

DRAFT

LAW ON TRADE UNION

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CHAPTER 1 GENERAL PROVISIONS

Article 1. Aim

This law aims to provide for the rights of workers and employers to establish and join respective professional organizations as the basis of harmonious industrial relations.

Article 2. Purposes

This law has the following purposes:

- Defending the rights and interests of workers and employers;
- Guaranteeing the right to [collective] bargaining between workers and employers;
- enhance industrial relations;
- ensuring employment and national development.

Article 3. Extent

This law covers enterprises/establishments as well as workers, employers and other persons, who fall within the provisions of the Labour Law.

Article 4. Definitions

The key terminologies used in this law have the following definitions:

- A Professional Organization refers to a voluntary jointly constituted team/group aiming to cooperate with each other to carry out activities or developing their own procedural law toward achieving specific professional objectives or goals.
- A Worker Union (called a Union) refers to a professional organization that is established by workers jointly and voluntarily at a [particular] enterprise/establishment. An enterprise/establishment level union is a local union.
- A higher level union refers to a voluntary jointly by local unions to establish union federation, union confederation, coalition of union confederation as such.
- A Union Federation refers to a professional organization at the municipal/provincial level, which is established jointly and voluntarily by local unions with the same or similar professions.
- A Union Confederation refers to a professional organization at the national level, which is established jointly and voluntarily by the union federations.

- A Coalition of Union Confederations refers to a professional organization at the national level, which is established jointly and voluntarily by the union confederations.

- An Employer Association (called an Association) refers to a professional organization, which is established jointly and voluntarily by employers.

- A Collective Work Agreement (called a Collective Agreement) refers to a written agreement between an employer, a group of employers or an employer association and a union, a group of unions, a higher-level union or a shop steward, to determine the working conditions and occupations of workers, and social insurance as well as determining relations between employers and workers.

CHAPTER 2 FUNDAMENTAL RIGHT TO ESTABLISH AND JOIN PROFESSIONAL ORGANIZATIONS

Article 5. Right to Establish and Join Professional Organizations

Workers and employers have, without any distinction whatsoever or prior authorization, the right to form and join professional organizations of their own choice for the exclusive purpose of studying, promoting the interests, and protecting the rights, as well the moral and material interests, both collectively and individually, of the persons covered by the organization's statutes.

For the purposes of this law, workers' unions or employers' associations that include both employers and workers are forbidden.

Article 6. No Discrimination in Membership

All workers, regardless of race, colour, sex, religion, political opinion, nationality, social origin, or health status are free to be a member of the professional organization of their choice. No one, including any professional organization, shall interfere with this right.

Article 7. Freedom to Join

The freedom of individuals as set out in Article 5 of this law also implies the freedom to not join a workers' union or employers' association and the freedom to withdraw at any time from the organizations that they join. A worker may withdraw from a union through a signed or thumb printed statement to be submitted to his or her union and employer. No one shall interfere with a worker's right to join or to leave a union.

Article 8. Freedom to Participate in Leadership and Management

Subject to conditions laid down in this law, all members of a professional organization can participate in the leadership, management and administration of the organization. The organization's statutes, however, can possibly limit the conditions for the participation of retirees in these functions.

Article 9. Rights of all Workers' Unions and Employers' Organizations

Workers' unions and employers' associations have the right:

- To draw up their own statutes and administrative regulations, as long as they are not contrary to the laws in effect and public order;
- To freely elect their representatives; and
- To formulate their work program.

Article 10. Affiliation Between Professional Organizations

The union has the following organization chart:

- Local unions;
- Union federations;
- Union Confederations;
- Coalition of union confederations.

Professional organizations of workers and professional organizations of employers can freely consult each other about the study, research, professional promotion and protection of their moral and material interests. Unions can jointly and voluntarily establish union federations, union confederations and coalitions of union confederations, and can also affiliate with international unions. Employer associations also have the same rights. At least 5 (five) unions are required to jointly and voluntarily establish a union federation. At least 5 (five) union federations are required to jointly and voluntarily establish a union confederation. At least 5 (five) union confederations are required to jointly and voluntarily establish a coalition of union confederations.

CHAPTER 3 REGISTRATION OF PROFESSIONAL ORGANIZATIONS

Article 11. Rights of Registered Organizations

In order for professional organizations to enjoy the rights and benefits set out in this law, the founders of an organization must register it with the Ministry in Charge of Labour. The Ministry in Charge of Labour shall maintain registration records and shall publish them on a regular basis.

Article 12. Requirements for Registration Request

A request for registration shall be approved if it includes, in conformity with other provisions of this law and the Prakas of the Ministry in Charge of Labour. The request shall have:

- (a) An original copy of the organization's statutes, including a statement of its purpose;
- (b) An original copy of its Administrative Regulations which govern management and administration;
- (c) A list of names of those responsible for the management and administration of the organization;
- (d) An address where financial books and records required by this law are kept;
- (e) If the organization has existed for more than 3 (three) years, an annual financial report as required by this law;
- (f) In the case of a workers' union, a list of at least 20 (twenty) dues-paying members or 20 (twenty) members who have authorized deduction of dues;
- (g) A list of at least 5 (five) affiliating registered workers' unions, where the organization is an organization of union federation level;
- (h) A list of at least 5 (five) union federations representing at least 3 (three) different industrial sectors, where the organization is an organization of confederation level;
- (i) A list of at least 5 different union confederations, where the organization is an organization of a coalition of union confederation level (chamber).

If the Ministry in charge of Labour does not reply within 60 (sixty) working days after receipt of the registration form, the professional organization is considered to be registered. A copy of the statutes and the list of names of those responsible for management and administration shall be sent to the Municipal/Provincial Departments of Labour and Vocational Training where the organization was established, as well as to the Office of the Council of Ministers, the Ministry of Justice and the Ministry of Interior. The registrar may require additional information or clarification in support of the application.

Article 13. Requirements for Statutes

The statutes of any professional organization seeking registration shall include:

- The name, logo and stamp of the professional organization;
- A description of the geographic or professional scope of the professional organization;

- Requirement that ordinary financial records be maintained and that an annual report of the financial situation of the organization be periodically published;
- Requirement that a secret ballot be taken for a strike in the case of workers' unions, including specifications as to quorum requirements relative to workers affected by the proposed strike;
- A procedure for electing leadership through secret ballot;
- Limitation of the holding of leadership office to 2 (two) years, with the possibility of re-election;
- Qualifications of management and administrative officers at least in conformity with Article 21 and Article 22 of this law.

The statutes shall define whether this particular union is intended to represent all workers in an enterprise/establishment or to represent only one or more than one category of workers as defined by the statutes. In this case, only the workers in that category or those categories are eligible to join that particular union.

Article 14. Effect of Registration

Registered professional organizations have legal personality. They have the right to sue in court and to acquire personal property or real estate without authorization, for free or for payment and, more generally, they have the right to enter into a contract.

A union cannot run a trading business.

Article 15. Action on Application

Practical details of the application process for registration of professional organizations will be determined by a Prakas of the Minister in Charge of Labour.

Article 16. Refusal of Registration

Registration of a professional organization may only be refused for one of the following reasons:

- (a) The stated aims of the organization are not to defend and further the rights and interests of workers;
- (b) The professional organization is not independent;
- (c) The professional organization does not fulfil the conditions stipulated in Article 12 of this law;
- (d) The professional organization's statute does not contain the detailed provisions required by this law or its implementing regulations;
- (e) The name of the organization is the same as that of a registered organization or so closely resembles that of a registered organization or so inaccurately describes its coverage or objectives that the public is likely to be deceived or misled.

The Ministry in Charge of Labour must communicate its reasons for refusing the registration of a professional organization within 60 (sixty) days of application. An organization whose registration has been refused has 7 (seven) days to appeal the decision of refusal to the Court of First Instance, which will provide a ruling within 15 days. The ruling of the Court of First Instance will be final.

A trade union is independent if:

- It is not under the control of any employer or employers' organization; and
- It is free of any interference or influence of any kind from any employer or employers' organization.

Article 17. Maintenance of Registration

In order to maintain the list of registration approved by the Ministry in Charge of Labour, all professional organizations must submit an annual report of accounts based on the financial books and records they keep, showing

- (a) Total income during the covered period, shown by amounts in categories of sources;
- (b) Expenditure of the professional organization shall update information as required by article 12 of this law whenever changes are made thereto, including any change of address, as well as the number of members of the organization.

Article 18. Suspension of Registration

The registration of a professional organization is automatically suspended if it is not maintained as required in Article 17 and where the union does not reply providing the required information within a specified period of time. Notice of suspension shall be sent to the last known offices of the organization involved. After the required conditions are fulfilled, the registration of the professional organization will be reactivated.

Article 19. Cancellation or Revocation of Registration

The Ministry in Charge of Labour may only cancel or revoke the registration of a professional organization under the same conditions that warrant the refusal of registration provided in Article 16.

Article 20. Appeal From Suspension, Cancellation or Revocation of Registration

Professional organizations can lodge an appeal against suspension, cancellation or revocation of registration with a higher court.

Article 21. Qualifications for Managerial and Administrative Officials

Members responsible for the administration and management of a professional organization shall meet the following requirements:

- (a) be able to read and write Khmer
- (b) have never been convicted of any criminal offense
- (c) have engaged in the profession or the job for at least one year.

Article 22. Qualifications for Foreign Candidates to be Entitled to a Position in the Professional Organizations

Foreign employers who are eligible to stand for election to be leaders of the professional organization of employers must meet the following requirements:

- (a) Have the right to permanent residence in accordance with the Immigration Law of the Kingdom of Cambodia.
- (b) Have worked at least 2 consecutive years in the Kingdom of Cambodia.

Foreign workers who are eligible to stand for election to hold a position in the professional organization of workers must meet the following requirements:

- (a) Be at least 25 years of age
- (b) Be able to read and write Khmer,
- (c) Have the right to permanent residence in accordance with the Immigration Law of the Kingdom of Cambodia.

CHAPTER 4 FINANCES OF PROFESSIONAL ORGANIZATIONS

Article 23. Sources of Finance

Professional organization finances are derived from:

- (a) Membership fees, the amount of which shall be determined in the organization's statute;
- (b) Profits earned from the organization's legitimate money-making activities;
- (c) Unconditional financial assistance from members or other parties.

Article 24. Separation of Finances and Assets

Finances and assets of unions, union federations, union confederations and coalitions of union confederations must be separated from the private finances and assets of their elected leaders, managerial or administrative officers and members.

Article 25. Use of Finances in Accordance With the Statute

The deposit and transfer of organization finances and assets to other parties, investment of funds and other legitimate business transactions by the professional organization can only be made in accordance with the provisions as stipulated in this law or a statute of the professional organization.

Article 26. Responsibility for Use of Finances

Elected leaders, managerial and administrative officers of professional organizations shall be responsible for the use and management of finances and assets of the professional organization.

Article 27. Authorization to Deduct Dues and Agency Fees

Employers may deduct union dues from the wages of their workers and transfer them to the union involved, provided a written request for the deduction has been made by each individual member.

A most representative status (MRS) workers' union may negotiate to include in a collective bargaining agreement the assessment of a reasonable fee equivalent to the dues and other fees paid by members of the most representative status. The fee shall be paid by workers who are not members of the MRS union but share the benefits provided in the collective agreement with workers whom the union legally represent.

Article 28. Keeping of Financial Records and Complaint

All professional organizations, irrespective of registration or most representative status, shall maintain ordinary business records showing income and expenditure, including the sources of income and recipients of income and expenditure, and shall present annual financial reports to members of professional organizations in accordance with the statute of those professional organizations.

An independent audit institution or entity which is legally registered shall inquire into the financial activities of any professional organization upon the filing of a complaint under oath and duly supported by the written support of at least 20% (twenty percent) of the total membership of the professional organization concerned, and examine their books of accounts and other records to determine compliance with the law. Such inquiry or examination shall not be conducted within 30 (thirty) days prior to the date of election for the leaders of the professional organization. The costs associated with this audit shall be borne by the parties concerned or a third party.

Article 29. Dissolution of Organizations

The dissolution of a professional organization shall be as follows:

1. A trade union is voluntarily dissolved by the decision of the general assembly at the request of 2/3 (two-thirds) of members attending a meeting. The general assembly shall also adopt a resolution on the procedure for liquidation pursuant to its statute.

2. A court may order the dissolution of a professional organization as follows:
 - 2.1 A professional organization will be dissolved by a court judgment when there is a complaint from the related third person or the Ministry in Charge of Labour if:
 - (a) The foundations or activities of the professional organization are contrary to law or the objectives of the professional organization specified in the statute.
 - (b) A professional organization is no longer independent and is manifestly unable to recover its independence;
 - (c) The number of members falls below the number provided for in Article 12 of this Law and the management board does not initiate voluntary dissolution within 6 (six) months;
 - (d) At least 3 (three) members of the leaders, unions, managerial or administrative officers, or agents or members performing their duties on behalf of the professional organization have been in prison at least 3 (three) years, or have been convicted of a crime, in the capacity of the professional organization, that causes substantial harm to the security of the State, or are found to be systematically inducing members of the organization to commit unlawful activities extraneous to the objectives of the organization, and offences against the physical integrity of persons and destruction of property.
 - 2.2. A court may set a deadline for elimination of deficiencies specified in clauses (a) and (b) of paragraph 2 of this Article.

Article 30. Grounds for Dissolution by Court

A court may dissolve a professional organization where leaders, managerial or administrative officers, or agents or members performing works on behalf of the professional organization have committed a wrongdoing as stated in Article 19 of this law or in case of serious, repeated violation of laws and regulations, or have been proved to be guilty of committing an offense, in the capacity of the professional organization, that causes substantial harm to the security of the State.

The decision of a Court of First Instance on the dissolution of the professional organization shall be final.

Article 31. Effect of Dissolution

Though a professional organization has been dissolved, the leaders and managerial officers of the organization may not be absolved from their responsibilities and obligations to members of the professional organization or other parties. The leaders, managerial officers or members of a professional organization, who have been proved to be guilty of a wrongdoing according to a court decision, or who caused the dissolution of the organization, shall be liable to a 3 (three)-year suspension outside the prison, during which they are not allowed to establish and become officials of any professional organization. The three-year suspension is effective starting from the date on which the court decision concerning the permanent and legal dissolution of the organization is declared.

Article 32. Assets of a Professional Organization on Dissolution

In case of dissolution of a professional organization of workers and of employers, the assets of the organization are allotted as prescribed in the statutes or, if there is no such statutory provisions, they are allotted according to the rules determined by the General Assembly. If there is no such statutory provisions and no decision from the General Assembly, the organization's current assets can only be transferred in the form of donation to another similar, legally constituted professional organization or to relief associations or to social providence.

CHAPTER 6 REPRESENTATION OF WORKERS IN THE ENTERPRISE

Article 33. Election of Shop Stewards

In every enterprise or establishment where at least 8 (eight) workers are normally employed, the workers shall elect a shop steward to be the sole representative of all workers who are eligible to vote in the enterprise or establishment.

Acknowledging that there are several distinct establishments within any enterprise with the above-required number of workers, does not have the effect of excluding a number of workers from abiding by this provision.

If there is no agreement between the employer and the most representative union organization in the enterprise on the number of distinct establishments required for the election of shop stewards, such dispute shall be submitted to a Court of First Instance, which has jurisdiction to determine the nature of a distinct establishment.

Article 34. Mission of the Shop Steward

The mission of the shop steward are as follows:

- To present to the employer any individual or collective grievances relating to wages and the enforcement of labour regulations and

general labour regulations as well as collective agreements applicable to the establishment;

- ✧ To inform the Labour Inspector all complaints and criticism relating to the enforcement of the Labour legislation and labour regulations that the Labour Inspector is responsible for monitoring;
- ✧ To ensure the enforcement of the provisions relating to the health and safety of work (to be consulted with the Health and Safety Department);
- ✧ To suggest measures that would be beneficial to contributing towards protecting the health, and improving safety and working conditions of workers in the establishment, particularly in case of work-related accidents or illnesses.

The shop steward must be consulted and put forward a written opinion on the draft of internal regulations provided for in the Labour Law or on a draft of modification to these internal regulations.

The shop steward must also be consulted and put forward a written opinion on the measures for redundancy due to a reduction in activities or an internal reorganization of the enterprise or establishment.

Article 35. Number of Shop Stewards

The number of shop stewards is set in proportion to the number of workers in the establishment as follows:

- ✧ From 8 (eight) to 50 (fifty) workers: 1 (one) official shop steward and 1 (one) assistant shop steward;
- ✧ From 51 (fifty-one) to 100 (one hundred) workers: 2 (two) official shop stewards and 2 (two) assistant shop stewards;
- ✧ For more than 100 (one hundred) workers: 1 (one) extra official shop steward and 1 (one) extra assistant shop steward for each group of 100 (one hundred) workers.

Article 36. Eligibility to Vote and to Stand for a Candidate

Workers of either sex who are at least 18 (eighteen) years old and who have worked for the enterprise/establishment for at least 3 (three) months and have not forfeited their right to vote, as set forth in the Electoral Law, are eligible to vote.

Workers who are at least 21 (twenty one) years old, and who have seniority of at least 3 (three) months in the enterprise/establishment, and with a minimum level in general education of the 9th (ninth) grades shall be eligible to stand for candidates. In addition to these conditions, for a foreigner to be eligible to stand for a candidate they must have the right to reside in the Kingdom of Cambodia in conformity with the provisions of the Immigration Law until the end of the term solicited.-

Article 37. Timing and Place of Election

Elections shall take place during working hours. The ballot is secret. The election of official shop stewards and assistant shop stewards shall be organized with separate but concurrent ballots. If there is a pre-electoral agreement or a collective agreement or a regulatory provision applicable to the discrete professional categories that entail distinct polls, then the election shall be organized separately in different places.

Article 38. Nomination of Candidates by Unions

The shop stewards are elected from the candidates nominated by the union organizations within each enterprise.

A union organization cannot nominate more candidates than the number of seats available for the prospective shop stewards to fill, and if necessary, this must apply to each electoral body.

Article 39. Conditions of Being Elected

Candidates who obtain the largest numbers of votes are declared elected up to the number of seats to fill. In the case that only one seat remains to be filled, and several candidates received the same number of votes, this seat is allocated to the oldest candidate. The ballot is considered valid only if the number of voters is at least equal to half the number of those registered.

Article 40. Second Election

In the case that the number of voters is less than half the number of those registered or that the union organizations did not nominate any candidates within the allotted time, a new ballot shall be re-organized within 15 (fifteen) days, in which the voters can vote for any candidate whether or not the candidate was nominated by the union organization. No quorum is required for this second ballot to be valid.

Article 41. Term of Official Shop Stewards and Assistant Shop Stewards

The official shop stewards and the assistant shop stewards are elected for a 2 (two)-year term and can be re-elected. Their functions shall be terminated by death, resignation and termination of the employment contract. When an official shop steward leaves office or is temporarily absent, she or he shall be replaced by an assistant shop steward from the same electoral body, and the priority for replacement is given to the assistant shop steward who has been nominated by the same union organization and who received the largest number of votes.

Article 42. Employer's Duties to Organize Elections

It is the duty of the employer to organize elections. Should there be no shop stewards, the employer shall determine an election date and publicize it

within 15 (fifteen) days upon receipt of the request of a worker, a union or the Labour Inspector. The elections shall be organized within 45 (forty-five) days upon receipt of the request.

Article 43. Protection of Shop Stewards

The employer or his or her representatives shall not in any way victimize the shop steward for carrying out the missions bestowed by the present law.

The dismissal of a shop steward or of a candidate of shop steward can take place only after authorization from the Labour Inspector. The same protective measures apply to former shop stewards within 3 (three) months following the end of their terms and to unelected candidates within 3 (three) months following the proclamation of the results of the ballot. Any reassignment or transfer of a shop steward, which would end the shop stewards' term, is subject to the same procedure.

The Labour Inspector, who has been referred a request to authorize the dismissal of a worker covered by the present article, shall give his decision to the employer and to the worker in question, as well as to the union organization to which the worker belongs within 1 (one) month at the latest upon receipt of the case.

Upon receipt of the decision, the employer, the worker in question, or the union organization to which the worker belongs, has a period of 2 (two) months to appeal to the Minister in charge of labour. The Minister in charge of labour can cancel or reverse the decision of the Labour Inspector.

If there is no notification of the Labour Inspector's decision within the allotted time, or if there is no notification of the decision of the Minister in charge of labour within 2 (two) months upon receipt of the appeal, the case and the appeal are considered to be rejected.

Article 44. Effect of Revocation of an Administrative Decision

If the Minister in charge of labour or a higher court revokes an administrative decision authorizing the dismissal of a shop steward, the latter is entitled to resume his previous position or an equivalent position if he has made an appeal within 2 (two) months after receipt of notification of the administrative decision. The shop steward shall be reinstated to his term if it has not expired.

Article 45. Serious Misconduct

In case of serious misconduct, the manager of an enterprise can render the decision to instantly suspend the party in question pending the Labour Inspector's decision. If the Labour Inspector turns down the dismissal, the suspension is considered null and void, and its effects are cancelled lawfully.

Article 46. Employer's Duties to Prepare the Minutes

The employer shall, within 8 (eight) days following the elections, prepare the official minutes of the result of elections of the shop stewards to the Ministry in charge of labour. Furthermore, the employer must post another copy of the official minutes in the enterprise/establishment for information.

Article 47. Workers' Rights to File Their Own Grievance

The presence of the shop stewards in the enterprise/establishment is not an obstacle to the workers' rights to file their grievances directly to the employer or his representative.

Article 48. Complaint Against the Results of the Shop Steward Election

Disputes relating to the election, eligibility and fairness of the elections of shop stewards shall be referred to a Court of First Instance that has the jurisdiction to rule promptly without the possibility of recourse to appeal.

Article 49. Issuance of Prakas by the Minister in Charge of Labour

The Ministry in charge of labour shall issue a Prakas to determine the formality of enforcement of the present section, particularly regarding:

- a) The development of voting procedures and the division of the workers into electoral body;
- b) The conditions under which the shop stewards are recognized by the employer or his representative,
- c) The means for the shop stewards, including the number of working hours, to carry out their duties.
- d) The conditions under which an electoral body can remove a shop steward from office.

Article 50. Union Delegate

Where an enterprise/establishment has only 1 (one) union or only a most representative union, the union can appoint one of its members, who meets all the conditions required by paragraph 2 of Article 36 of this law, a union delegate. The union delegate is entitled to make decisions and sign a collective agreement with the employer on behalf of a professional organization which has appointed him. The union delegate is appointed for a 2 (two)-year term and can be re-appointed.

Article 51. Mission of a Union Delegate

Union delegates have the same mission as the shop stewards

Article 52. Rights of Membership in a Workers' Union or Employers' Association

Leaders of a professional organization shall be directly elected by members for a 2 (two)-year-term and can stand for re-election.

Members shall determine any question of policy which may affect the entire membership of the professional organization by secret ballot. No arbitrary or excessive fees shall be required by members, and no officer or agent of the union shall collect fees unless he or she is duly authorized pursuant to the statute of the professional organization.

The previous two paragraphs of the present Article shall apply by analogy to employer's associations and their members.

A worker may be a member in only one enterprise union in the same enterprise/establishment at any one period of time. If a worker who has already been a union member joins a new union within the same enterprise, otherwise (s)he shall be deemed to have relinquished membership in the previous union(s).

Article 53. Representation of Members

Each worker has the rights to be represented in relations with his or her employer by the workers' union of his or her own chose. Where a workers' union has been certified as the most representative union, any other workers' union with members in the enterprise or establishment may represent its members only with respect to the rights provided under the collective agreement negotiated by the most representative union. It may not renegotiate or attempt to alter the terms and conditions applicable to its members while the agreement is in force or the MRS status is valid. Where no most representative union has been certified, the employer has the obligations to work with workers' unions as stipulated in Article 54 of this law.

Article 54. Obligation of Good Faith

All workers' unions, regardless of representative status, have a duty to be engaged with employers in good faith, with the purpose of representing the interests of their members in determining the terms and conditions of employment and ensuring the compliance with the agreed terms and conditions and lawful rights. This obligation of good faith includes an obligation to meet and convene promptly and expeditiously for the purpose of discussion to resolve problems or collective negotiation to sign a collective agreement with respect to terms and conditions of employment in accordance with the provisions of this law, as well as to consider proposals for adjusting any grievances or questions arising under such agreement. The obligation includes the obligation to make concessions and protest with reasonable consideration, if requested by either party. The obligation also includes cooperation with current most representative union to give full effect to rights secured through collective bargaining with the employer

concerned.

CHAPTER 8 RIGHTS AND OBLIGATIONS OF EMPLOYERS, AND EMPLOYER ASSOCIATIONS

Article 55. Workers' List for Requesting the Most Representative Status

Employers shall maintain and update on a monthly basis a list of current employees indicating their name, contractual status, and job classification for immediate inspection in the case that a workers' union requests the most representative status.

Article 56. Obligation of Good Faith

All employers and employer associations have a duty to be engaged with workers' unions and their lawful representatives in good faith for the purpose of representing itself and the interests of its members and accepting the compliance with agreed terms and conditions, and lawful rights.

This obligation of good faith includes the obligation in respect of a certified most representative status union or a higher level most representative status union to meet and convene promptly and expeditiously for the purpose of negotiating a collective bargaining agreement with respect to the terms and conditions of employment in accordance with the provisions of this law, as well as to consider proposals for adjusting any grievances or questions arising under such agreement. The obligation goes beyond merely formal "meeting and consultation" and includes providing the most representative status workers' union or a higher level most representative status union with facilities for carrying out negotiations providing all information relevant to negotiations as requested by the union, implementing a contract or other written memorandum incorporating such agreements if requested by either party but does not oblige an employer or an employers' organization to agree to any specific proposal put forward by a workers' union.

CHAPTER 9 REPRESENTATION BY A WORKERS' UNION WITH MOST REPRESENTATIVE STATUS

Article 57. Most Representative Status at the level of the enterprise or establishment

The most representative status of a single professional organization or a single union is recognized in the framework of the enterprise or establishment. For the purpose of collective bargaining, the professional organization with the most representative status has the exclusive right to negotiate. For an enterprise or establishment where no most representative status union exists, any union will receive MRS status if it meets the following criteria:

- (a) A legally registered union;
- (b) Having members, in possession of an official membership identification card, of at least 50% + 1 (fifty percent plus one) of the total number of workers in the enterprise, establishment, or geographic area, for which it seeks to have the most representative status;
- (c) Receiving dues from at least 33% (thirty three) percent of its members;
- (d) Having programs and activities indicating that the union is capable of providing professional, social and educational services to its members, as provided for in this law.

Article 58. Most Representative Status Coalition

For the purposes of bargaining collectively with the employer and implementing any agreement that might be reached, two or more unions at the level the enterprise/establishment may join in order to achieve the criteria in Article 57 of this law. This shall be referred to as a most representative status coalition, and shall be recognized by the employer as the exclusive bargaining agent on behalf of all workers in the enterprise. In order to bargain collectively with the employer, the coalition must submit its common list of demands and bargain as part of the coalition

In the absence of a most representative status union or most representative status coalition, the employer shall bargain with one or more unions as regards terms and conditions of employment for the individual members of those unions.

Article 59. Request for Most Representative Status Certification

An employer or employer association may voluntarily recognize the most representative status of a workers' union upon that workers' union showing that it meets the criteria set out in Article 57 of this law. In this case, the relevant employer or employer association and workers' union must jointly request the Ministry in charge of labour to issue a certification of the voluntary recognition if no other unions object to it.

Apart from the voluntary recognition of a most representative status union by the employer as provided for in the first paragraph of this article, a professional organization shall refer a request for the most representative status certification to the Ministry in charge of labour in accordance with the formalities and procedures described in a Prakash issued by Minister in charge of labour.

Article 60. Determination by the Minister in Charge of Labour

Within 60 (sixty) working days at the latest after receipt of the form

requesting recognition of the most representative status of the professional organizations or certification of voluntary recognition, the Ministry in charge of labour shall give an official decision on recognition of the most representative status of the professional organizations in terms of the criteria stated in this law. If it is necessary to re-determine the most representative status of a professional organization, the Minister in charge of labour can conduct an investigation.

If the Ministry in charge of Labour does not reply within 60 (sixty) working days after receipt of the form requesting recognition of the most representative status of the professional organization or certification of voluntary recognition, most representative status shall be deemed recognized.

The Ministry in charge of labour can suspend or revoke the most representative status of a professional organization in case of a breach in or lack of criteria as set out in Article 57 of this law.

Article 61. Rights and Obligations of Unions with the Most Representative Status

In addition to others found in this law, a union or union coalition with most representative status, has the following rights and obligations:

(a) Rights include: the possibility to assess non-members' service fees for extraordinary services in legal representation when representing them. The maximum service fee shall be equivalent to the union membership dues.

(b) Obligations include:

- To negotiate in good faith with the employer with a view to agreeing on a collective agreement covering terms and conditions of employment, health and safety of work, and other related issues with the employer;
- To represent in good faith non-members in grievances arising from collective agreement;
- Not to discriminate in taking new members;
- To allocate a number of seats in the organization as determined in the Labour Law.

Article 62. Rights and Obligations of Minority Unions in Enterprises with a Most Representative Status Union

Minority unions in enterprises/establishments where a most representative status union has been certified, and where that status remains valid, are prohibited from demanding collective bargaining

rights, and from demanding rights or benefits above those provided for in law, Prakas, regulations, collective bargaining agreements in force, or internal work rules. The roles of the minority unions may include the following:

- a. Providing legal literacy training;
- b. Providing legal and practical advice to its members;
- c. Representing their own members in individual labour disputes;
- d. Participating in workplace cooperation mechanisms that operate on a continuous basis;
- e. Participating in labour market institution boards;
- f. Providing information regarding their union membership;
- g. Organizing cooperatives, which can be shops, restaurants, or concern matters such as credit or health care etc. to help improve the living standard of their members;
- h. Having an administrative role in handing out unemployment benefits.

Article 63. Duration and Loss of Most Representative Status

Subject to the following provisions, a most representative status union may lose this status indefinitely. The certification of a workers' union as most representative cannot be challenged for two years from the date of its certification, except that the certification will no longer be valid:

- a. Where the workers' unions has, on the factual evidence, been found to have consistently failed to meet its obligations as set out in Article 61 of this law;
- b. Where the registration of the workers' union has been suspended or revoked;
- c. Where the workers' union has been dissolved.
- d. After having a most representative status certification for two years, any workers' union present within the same enterprise can challenge the majority of the most representative status workers' union by seeking voluntary recognition, or through the procedures set by the Prakas of the Minister in charge of labour. The employer may also challenge most representative status. In this case the procedure for determining the most representative status

will be used to resolve the matter. The Minister in Charge of Labour shall make a determination in respect of paragraph (a), which can be appealed to the Court of First Instance for a final ruling.

The Ministry in charge of labour shall maintain records of unions with Most Representative Status and every 12 (twelve) months publish the list of most representative status unions.

Article 64. Safeguards in Connection with Deduction of Dues and Agency Fees

An employer shall keep records wherever dues and/or agency fees are being deducted. The records must include the date the authorization for deduction was made by the workers involved, the date and the amount of deduction made in relation to each worker, and the dates and the amounts of funds transferred to the relevant workers' union.

CHAPTER 10 UNFAIR LABOUR PRACTICES BY EMPLOYERS

Article 65. No Discrimination on Account of Workers' Union Activities

Employers cannot discriminate against workers by taking into consideration union affiliation, or participation in union activities when making decisions concerning recruitment, management and assignment of work, promotion of rank and position, remuneration and granting of benefits, disciplinary measures and dismissal.

Article 66. Unfair Labour Practices Defined and Prohibited

It shall be unlawful for an employer to commit any of the following unfair labour practices.

- a. To interfere in any way with workers in the exercise of their right to self-organization;
- b. To require as a condition of employment or continuing employment that a person shall not join a professional organization or shall withdraw from one to which he belongs;
- c. To contract out services or functions being performed by union members when doing so undermines workers' right to organize;
- d. To initiate, dominate, assist or otherwise interfere with the formation or administration of any workers' union, or union

of unions, including the giving of financial or other support to it or its organizers or supporters in any other manner than that provided for in this law;

- e. To discriminate in regard to wages, hours of work and other terms and conditions of employment in order to encourage or discourage membership in any workers' union;
- f. To dismiss, discharge or otherwise prejudice or discriminate against workers for having given or being about to give testimony or otherwise provide evidence or information relevant to the application this law.
- g. To violate the duty to bargain collectively as prescribed by this Law;
- h. To lock out illegally.

CHAPTER 11 UNFAIR LABOUR PRACTICES BY WORKER'S UNIONS

Article 67. No Discrimination in Membership

It shall be an unfair labour practice for a workers' union, its officers, or representatives to deny membership as stated in Article 6 of this law.

Article 68. Unfair Practices Defined and Prohibited

The unfair labour practices by a workers' union, its officers, or representatives shall be defined as below:

- a. To restrain or coerce workers in the exercise of their rights to self-organization; however, a workers' union shall have the rights to prescribe its own rules with respect to the acquisition or retention of membership;
- b. To cause or attempt to cause an employer to discriminate against a worker, including discrimination against workers with respect to whom membership in such workers' union has been denied, or to terminate a worker on any ground other than a legitimate reason, and the usual terms and conditions under which membership or continuation of membership is made available to other members;
- c. To violate the duty of good faith in collective bargaining, or refuse to bargain collectively with the employer, provided it is a MRS union or a high level MRS union;
- d. To cause or attempt to cause an employer to pay or deliver or agree to pay or deliver any money or other things of

value, in the illicit nature, for services which are not performed or not to be performed, including the demand for a fee to conduct union negotiations;

- e. To violate or cause to violate a collective bargaining agreement;
- f. To agitate for purely political purposes or commit acts of violence at the workplace;
- h. To strike illegally.

CHAPTER 12 SPECIAL PROTECTIONS FOR WORKERS AND THEIR REPRESENTATIVES

Article 69. Access to Enterprise/Establishment

Access to an enterprise/establishment by union representatives to interact with their members shall only be given with the permission of the employer who shall not unreasonably withhold such permission. Such interactions shall not affect the normal functioning of the enterprise/establishment.

Article 70. Protection from Dismissal

All workers who stand for candidates for elected leadership positions shall enjoy the same protection from victimization and dismissal as shop stewards. This protection begins 45 (forty-five) days prior to the election and continues for 45 (forty-five) days after the election if he/she is not elected. The union shall notify the employer of the candidacy by any reliable means. However, the employer shall only be required to comply with this once for each election of union leaders.

From the time that the application for registration is submitted, all workers who are founding members of a union as well as those workers who voluntarily join the union during the application period shall enjoy the same protection as shop stewards. This protection shall last for a period of up to 30 (thirty) days following the date of registration of the union.

Beyond the date specified in the preceding paragraph, this protection shall cover the 3 (three) union leaders. In order to enjoy such protection, the union shall notify the employer by any reliable means, of the names of the individual candidates to be protected. A copy of this notification shall also be sent to the Ministry in charge of labour.

Article 71. Rights and Obligations of Dismissed Leadership

Any union leader who has been laid off either temporarily or permanently for economic or other reasons shall retain the right of access to the

enterprise/establishment for the purpose of fulfilling the responsibilities of her/his office. Any leader of a professional organization who committed wrongdoings and was dismissed with legal cause shall resign from her/his post from that professional organization, and he/she has no further responsibility to access to the enterprise/establishment.

CHAPTER 13 COLLECTIVE AGREEMENTS AND COLLECTIVE BARGAINING

Article 72. Purpose of Collective Agreements

The purpose of the collective agreement is to determine the working and employment conditions of workers and to regulate relations between employers and workers as well as their respective organizations. Collective agreements should specify the scope of their application, which may be in:

a. Geographical framework:

- ✦ At a workshop or site level
- ✦ At enterprise/establishment level
- ✦ At provincial/municipal level
- ✦ At national level;

b. Professional framework:

- ✦ A particular profession
- ✦ A number of combined professions or similar professions
- ✦ An economic activity or a particular sector of economic activity
- ✦ Many economic activities or a large proportion of the economic activities.

The provisions of a collective agreement can be more favourable towards workers than those of laws and regulations already in effect. However, they may not be contrary to the provisions on the public order already in effect. All demands by both employers and workers for rights, benefits, and terms and conditions of the enterprises/establishments shall be settled through an orderly collective bargaining process.

Article 73. Duration of Collective Agreements

A collective agreement is concluded for a definite term or for an indefinite term. When it is for a definite term, this term may not exceed three years. Upon its expiration, it shall remain in effect as the definite term unless it has been cancelled or revised by either party, on the condition of retaining a

three-month notice. When the collective agreement is entered into for an indefinite term, it can be cancelled; however, it continues to be in effect for a period of 1 (one) year to the party that forwarded a complaint to cancel it. The notice of cancellation does not prevent the agreement from being implemented by other signatories.

Article 74. Parties to Bargaining

Parties to collective bargaining must be duly mandated by their members through a written authorized letter or by delegating the rights prescribed in this law to conduct and conclude negotiations.

Where there is union(s) in existence in the enterprise/establishment, collective bargaining is the union's exclusive right to sign a collective agreement with the employer. In an enterprise/establishment where there is no union in existence, then collective bargaining to conclude a collective agreement is the right of shop stewards.

Article 75. Collective Bargaining to Conclude a Agreement Between More than One Employer and More than One Union

- (a) For a profession that has no union federation, bargaining with more than one employer and more than one local union with a view to concluding a collective agreement shall be conducted as follows:
- Employers shall jointly establish a [bargaining] Council, which is comprised of representatives from each of the employers. The Council then shall select a Chairperson, who has the decision making right [power] on behalf of all employers, to negotiate with unions. This Council shall inform the unions, who are the negotiation partner, of the name, position, address of its Chairperson, with a copy sent to the Ministry in charge of Labour informing about the establishment and election of the Chairperson of the Council.
 - The unions shall jointly establish a [bargaining] Council, which is comprised of representatives from each of the unions. The Council then shall select a Chairperson, who has the decision making right [power] on behalf of the unions, to negotiate with the employers. The Council shall inform the employers, who are the negotiation partner, of the name, position, address of its Chairperson with a copy sent to the Ministry in charge of Labour informing about the establishment and election of the Council's Chairperson.
 - During negotiation, members of the Council of both the employer and the union parties all together or without all together, or just only the Chairperson alone can participate.
 - Collective agreement(s) that comes out from the decision agreed between the Chairpersons of the two parties has a [binding]

implementation effect on all employers and unions concerned after it has been registered.

- (b) For a profession that has only one union federation, bargaining with more than one employer and more than one local union with a view to concluding a collective agreement shall be conducted as follows:
- employer(s) shall follow the dash [point] 1 of paragraph (a) above,
 - bargaining with the union federation representative(s) shall be conducted by the Chairperson of the employers. Members of the Council of Employers may participate in this negotiation.
 - Collective agreement(s) that comes out from the decision agreed between the Chairperson of the Council of Employers and the union federation representative has a [binding] implementation effect on all parties concerned after it has been registered.
- (c) For a profession that has more than one union federation, bargaining between more than one employer and more than one local union with a view to concluding a collective agreement shall be conducted as follows:
- employer(s) shall follow the dash [point] 1 of paragraph (a) of this article,
 - union federation(s) shall seek a MRS status, [and] must meet the criteria stated in article 57 of this law, and shall request for a MRS certification from the Ministry in charge of labour in order to secure the right to be a representative union for the purpose of negotiating [collective agreement] with the employers,
 - bargaining with a MRS union federation shall be conducted by the Chairperson of the Council of Employers. Members of the Council of Employers may participate in this negotiation.
 - Collective agreement(s) that comes out from the decision agreed between the Chairperson of the Council of Employers and the MRS union federation representative(s) has a [binding] implementation effect on all parties concerned after it has been registered.
- (d) For a profession that has the Employer Association established already, this Association shall act to replace the [bargaining] Council of Employers as referred to in paragraphs (a), (b) and (c) above,
- (e) Collective bargaining between the employer association and a national union confederation, or a coalition of national union confederations as such shall be conducted through representative(s) of the employer association with representative(s) of a union confederation, or with representative(s) of a coalition of their union confederations. The decision agreed between the two parties has a [binding] implementation effect on all parties concerned after it has been registered.

Article 76. Registration

Once concluded, a collective agreement shall be registered at the Ministry in charge of labour. The collective agreement shall become effective one day after it has been registered.

The provision of the collective agreement shall be applicable to the employer and all workers who fall within the scope of that agreement. The Ministry in charge of labour can publish on an annual basis the list of collective agreements that have been registered.

**Article 77. Collective Agreement shall Contain
Dispute Resolution Procedures**

All collective agreements must contain a clear dispute resolution process in order to be registered.

CHAPTER 14 RESOLUTION OF PROFESSIONAL ORGANIZATIONS' DISPUTES

**Article 78. Resolution of Professional
Originations' Disputes**

Disputes that arise between one professional organization of workers and another professional organization of workers shall be resolved through in-depth discussions and with the efforts of all parties concerned.

Disputes that arise between one professional organization of employers and another professional organization of employers, as well as disputes that arise between one professional organization of workers and another professional organization of employers shall be resolved in accordance with the provision prescribed in paragraph 1 of this Article.

If the discussions referred to in paragraphs 1 and 2 above do not lead to agreement, disputes shall be settled in accordance with the existing laws and provisions in force.

CHAPTER 15 SANCTIONS AND PENALTIES

**Article 79. Finances of Professional
Organizations**

Leaders, including managerial or administrative officers of a professional organization, found to have breached the requirements stated in articles of this law with respect to finances of professional organizations, shall be guilty of

Any professional organization that fails to keep financial records for a period of 5 (five) years as required by Article 28 of this law shall be subject to suspension of its registration, if registered, and if not registered, shall be subject to

**Article 80. Unfair Labour Practices Committed
by Employers**

Any employer found to have committed any of the unfair labour practices set out in Chapter 10 of this law shall be guilty of

Article 81. Unfair Labour Practices Committed by Workers

Any person found to have committed any of the unfair labour practices set out in Chapter 11 of this law, shall be guilty of

Article 82. Unfair Labour Practices by Leaders of Minority Unions

Leaders of minority unions, who cause trouble to or disturb a most representative status union for the purpose of both collective bargaining with the employer and for resolution of collective disputes on behalf of all workers, shall be guilty of

Article 83. Unfair Labour Practices by Leaders of Professional Organizations

Leaders of professional organizations who induce these organizations to engage in activities extraneous to their goals and purposes as defined in this law shall be guilty of

Article 84. Persons Impeding the Exercise of Freedom to [Organize] a Professional Organization

Any person who intentionally impedes the exercise of freedom to organize and join a professional organization as set out in this law, shall be guilty of...

Article 85. Persons who Undermine or Attempt to Undermine an Election of Shop Stewards

Any person who does not comply with the provisions of Article 33, Article 36, Article 37, Article 41 and Article 42 of this law, and who undermines or attempts to undermine the free election of shop stewards or the regular performance of their functions, shall be punished with.....

Article 86. Employers who Refuse to Prepare the Minutes of an Election of Shop Stewards

Any person who violates the provisions of Article 46 shall be punished with.....

CHAPTER 16 TRANSITIONAL PROVISIONS

Article 87. Registration

Professional organizations already registered prior to this law comes into effect shall seek to re-register within a period of 6 (six) months at the latest from the effective date of this law.

Article 88. Existing [Collective] Agreements

Existing collective agreements shall remain valid as prescribed in Chapter 13 of this law. However, in the meantime, the union concerned should seek a MRS status with a view to agreeing to the continuation of the agreement or the negotiation of a new agreement.

Article 89. Labour Court

When the labour court is created, the relevant jurisdiction of the Court of First Instance shall be transferred to the Labour Court.

CHAPTER 16 FINAL PROVISIONS

Article 90. Abrogation

Article 378 and all articles of Chapter 11 of the Labour Law and all provisions that are contrary to this law shall be abrogated.

Article 91.

This law shall be declared as matter of urgency.

This law was adopted on
by the National Assembly of the Kingdom of Cambodia
during its session of its fourth legislature.

Signature

Samdech Akka Moha Ponhea Chakrei HENG SAMRIN