



Cambodia: Workforce Restructuring in Cambodia – Legal Planning in Challenging Times

The global uncertainty recently escalated by the changes in U.S. tariff policies and the halt of USAID funding have posed operational challenges to business and non-business enterprises. In response to these challenges, enterprises have restructured their operations (and, in some serious cases, suspended their entire operations). The immediate and inevitable response is workforce restructuring.

Workforce restructuring does not necessarily equate to workforce reduction. There are numerous strategies to rationalize costs while maintaining the current headcount, ensuring that the organizations can effectively navigate crises.

This article aims to provide a practical legal roadmap for enterprises in Cambodia that are considering restructuring their workforce. We explore various alternatives to layoffs, while also providing guidance on layoffs when necessary.

1. Alternatives to Layoffs

a. Voluntary salary reduction

Employers and employees may agree on salary reductions to reduce operational costs. Salary reductions require explicit written

consent from employees. Any modification to the employment contract, including wage reduction, requires employee consent. This arrangement requires a written variation to the terms of employment, typically in the form of an amendment to the employment contract.

b. Voluntary unpaid leave and reduction in working hours

Voluntary unpaid leave and a reduction in working hours are not specifically set out in the Labour Law. Rather, this arrangement is made based on mutual agreement between employer and employee. Employer and employee can agree to voluntary unpaid leave during which time the employer will provide no (or reduced) remuneration to the affected employees. The parties can agree to reduce the remuneration of the affected employees under the voluntary reduction of working hours.

Reduction in working hours can be implemented via a written amendment to the employment contract.

c. Suspension of employment

Article 71 of the Labour Law permits an employer to proceed with suspension of employment on the basis of serious financial or material difficulty (or specific difficulty) or, subject to certain qualifications, force majeure.

An employment contract may be suspended for not more than two months when the business faces serious economic or material difficulty or any particularly unusual difficulty, which leads to a suspension of business operations. The employer must be prepared to prove that the business faces serious financial hardship, such as serious economic and material difficulty. Such suspension must be notified to and monitored by the labour inspector.

Generally, the suspension of an employment contract affects only the main obligations of the contract, including those under which an employee has to work for the employer and the employer has to pay the employee, except when there are provisions to the contrary (under the Labour Law, employment contract or internal work rules) that require the employer to provide benefits to the employee. In practice, suspension is made in the form of an agreement with the employee and requires a prior approval of or, depending upon the circumstances, notification to the labour authorities. Importantly, in case of violation or failure to follow the mandatory procedure in relation to employment suspension, employees are entitled to full wages and benefits during the suspension period.

d. Redeployment

For multinational corporations, redeployment of employees from one branch to another, often in different jurisdictions, is frequently a desired approach to minimize labour costs in one office while retaining key employees. Importantly, since labour regulations are very specific to each jurisdiction, care must be taken to ensure compliance with the applicable laws of both the jurisdictions where the employee is departing from and the jurisdiction where such employee will be redeployed to.

The concept of employee transfer does not exist under the Labour Law and there is no prescribed mechanism under the Labour Law to effect the transfer of employees between two separate and distinct legal entities. To effect a redeployment, the employment relationship must be terminated in Cambodia and then a new employment relationship formed in the foreign jurisdiction. In some situations, a tripartite agreement, among the Cambodian entity, the foreign jurisdiction entity and the redeployed employee is executed to emphasize certain agreed terms, such as termination compensation and recognition of seniority, among others.

e. Voluntary early retirement

Cambodia does not have a mandatory retirement age for employees in the private sector. Employees may choose to participate in a voluntary early retirement program proposed by the employer. Subject to its policies, employers may offer additional contractual benefits on top of the statutory termination payment to persuade employees to agree to their early retirement program.

2. Termination

a. Permissible grounds for termination

Under the Labour Law, a fixed duration contract ("**FDC**") cannot be terminated before its expiry date, except: (i) upon mutual agreement, signed by both employee and employer in front of a labour inspector; (ii) upon the occurrence of a force majeure event; or (iii) for serious misconduct by the employee (to the extent proven by the employer).

An unspecified duration contract ("**UDC**") is terminated with cause when it is terminated on any of the following grounds: (i) with a valid reason relating to the employee's aptitude or behavior based on the requirements of the operation of the enterprise; (ii) a force majeure event; or (iii) serious misconduct by the employee.

The term 'valid reason' stated under Article 74 of the Labour Law is vague and subject to different interpretations by the labour authorities or courts. One of the possible interpretations is that it must be a reason related to the employee's poor performance or behavior (after all due process has been exhausted), which does not align with the operational requirements of the enterprise.

On the other hand, a reduction in the operational activities or internal restructuring may arguably also be considered a termination with valid reason. However, there is no clear guidance under the Labour Law on whether a reduction of business activities per se qualifies as a valid reason under Article 74 of the Labour Law. As aforementioned, the interpretation of these matters will be subject to the relevant labour authorities or a court on a case-by-case basis.

For completeness, the Ministry of Labour and Vocational Training ("**MLVT**") issued the Notification on the Compensation for Terminating an Employment Contract dated 21 March 2024 which states that termination based on bankruptcy is considered termination with cause (a valid reason that exempts employers from having to pay damages to the terminated employees). The MLVT further clarifies in the above notification that termination based on bankruptcy is considered termination with cause as it does not affect an employee's reputation or cause other employees to doubt the employee's behavior, ability, or productivity.

b. Termination options

i. *Collective termination*

For employers whose situation requires collective termination of employees (more than one employee), the employer must follow a collective termination procedure. The Labour Law allows for collective termination if it is a result of a reduction in an employer's activities or due to an internal reorganization. While there is no definition of a 'reduction in an employer's activity or an internal reorganization' in the Labour Law, examples could include: the use of robots for certain functions, funding cuts/ freeze, or a reduction in product orders, which results in there being less need for certain employees.

The employer must comply with the following:

- (A) order of employees to be terminated based on qualification, seniority and family obligation;
- (B) consulting with the employee representatives (and union delegates if any) in writing about the planned

collective termination and seeking their suggestions on the appropriate measures prior to an announcement of the proposed collective termination;

- (C) informing the MLVT of each step of the collective termination process.

It is important to note that if the employer does not follow the collective termination procedures, the employer may be ordered by the labour authorities or the court to reinstate (where possible) or pay damages to the affected employees in the event of dispute.

ii. Mutual separation

Mutually agreed termination, based on an agreement between employer and employee, is a desirable approach to ending employment. Under the Labour Law, other than the requirement that a mutual termination agreement to terminate an FDC must be executed by both parties before the labour inspector, there are no specific rules addressing mutually agreed termination and the accompanying termination compensation.

While it is reasonable to form the view that the parties are free to determine termination compensation via mutual agreement, the terminated employees should arguably be entitled to the minimum compensation provided under the Labour Law and their contractual entitlements.

c. Termination compensation

When terminating employment contracts, the employer must pay statutory compensation, including the last salary and benefits, and compensation for accrued unused annual leave to the terminated

employees. Other termination compensation is payable based on the types of employment contract and reason for termination.

For an FDC, the employer must additionally pay severance pay of at least 5% of the total salary and benefits received during the employment contract, unless a collective bargaining agreement provides otherwise. In the case of premature termination without cause, an employee is entitled to compensation at least equal to the remuneration they would have received up to the expiry of the employment contract. Regarding termination of a UDC with cause (except serious misconduct), the employer must provide prior written notice (or compensation in lieu) based on the employee's length of continuous service, and outstanding seniority payments. For termination without cause, the employee may claim damages equivalent to all seniority payments accrued during employment without needing to provide evidence justifying the harm incurred. If seeking higher damages, the employee can present evidence to justify the harm caused by such termination.

d. Protected employees

Certain employees are entitled to special protection from termination for a certain period of time. They are, including but not limited to, shop stewards, unelected candidates for shop stewards, and founding union members. The period of protection varies depending on their role. These employees cannot be terminated without prior approval from the labour inspector of the MLVT.

Employers are also prohibited from terminating the employment contracts of

female employees who are pregnant or within one year after giving birth.

Termination of employees on the basis of race, colour, sex, creed, religion, political opinion, origin, ancestry, social origin, union membership, or union activities is illegal under Cambodian laws.

3. Conclusion

Plans for reorganization and reduction in employment costs must be carefully considered on a case-by-case basis to ensure compliance and minimize risks. Factors such as grounds for termination, types of employment contracts, seniority, special protection status, strength of evidence and justification, among others, must be taken into account, and appropriate procedures must be followed.

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