a Prakas.

5 Law on Minimum Wages, promulgated on 6 July 2018, and its implementing regulations.

6 Law on Social Security Schemes dated 2 November 2019, replacing the old law dated 2002 and its implementing regulations.

7 Law on Trade Unions, promulgated on 17 May 2016 (amended on 3 January 2020) and its implementing regulations.

8 Law on the establishment of the Ministry of Labour and Vocational Training [MLVT], dated 17 January 2005; Sub-decree No. 52 on the Organisation and Functioning of the MLVT, dated 1 January 2005.

9 Labour Law, Article 343.

10 ibid., at Article 344.

The court structure consists of the Supreme Court, the Appeal Court, municipal and provincial courts, and the Military Court.[11] There are no specialist courts yet, such as a labour court or an administrative court. Pending creation of a labour court, the ordinary courts hold jurisdiction to hear labour cases.[12]

An individual dispute is defined as one arising between an employer and one or more employees or individual apprentices. Individual disputes concern interpretation or enforcement of the contractual terms of employment (or apprenticeship), the provisions of a collective agreement, and the regulations and laws currently in force.[13] A 'collective dispute' is defined as one arising between one or more employers and a certain number of their staff on matters relating to working conditions, exercise of the rights of professional organisations, recognition thereof within the enterprise and issues regarding relationships between employers and employees that may threaten the normal functioning of enterprises or general social harmony and order.[14]

II YEAR IN REVIEW

The Amended Labour Law introduces several changes to the 1997 Labour Law, particularly provisions relating to employee working schedules, work on paid public holidays, individual disputes and the authority of an MLVT labour inspector:

a Enterprises can determine work schedules of more than one shift per day for different jobs based on the nature of their activities and arrangements. Work schedules can be divided into morning, afternoon and night shifts if the enterprise operates three shifts, provided that each shift does not exceed the statutory maximum working hours per day. Enterprises can also divide the work schedule of each shift into two separate sessions.

b Work performed on public holidays must be under the supervision of the labour inspector, formalities and procedures of which will be determined in the forthcoming Prakas. Employees are no longer entitled to a day off in lieu if a public holiday falls on a Sunday.

c The jurisdiction of the AC, which previously only resolved collective labour disputes, is expanded to cover individual labour disputes.

d Labour inspectors are now empowered as judicial police officers tasked with examining offences in accordance with the provisions of the Code of Criminal Procedures, the detailed procedure of which will be determined by an interministerial Prakas between the Ministry of Justice and the MLVT.[15]

Equally important, all applications for labour registration and compliance (i.e., a declaration of an enterprise opening or overtime approval) must now be submitted and approved via the MLVT's online system.[16]

11 Law on the Organisation of the Court, dated 16 July 2014, Article 3.

12 Labour Law, Article 389.

13 ibid., at Article 300.

14 ibid., at Article 302.

15 ibid., Articles 138 (new), 162 (new), 300 (new) and 343 (new).

16 Prakas No. 430 on the Launch of Public Services in relation to the Labour and Vocational Training Sectors through the Online System, dated 31 December 2020.

III SIGNIFICANT CASES

No information is available as judgments are not publicly circulated.

IV BASICS OF ENTERING INTO AN EMPLOYMENT RELATIONSHIP

i Employment relationship

The purpose of employment contracts is fundamentally to legally establish employment relationships. There are two types: a fixed duration contract (FDC) and an unfixed duration contract (UDC).

The maximum duration of an FDC is two years. It must be in writing and clearly specify the start and expiry dates. Depending on the purpose of the contract, an FDC may or may not have a clear expiry date.[17] Based on the AC's majority interpretation, when the entire duration of the contractual relationship exceeds two years, whether renewed or not, the FDC will automatically convert to a UDC regardless of the parties' original intent.[18]

However, the MLVT issued Instruction 050, which provides that the maximum duration of an FDC (i.e., the initial term of the FDC plus any subsequent renewals, up to a maximum of two years) is contingent upon the duration of the initial FDC. In any event, it shall not exceed a maximum of four years.[19] However, this interpretation is not consistent with past rulings rendered by the AC.

Unlike FDCs, UDCs are not required to be in writing. However, to ensure that the parties are aware of their rights and obligations, it is recommended that they are in writing. UDCs must meet the minimum standards set by the Labour Law (and its related regulations), otherwise they will be unenforceable. However, this does not preclude the parties from agreeing on more favourable terms.[20]

Certain mandatory content must be specifically included in any employment contract, such as wages, working hours and other working conditions.[21] The term 'working conditions' includes those specified under the Labour Law, such as wages, working hours, night work, weekly time off, paid holidays, paid annual leave, special leave and working conditions.[22]

Additionally, the employer may include other necessary terms based on the business's operational needs or requirements. These terms should be added only to the extent necessary and must not contradict the mandatory terms under the Labour Law.

For matters not covered by the employment contract, the Labour Law provisions, other applicable laws and regulations will be applicable by default. Employers are not permitted to unilaterally change the terms and conditions of employment contracts; otherwise, the employee has the right to immediately terminate his or her employment contract.[23] The employer should therefore notify and obtain employees' consent to amend any of the terms and conditions of employment.

17 Labour Law, Article 67.

18 See Arbitral Award 10/03 *Jacqsintex Garment Co., Ltd*, dated 23 July 2003.

19 Instruction 050/19, dated 17 May 2019, on Determination of Types of Employment Contracts issued by the MLVT.

20 Labour Law, Articles 65 and 67.

21 Civil Code, Article 665.

22 Labour Law, Chapter VI.

23 Civil Code, Article 665.

ii Probationary periods

An initial probation period will apply to an employment contract, during which time an employer may determine the suitability of the relevant employee. Employment contracts can be terminated without notice during the probationary period.[24] This period must not exceed three months for regular employees, two months for specialist workers and one month for non-specialist workers.[25]

iii Establishing a presence

A foreign company that hires employees to carry on business in Cambodia must register its establishment. To hire local employees, the foreign company must assist its local employees in obtaining their work books,[26] and declare the recruitment through a declaration of staff movement to the MLVT.[27] Furthermore, when a foreign national is employed to work in Cambodia, he or she must obtain a foreign work permit.[28] To fulfil this requirement, the company must have a legal presence and be duly registered with the MLVT.

Alternatively, foreign companies can enter into a service agreement to outsource employees from an agency or labour hire company. In this arrangement, the agency will be responsible for registration of the employees. However, the foreign company cannot exercise direction and supervision over these foreign employees. Similarly, the foreign company can engage an independent contractor, but must refrain from exercising direction and supervision over the independent contractor.[29]

If an employer substantially supervises and directs the independent contractor, the relationship between the employer and the contractor may be viewed as an employer–employee relationship, thus potentially rendering the employer responsible for all the employer's obligations under the Labour Law.

V RESTRICTIVE COVENANTS

During employment, an employee is permitted to engage in any professional activities that are neither in competition with the employer nor harmful to the agreed process of performance unless there is an agreement to the contrary.[30]

However, non-compete clauses for post-employment are not valid under Cambodian Laws. Under the Constitution, Khmer citizens of both genders have the right to choose any employment according to their ability and societal needs.[31] Further, the Labour Law broadly prohibits an employer from imposing any restrictions on an employee after his or her employment has ceased, in stating: 'Any clause of a contract that prohibits an employee

24 Labour Law, Article 82.
25 ibid., at Article 68.
26 ibid., at Article 32; Prakas No. 197 on the Work Book of the Cambodian Employee, dated 20 August 2014.
27 ibid., at Article 21.
28 ibid., at Article 261; Prakas No. 195 on Foreigner Work Permit and Employment Card, dated 20 August 2014, Clause 1.
29 See Arbitral Award 154/09, *Radio Free Asia*, dated 16 December 2009.
30 Labour Law, Article 69.
31 The Constitution, Article 36.

from engaging in any activity after expiry of the contract is null and void.'[32] Thus, we are of the view that a non-compete clause may be deemed null and void given that it prohibits an employee from engaging in his or her professional activities following employment.

VI WAGES

i Working time

Normal working hours cannot exceed eight hours per day and 48 hours per week.[33] The Labour Law prohibits employers from having an employee work for more than six days per week and grants employees the right to weekly time off for a minimum of 24 consecutive hours.[34] In practice, the weekly time off falls on Sunday.

In essence, any additional time worked by the employee beyond the normal working hours will be considered as overtime, even if the number of hours to be worked by employees is less than 48 hours per week.

'Night-time' means a period of 11 consecutive hours that includes the seven hours between 10pm and 5am.[35] Although the term 'night work' is subject to various interpretations, it is commonly accepted to refer to work performed between 10pm and 5am the following day.

The wage for night work is 130 per cent of the daytime rate.[36] Employees are entitled to an increased rate of 100 per cent of the normal rate of pay for overtime work between 10pm and 5am the following day.[37] Furthermore, the employer must also provide employees who work at night with an appropriate place to rest or sleep after working or a safe means of transport to their residences after finishing their work.[38]

ii Overtime

A company may undertake overtime when there is special work to be done (i.e., carrying out an inventory stocktake at a scheduled time for liquidation) or unusual backlog owing to unforeseen circumstances.[39] Prior to an employee working overtime, an employer must first gain approval from the employee representative and union (or from half of the employees if the company does not have an employee representative or union) and submit an application requesting approval of the proposed overtime work with the MLVT, accompanied by a certified letter of approval from the employee representative and union (or from half of the employees), at least 15 days before commencing the overtime work.[40]

The MLVT can only approve overtime work for a period of up to two hours per day and total working hours (including normal working hours and overtime work) cannot exceed 10 hours per day.

32 Labour Law, Article 70.
33 ibid., at Article 137.
34 ibid., at Article 147.
35 ibid., at Article 144.
36 Amendment to the Labour Law, dated 20 July 2007, Articles 139 and 144.
37 ibid., at Article 139.
38 Prakas No. 80 on Overtime Work Besides Regular Working Hours, dated 1 March 1999, Clause 6.
39 ibid., at Clause 1.
40 ibid., at Clause 2.

Employees are entitled to 150 per cent of the normal rate of pay for overtime work on a normal working day and 200 per cent of the normal rate of pay for overtime work between 10pm and 5am the following day and for work performed during normal weekly time off.[41]

A company can request that overtime work be undertaken at the weekend or weekly time off by means of a temporary suspension of weekly time off so that employees can work during these periods. However, this must not exceed two days per month and must not involve two consecutive periods of weekly time off. An employer must submit a request for the suspension of weekly time off to the MLVT before effecting such a change.

Although the Labour Law does not specify that an employer needs to seek approval from the employee representatives and union (if any), based on current practices of the MLVT, an employer must first gain approval from the employee representatives and union (or from half of the employees if the company does not have employee representatives or a union). Using the new online system, an employer can now submit a request to the MLVT at least seven working days before commencing the overtime work.[42]

All overtime work must be undertaken voluntarily.

VII FOREIGN WORKERS

All types of employees enjoy the same protection and mandatory benefits as those of local employees.[43]

Employers are obliged to keep immigration and labour documents on-site so that they are immediately available for labour inspection purposes. For foreign workforce inspections, the joint foreign labour inspectors can request a company to disclose original documents, such as:

a the initial declaration of employees;
b all declarations of staff movement in and out;
c foreign employee quota approvals;
d certification of foreign employees' employment contracts issued by the MLVT;
e passports (with two photos measuring 4cm x 6cm);
f visas and the latest extensions thereof; and
g employee work permits issued by the MLVT.

The employer must therefore retain original copies of the aforementioned documents for the duration of the employment period.[44]

Companies employing (or intending to employ) foreign employees are required to apply for a foreign employee quota via the MLVT online system. Under the quota system, no more than 10 per cent of an employer's total local workforce may be foreign nationals (based on a calculation of foreign employees and local employees), as follows: skilled labour employees

41 Amendment to the Labour Law, Article 139; Prakas No. 80 on Overtime Work Besides Regular Working Hours, dated 1 March 1999, Clause 6.

42 See Guideline on the Use of Public Service via Automatic System, at https://lacms.mlvt.gov.kh/client/guidline.

43 Labour Law, Article 1.

44 Interministerial Prakas No. 719 on Strengthening the Inspection of Foreign Workforce in the Kingdom of Cambodia, dated 19 February 2018, Article 3.

(6 per cent), office employees (3 per cent) and unskilled labour employees (1 per cent). Through the online system, the MLVT generally adheres very strictly to the foreign employee quota within the scope of the 10 per cent cap.

However, the MLVT has issued Prakas No. 277, allowing the owners or directors of enterprises to submit a letter to the MLVT requesting the hiring of additional foreign workers in excess of the 10 per cent cap in special circumstances; for example, if they are unable to recruit any Cambodian employees to perform work at any workplace, job or work shift. As Prakas No. 277 does not specify that the MLVT must grant such a request, whether a request will be approved or declined remains subject to the sole discretion of the MLVT.[45]

Foreign nationals intending to work in Cambodia are required to obtain a Visa EB. They can apply for in initial Visa E either in advance from Cambodian embassies and consulates located overseas or on arrival in Cambodia.[46] However, there are certain nationalities for which an application for a visa on arrival may be denied.[47] After obtaining a Visa E and entering Cambodia, the foreign workers will have to extend the visa to a Visa EB.[48] The initial Visa E is valid for 30 days from arrival in Cambodia and may be extended to a Visa EB for between six months and one year.[49]

Foreign nationals intending to work or do business in Cambodia are also required to hold a work permit.[50] A foreign national can apply for a work permit with only one year's validity through the MLVT's online system.[51] No matter when the work permit is issued by the MLVT, it expires on 31 December of that year. If foreign nationals continued to work into the following year, the employer must apply for renewal of the work permits before 31 March of the following year.[52]

Besides the initial labour registration, an employer must register new foreign employees with the MLVT or relevant DLVT when they join (by issuing a written declaration of staff movement) and then also declare when they leave, within 15 days of their start or termination date.[53]

VIII GLOBAL POLICIES

An enterprise employing eight or more employees must establish internal work rules (IWRs) within three months of opening of an enterprise after consultation with workers' representatives.[54]

45 Prakas No. 277 on Special Conditions for the Recruitment of Foreign Workers, dated 14 August 2020.

46 Sub-Decree No. 123 on Formalities on Permission for Non-Immigrant Foreigners to Enter, Exit and Stay in Cambodia, dated 10 June 2016, Article 4.

47 Owing to the covid-19 pandemic, the Royal Government of Cambodia has suspended the granting of visas on arrival. Travel restrictions and entry requirements discussed above may be adjusted following any new further notice from the competent authorities in charge of covid-19 measures.

48 Sub-Decree No. 123 on Formalities on Permission for Non-Immigrant Foreigners to Enter, Exit and Stay in Cambodia, dated 10 June 2016, at Article 20.

49 ibid., at Article 19.

50 Labour Law, Article 261.

51 The online system was implemented through a website launched on 1 September 2016. See Foreign Workers Centralised Management System <http://www.fwcms.mlvt.gov.kh>.

52 Prakas No. 195 on Foreigner Work Permit and Employment Card, dated 20 August 2014, Clause 5.

53 Labour Law, Article 21.

54 ibid., at Article 24.

The IWRs must address (among other things) employment conditions, application procedures, salary information, leave policies and disciplinary matters. Standardised IWRs issued by the MLVT are available but not compulsory, although labour inspectors generally prefer enterprises to use the MLVT standardised IWRs. Consequently, the approval process typically takes longer if the MLVT standardised IWRs are modified, as the labour inspector will typically insist on successive reviews and amendments.

Before submission to the MLVT or DLVT, the IWRs must be signed by a director or other representative of the enterprise, accompanied by a certification letter signed by the elected shop stewards and assistant, as elected in accordance with the shop steward election procedures.[55] The shop stewards must be consulted and must put forward a written opinion on draft modifications to these regulations.[56]

The IWRs must be certified by the labour inspector. This certification must be issued within 60 days of the inspection.

IX PARENTAL LEAVE

There is no regulation concerning parental leave under the Labour Law. Nevertheless, female employees will are entitled to maternity leave of at least 90 days.[57] During maternity leave, female employees are entitled to half of their regular wages, plus certain other benefits, provided that they have completed at least one year of uninterrupted service with the enterprise.[58]

Employers are prohibited from dismissing female employees during their maternity leave or at the date when the end of the notice period would fall during their maternity leave.[59] During the first two months after returning to work, female employees are expected to perform light work only.[60]

For one year from the date of birth, mothers who breastfeed are entitled to one hour per day during working hours to breastfeed their child. This hour may be divided into two periods of 30 minutes each, one during the morning shift and one during the afternoon shift.[61] The exact time of breastfeeding is to be agreed between the employee and the employer. If there is no agreement, the periods will be at the midpoint of each work shift. Employers will not deduct breaks for breastfeeding from other normal breaks provided for in the Labour Law, IWRs of the enterprise or a collective bargaining agreement.

X TRANSLATION

There is no legal requirement for employment documents to be translated into the local language. However, this is strongly recommended, especially for local employees. Khmer is the official language of Cambodia as recognised by the Constitution,[62] authorities and courts in Cambodia. In the event of any disputes, the authorities and courts generally only

55 ibid., at Article 22.
56 ibid., at Article 284.
57 ibid., at Article 182.
58 ibid., at Article 183(1).
59 ibid., at Article 182(3).
60 ibid., at Article 182(2).
61 ibid., at Article 184.
62 The Constitution, Article 5.

accept documents in Khmer. For local employees, using Khmer will also assist those who do not have a good command of English or other foreign languages. It will help them to better comprehend the purpose and terms of the employment contract and guard against any later claims of withdrawing their consent on the basis that they did not fully understand the terms of the employment contract. Importantly, all employment-related filings and registration documents are required to be in Khmer.

Further, employment contracts for foreign employees must be translated into Khmer and certified by the MLVT when applying for a work permit.

XI EMPLOYEE REPRESENTATION

There are two forms of collective bodies under Cambodian labour regulations, namely shop stewards and trade unions.

An enterprise employing eight or more employees must hold an election for shop stewards.[63] The statutorily required number of shop stewards is as follows:

a one official shop steward and one assistant, if the enterprise employs between eight and 50 employees;

b two official shop stewards and two assistants, if the enterprise employs between 51 and 100 employees; or

c in addition to the above, one extra official shop steward and one extra assistant for each group of 100 employees.[64]

With respect to election procedures, the company must organise the election (and absorb the entire cost of the process) in accordance with the following requirements:

a for the first term, hold discussions with an employee that represents all employees to determine the election date and procedures;

b publish the election date 15 days in advance, and publish the election procedures and the list of candidates at least three days prior to the election date. This all needs to be done in the enterprise's premises in a place that is accessible and visible to all employees;

c allow eligible employees to register as election candidates and register to vote;

d conduct the election by secret ballot and during working hours;

e hold the election for official shop stewards and assistants at the same time;

f on the election date, allow employees at least two hours off work to consider the candidates; and

g produce the election minutes and submit those minutes to the relevant labour authority within eight days of the election date as part of the process to register the elected shop stewards with the MLVT or relevant DLVT.[65]

If the enterprise has more than 51 employees, the election of the official shop stewards and assistants must be held in two separate electoral bodies. The first electoral body will be for the election of an official shop steward and assistant for manual employees and employees not holding managerial positions. The second electoral body will be for the election of an

63 Law on Trade Union, promulgated on 17 May 2016 and amended on 3 January 2020, Article 31.

64 ibid., at Article 40.

65 Prakas No. 302, dated 2 July 2018, on Shop Stewards in the Enterprise, Article 2.

official shop steward and assistant for employees holding managerial positions. However, if the aggregate number of those in the second electoral body is fewer than eight, the election can be held with only one electoral body.

Shop stewards must perform their duties in good faith. These duties include, but are not limited to, the following:

a reporting to the employer and the labour inspector any employee grievances;

b ensuring enforcement of provisions concerning occupational health and safety; and

c proposing to the employer any measures that would contribute beneficially towards protecting and improving the health, safety and working conditions of employees in the enterprise, particularly in respect of work-related accidents or illnesses.[66]

To facilitate performance of their duties, an employer must provide the shop stewards with an office, a meeting room, an appropriate site or board for the display of posters and office supplies. Furthermore, every shop steward must be allocated two hours per week to undertake his or her representative duties, without any reduction of salary or other benefits. In special circumstances and with the prior consent of the employer, shop stewards may take additional time off work when the time taken to perform their duties exceeds the prescribed times.[67]

Unlike shop stewards, trade unions are not statutorily required under the laws. Employers do not have an obligation to form or hold elections for union leaders. Rather, it is the right of the workers to form a union and to elect their leaders. Importantly, the employers must not be involved in creating a union.[68]

The registration of trade unions is under the jurisdiction of the MLVT.[69] The threshold to form a union is at least 10 employees for a local union at the company level. A trade union obtaining most representative status (MRS) has the exclusive right to engage in the negotiation of collective bargaining agreements or pursue collective labour dispute resolution.[70] To obtain MRS, a union must be duly registered, fulfil required qualifications and request a certificate from the MLVT.[71]

XII DATA PROTECTION

i Requirements for registration

There is no specific data protection law. However, general data protection provisions are provided under various pieces of legislation, such as the Constitution, the Civil Code and the Criminal Code. The Law on E-Commerce also specifies the obligation to protect the privacy of a data subject in the case of electronic communications and storage.[72] The Labour Law does not extensively address data privacy for employees, although there are a few articles that limit the disclosure of information about employees.[73] To date, there is no specific regulator or authority in charge of data protection that requires companies to register with it.

66 ibid., at Article 4.

67 ibid., at Article 7.

68 Law on Trade Union, Article 5.

69 ibid., at Article 11.

70 ibid., at Article 54.

71 id.

72 Law on E-Commerce, dated 2 November 2019, Article 32(1).

73 Labour Law, Articles 34 and 93.

The right to privacy is enshrined as a constitutional right and is listed as a personal right under Article 10 of the Civil Code, which provides that personal rights include the right to life, body, health, freedom, name, dignity, privacy and other rights relating to personal benefits or interests. However, the scope and extent of any privacy rights granted under the Civil Code have not been clarified by any official guidance or judicial opinion.

The Civil Code offers the right to seek damages against any person who intentionally or negligently infringes the (personal) rights of another in violation of the law.[74] In this regard, if the collection, processing, use, access, storage, disclosure or transfer (or otherwise) of personal data of the person is deemed to be a breach of a privacy right as mentioned above, the data subject has the right to seek damages against the person who intentionally or negligently infringed his or her privacy rights. Additionally, the concerned data subject also has the right to seek an injunction and demand elimination of the effect of the infringing act.[75]

Employees' private information could be deemed as within personal rights and are protected under the law. The collection, storage and transfer of an employee's data by the employer without proper consent from the employee could be construed as breaching employee data privacy and may expose the employer to both civil and criminal liabilities.[76] The company has a legal obligation to ensure that certain personal and confidential information is not disclosed, if that disclosure causes harm to the data subject. In the event of disclosure, the company and, possibly, its directors (legal representatives) can be held legally liable under Cambodian law, both civilly and criminally. Further, any persons that keep private information in electronic form must ensure by all available means that the information is safely protected under reasonable circumstances.

ii Cross-border data transfers

A company is not obliged to register with a data protection authority when conducting cross-border data transfers in Cambodia's jurisdiction, as there is no specific regulator or authority in charge of data protection in Cambodia yet. Nevertheless, it is highly recommended that an employer obtains an employee's consent prior to the transfer of his or her personal data to mitigate the risk of civil and criminal claims arising from the employee's right to data privacy.

iii Sensitive data

As outlined above, the definition of personal rights is quite broad and the laws do not specifically define what types of data are considered sensitive. Determination of the categories of personal rights rests with the interpretation of the Cambodian courts.

Nevertheless, the Labour Law prohibits an employer from making harmful statements about a former employee to a new or prospective employer that could prejudice the new employment, even if misconduct occurred during the former employment relationship. The transfer or disclosure of information that may be harmful to an employee's prospects of employment may provide grounds for the employee to commence legal actions against the

74 Civil Code, Articles 13 and 743.

75 ibid., at Articles 11 and 12.

76 ibid., at Article 756; Criminal Code, dated 30 November 2009, as amended on 27 February 2018, Article 314.

former employer. Further, the health records collected by labour medical personnel of the MLVT is confidential information that must not be disclosed to employers, unions or any third party in a manner that could identify the employee.[77]

iv Background checks

As the law is not entirely clear on the scope and extent of privacy rights, it is recommended that any form of background checks be conducted with the involvement and consent of the candidate or employee.

For the purpose of background checks, it is common for employers to request information on (or a copy of) the national identity card. Employers do not have a legal right to require candidates or employees to provide credit histories other than with the consent of the individual. Criminal checks may only be undertaken in the form of a request for criminal records from the Ministry of Justice by the respective individual.

In general, in the absence of regulations addressing requirements for particular background checks for employment, there is no limitation on who and when the checks may be conducted, provided that:

a proper consent from the candidate or employee is obtained (no consent is needed if the information is publicly available);

b the checks and purpose do not subject the candidate or employee to discrimination; and

c the checks do not involve data that is legally prohibited from being released to a prospective or new employer.

XIII EMPLOYMENT

i Dismissals

Under the Labour Law, terminations must be with cause in general. Although termination without cause is possible, the employer will need to pay full termination compensation to the employee. The termination procedures depend on the type of employment contract, the position held by the employee and the reason for termination. For individual termination, the employer does not need to notify the competent authority except in the case of terminating the employment of specially protected employees.

An FDC cannot be terminated before its expiry date, except in the event that there is a mutual separation agreement signed by both employee and employer in front of a labour inspector,[78] an event of *force majeure*[79] or serious misconduct by the employee.[80]

Except for serious misconduct, in the event of expiry or non-renewal of an FDC, the notice period to be given to an employee is 10 days for an FDC that is more than six months and up to one year in duration, and 15 days for an FDC that is more than one year and up to two years in duration.[81]

77 Labour Law, Article 239.

78 ibid., at Article 73(1).

79 ibid., at Article 73(2).

80 ibid., at Article 83, Part B.

81 ibid., at Article 73(5).

If there is no prior notice, an FDC will be extended for a length of time equal to its initial duration or deemed a UDC if its total duration exceeds two years. However, there are different interpretations on whether prior notice should be given in the case of termination of an FDC before its expiry date.

If an employer terminates an FDC with cause (in the absence of serious misconduct), the employee is entitled to:

a severance pay of at least 5 per cent of the total salary and benefits due to the employee during the entirety of the contract if there is no collective bargaining agreement that provides differently;[82]

b compensation for unused annual leave;[83] and

c the last unpaid salary.

Termination of an FDC without cause entitles the employee to the above-mentioned compensation plus damages equal to compensation that is at least equal to the remuneration that the employee would have received up to the expiry date of the contract.[84]

Termination of an FDC without cause by the employee also entitles the employer to compensation in an amount that corresponds to the damage sustained by the employer.[85]

A UDC is terminated with cause when it is terminated on any of the following grounds:

a with a valid reason relating to the employee's aptitude or behaviour, based on the requirements of the operation of the enterprise;[86]

b a *force majeure* event;[87]or

c serious misconduct by the employee.[88]

An employee whose UDC is terminated with cause (in the absence of serious misconduct) is entitled to:

a prior written notice of the termination (or compensation in lieu) based on the employee's length of service as follows:
- less than six months: notice of seven calendar days;
- between six months and two years: notice of 15 calendar days;
- more than two years and up to five years: notice of one calendar month;
- more than five years and up to 10 years: notice of two calendar months; and
- more than 10 years: notice of three calendar months;

b two days of paid leave per week during the notice period to look for a new job;[89]

c seniority payments,[90] comprised of back pay and new seniority pay as follows:
- new seniority pay: as of 1 January 2019, new seniority pay equal to 15 days of wages and fringe benefits per year must be paid to employees during continuous employment every six months, half in June and half in December. When employment is terminated, the employer must provide new seniority pay equal to

82 ibid., at Article 73(6).
83 ibid., at Article 167(2).
84 ibid., at Article 73(3).
85 ibid., at Article 73(4).
86 ibid., at Article 74(2).
87 ibid., at Article 82.
88 ibid., at Article 82.
89 ibid., at Article 79.
90 Prakas No. 443, dated 21 September 2018, on Seniority Payment issued by the MLVT.

seven days of wages and other benefits to employees if their remaining seniority for the current year (after the latest payment of new seniority pay up to the termination date) is between one and less than six months; and

- back pay: the employer must provide back pay for the employment period prior to 1 January 2019 to employees at the rate of 15 days of wages and benefits per year, and is capped at a maximum amount of 156 days' of wages and benefits.[91] Whether termination of employment is with cause (in the absence of serious misconduct) or without cause, the employer must provide the total outstanding amount of back pay to employees;

d compensation for unused annual leave; and

e the last unpaid salary.

If the cause of termination includes serious misconduct, the employer will only pay compensation for any unused annual leave and the final unpaid salary.

On termination of a UDC without cause by the employer, the employee is entitled to the above-mentioned entitlements plus damages in the amount equal to seniority payments (back pay and new pay) capped at six months' wages and benefits. If an employee terminates a UDC without cause, the employee will be liable to the employer for damages in an amount corresponding to the damages sustained by the employer.[92]

Certain employees are entitled to special protection, whereby termination of the employment contract requires approval from an MLVT labour inspector. These employees (which include shop stewards, unelected shop steward candidates, elected union leaders of legally registered unions, founding union members and normal union members who volunteer to join the union, and candidates for union elections) are entitled to special protection for different specified periods.[93]

A company must obtain approval to terminate the employment of specially protected employees by filing with the MLVT a letter requesting termination that specifies, among other things, the reason for termination and the intended date of termination.[94]

ii Redundancies

Termination of an individual employment contract is determined by the termination provisions of an FDC or UDC (with or without cause) and the relevant employee's length of service.

The terms 'collective redundancies' and 'mass lay-offs' refer to lay-offs resulting from a reduction in an enterprise's activity or where there has been an internal reorganisation that

91 There are different interpretations of the calculation formula for back pay. The first relies on Instruction No. 057/19 on Payments of Back Pay by Employers in the Textiles, Garment and Footwear Industries dated 10 June 2019 (the only instruction providing guidelines on back pay calculation), whereby the employer must provide back pay for the employment period prior to 1 January 2019 to employees at the rate of 15 days of base wages per year (base wage prior to 1 January 2019) and is capped at a maximum amount of 156 days of average base wages. In contrast, the second interpretation relies on Article 110 (New) of the Labour Law and the AC award, whereby the employer must provide back pay for the employment period prior to 1 January 2019 to employees at the rate of 15 days per year, but calculated by using base wages and other benefits received during the last 12 months (as opposed to base wage).

92 Labour Law, Article 91.

93 Law on Trade Union, Articles 43 and 67.

94 id.

is foreseen by the employer.[95] Although the Labour Law does not specify the number of employees that must be affected by a mass lay-off, it does not mean that all employees must be affected.

When there is a mass lay-off, an employer must establish the order in which employees are laid off. The first must be those with the least professional ability and then those with the least seniority (seniority is increased by one year for a married worker and by an additional year for each dependent child of the worker).[96] The employer must inform workers' representatives in writing, seeking suggestions regarding the proposed lay-offs, and consult them on how best to minimise the effects of the termination on the affected employees.[97] Union delegates may perform the same duties as shop stewards.

The employer must then inform the MLVT of each step of the collective termination process. At the request of the shop stewards, the MLVT can call the concerned parties together one or more times to examine the effects of the proposed collective termination and assess the measures to be taken to minimise them. In exceptional cases, the MLVT can (on up to two occasions) issue a proclamation to suspend the collective termination for a period not exceeding 30 days to help the parties concerned find a solution.[98]

Should there be any jobs available within two years of a collective termination being concluded, the employer is required to give priority to those terminated workers if any of the jobs available are similar to their previous roles.[99]

Each laid-off employee must be compensated in accordance with the type and the length of employment contract he or she entered into with the employer.[100]

The procedure and requirements for approval from an MLVT labour inspector when terminating specially protected employees, as mentioned above, are also applicable to a collective termination.[101]

It is also legally permissible for the employer and employee to mutually agree to terminate the employment agreement by entering into a mutual separation agreement. Mutual separation is a recommended approach as it can mitigate the risk of future claims from the employee. Other than the requirement to sign the mutual termination agreement or settlement agreement in front of a labour inspector for FDCs, as noted above, the Labour Law does not provide specific rules concerning mutual separation and accompanying compensation. Although it is reasonable to form a view that the parties are free to determine separation compensation by mutual agreement, it is recommended that the discharged employees receive at least the minimum compensation and entitlements as provided under the Labour Law.

95 Labour Law, Article 95.
96 ibid., at Article 95(4).
97 ibid., at Article 95(3).
98 ibid., at Article 95.
99 id.
100 See Section XIII.i herein.
101 id.

XIV TRANSFER OF BUSINESS

Under the Labour Law, if a change occurs to the legal status of the employer, particularly by succession or inheritance, sale or merger, all valid employment contracts on the day of the change remain binding between the new employer and the employees of the former company. The contracts cannot be terminated unless this is undertaken in accordance with all applicable termination rules[102] and are not transferable without the consent of the affected party.[103]

Other than this, there is no provision regarding statutory protection of employees involved in a business transfer between two distinct entities.

If an entity (such as the seller) wishes to transfer its employees to a distinct entity (such as the buyer), the process is straightforward. First, the seller terminates the employees' employment contracts and complies with its obligations regarding those terminations (including paying all applicable termination benefits) to the terminated employees, and second, the employees enter into new employment contracts (with fresh new seniority) with the buyer.

Otherwise, as a matter of practice, it may also be possible to effect the purported transfer by way of a tripartite agreement between the seller, the buyer and the relevant employees, whereby (1) the employees resign from their employment with the seller and agree to release the seller from any claim, (2) the employees accept the offer of employment made by the buyer, and (3) the buyer agrees to recognise the seniority of the employees and bears responsibility for all the entitlements and benefits arising from employment of the personnel with the seller (including those linked to their past seniority with the seller).

XV OUTLOOK

On 4 March 2021, Sub-Decree 32[104] was issued to implement a pension scheme and determine (among other things) the mechanisms, conditions and procedures on registration, contributions and benefits under the scheme.

Sub-Decree 32 does not indicate the actual date on which the pension scheme will be implemented, although it does state that this will be determined by a separate joint Prakas from the MLVT and the Ministry of Economy and Finance. It is expected that relevant ministries will issue an implementing regulation in 2022. Employers in all sectors are advised to be vigilant in regard to any updates about the pension scheme.

102 Labour Law, Article 87.

103 Civil Code, Article 667.

104 Sub-Decree 32 on the Social Security Scheme on the Pension Fund for Persons under the Scope of the Labour Law dated 4 March 2021.

Appendix 1

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