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International Employment Lawyer

Guide to Restructuring a Cross-Border Workforce

Cambodia 

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A.Reduction in Workforce

1. Is there a concept of redundancy - based on a shortage of work or other economic reasons - as a justified reason to dismiss employees in your jurisdiction? If so, how is it defined?

The Cambodian Labour Law dated 13 March 1997, as amended (the Labour Law) does not address the redundancy of a single employee. However, Article 95 defines "mass layoff" as "any layoff resulting from a reduction in an establishment's activity or an internal reorganization that is foreseen by the employer". It is a justifiable reason to dismiss employees, provided the statutory process outlined in section 2 is complied with.

2. In brief, what is the required process for making someone redundant?

According to Article 95, the employer establishes the order of the layoffs in light of professional qualifications, seniority within the establishment, and family burdens of the workers: "The employer must inform the workers' representatives in writing in order to solicit their suggestions, primarily, on the measures for a prior announcement of the reduction in staff and the measures taken to minimize the effects of the reduction on the affected workers.

"The first workers to be laid off will be those with the least professional ability, then the workers with the least seniority. The seniority has to be increased by one year for a married worker and by an additional year for each dependent child." Additionally, for a period of two years, dismissed workers have priority to be rehired for the same position, provided the worker informs their former employer of any change in residential address.

Lastly, labour inspectors of the Ministry of Labour and Vocational Training (MLVT) must be informed of the mass layoff process set out in Article 95.

3. Does this process change where there is a "collective redundancy"? If so, what is the employee number threshold that triggers a collective redundancy?

The concept of redundancy under the Labour Law is limited to mass layoffs; thus, any redundancy is necessarily a collective redundancy. There are no numerical thresholds that trigger Article 95, pursuant to which a number of workers (though not necessarily all) must have been dismissed due to a reduction in activities or internal reorganisation. As the Labour Law does not specify the actual number of employees who must be involved in the layoff procedure, the minimum threshold is likely two or more employees.

4. Do employers need to consult with unions or employee representatives at any stage of the redundancy process? If there is a requirement to consult, does agreement need to be reached with the union/employee representatives at the end of the consultation?

Pursuant to Article 95, the employer must inform the workers' representatives in writing to solicit their suggestions on the measures for a prior announcement of the reduction in staff and the measures taken to minimise the effects of the reduction on the affected workers. At the request of the workers' representatives, an inspector of the MLVT can summon the concerned parties to examine the impact of the proposed layoffs and measures to be taken to minimise their effects.

5. If agreement is not reached, can the restructure be delayed or prevented? If so, by whom?

Under Article 95, in exceptional cases, the Minister of Labour can issue a ministerial order (prakas) to suspend the layoff for a period not exceeding 30 days to aid the concerned parties in finding a solution. This suspension may be extended once by the Minister of Labour.

6. What does any required consultation process involve (ie, when should it commence, how long should it last, what needs to be covered)? If an employer fails to comply with its consultation obligations, what remedies are available?

Other than the aforementioned procedures, there are no requirements in the Labour Law.

7. Do employers need to present an economic business rationale as part of the consultation with unions/employee representatives? If so, can this be challenged and how would such a challenge normally be made?

Not applicable.

8. Is there a requirement or is it best practice to consult employees individually (whether or not the employer is also legally required to collectively consult employees)?

There are no requirements to consult employees individually. We are not aware of best practices in this respect.

9. Are there rules on the selection of individual employees for redundancy?

Yes. As described above, Article 95 sets out the order of layoffs in light of professional qualifications, seniority within the establishment, and family burdens of the workers. Thus, the first workers to be laid off will be those with the least professional ability, followed by workers with the least seniority. The seniority has to be increased by one year for a married worker and by an additional year for each dependent child.

10. Are there any specific categories of employees who an employer is prohibited from making redundant?

Under Article 182, employers are prohibited from laying off female workers during their maternity leave or at a date when the end of the notice period would fall during maternity leave.

Under Article 71, employers cannot terminate employees during periods of illness certified by a qualified doctor. The period of the illness is capped at six months.

Pursuant to the Law on Trade Unions dated 17 May 2016, Articles 43 and 67, shop stewards, shop steward candidates, elected union leaders of legally registered unions, founding union members and ordinary union members who volunteer to join a union, and candidates for union elections are entitled to special protection for different specified periods. Additionally, shop stewards may only be dismissed with an authorisation from the labour inspector.

11. Are there categories of employees with enhanced protection (eg, union officials, employees on sick leave or maternity/parental leave, etc)?

Yes. Under the Law on Trade Unions and the Labour Law, the special categories of protected workers include:

- shop stewards, who are protected during their term in office of two years, and three months after the end of their term;
- unelected candidates for shop steward positions, who are protected for three months after the result of the election;
- elected union leaders of legally registered unions, who are protected during their term in office;
- founding union members and other union members, who are protected from the date of submission of an application for union registration until 30 days after the union is duly registered;
- candidates standing in union elections, who are protected for 45 days before and after elections are held; and
- workers who are members of the Labour Advisory Committee of the MLVT.

The dismissal of these workers requires prior approval of a labour inspector from the MLVT. Pregnant employees are not categorised as protected employees, as dismissal of these employees does not require approval from a labour inspector. However, an employer cannot terminate employees who are on maternity leave, as detailed in question 10 above.

12. What payments are employees entitled to when made redundant? Do these payments need to be made within a specified period? Are there any other requirements, such as giving contractual notice, payments into a central fund, etc.

Each laid-off worker is compensated in accordance with the type of employment contract they have entered into with the employer and the length of time they have worked there.

An employee under a fixed duration contract (FDC) would be entitled to the following compensation upon termination by the employer:

- (i) damages for being laid off before the expiration date of the FDC, which is equal to the wages the employee would have received had he or she completed the original contracted term of employment (Article 73, the Labour Law);
- (ii) a severance payment equal to at least 5% of the wages paid to the employee during the length of the contract, unless otherwise prescribed by a collective labour agreement (Article 73, the Labour Law);
- (iii) unused and unpaid annual leave through to the termination date (Article 167, the Labour Law); and
- (iv) any other benefits agreed to between the employer and the employee in an employment contract, internal work rules, employee manual or HR handbook, or collective bargaining agreement.

If an employee is terminated at the expiration of the FDC, then item (i) would not apply.

An employee under an undetermined duration contract (UDC) would be entitled to the following compensation upon

termination by the employer:

- (i) seniority back payments that remain unpaid for employment periods before 2019 at a rate of 15 days of wages and benefits for each year of service before 2019 (subject to a payment cap equivalent to six months of the employee's actual wages) – Instruction No. 58 on Payment of New Seniority Indemnity in Each Year from 2019 dated 10 June 2019 (Instruction No. 58);
- (ii) final seniority payment of seven days of wages and benefits if the employee has worked for at least one month since the last seniority payment (Article 89 of the Labour Law, and Instruction on Seniority Indemnity);
- (iii) compensation in lieu of notice, if applicable (Articles 75 and 77 of the Labour Law);
- (iv) unused and unpaid annual leave through to the termination date (Article 167 of the Labour Law);
- (v) damages for being laid off in an amount equal to the seniority payment received during the employment contract (Article 91 of the Labour Law and Instruction on Seniority Indemnity); and
- (vi) any other benefits agreed to between the employer and the employee in an employment contract, internal work rules, employee manual or HR handbook, or collective bargaining agreement.

13. If employees are entitled to redundancy/severance payments, are there eligibility criteria and how is the payment calculated? If this is formula based, please set out the formula.

As detailed in section 12, the statutory payments depend on:

- the type of employment contract;
- the reason for termination; and
- whether prior notice was provided to the worker or employee.

As for the calculation of seniority payments, Article 2 of Instruction No. 58 sets out the following formulas to calculate the ongoing seniority payment:

- average monthly wages and other benefits = wages and benefits per month ÷ 6 (or the number of actual months worked);
- average daily wages and other benefits = average wages and other benefits per month ÷ 22, 24, or 26 (depending on the working days of the establishment); and
- seniority payment per semester = average daily wages and other benefits x 7.5.

14. Do employers need to notify local/regional/national government and/or regulators before making redundancies? If so, by when and what information needs to be provided?

Pursuant to Article 95 of the Labour Law, a labour inspector from the MLVT must be kept informed of any mass layoff proceedings. There are no timing requirements. However, according to Article 371, employers who dismiss staff in accordance with Article 95 without informing the labour inspector, or who carry out dismissals during a suspension period imposed by the Minister of Labour, are liable to a fine of 61 to 90 days of the base daily wage, or imprisonment of six days to one month.

15. Is there any obligation on employers to consider alternatives to redundancy, including suitable alternative employment?

Not applicable.

16. Do employers need to notify local/regional/national government and/or regulators after making redundancies, eg, immigration department, labour department, pension authority, inland revenue, social security department? If so, by when and what information needs to be provided?

Yes. Under Article 21 of the Labour Law, an employer must make a declaration to the MLVT each time it hires or dismisses a worker. This declaration must be made in writing within 15 days of the date of hiring or dismissal.

17. If an employee is not satisfied with the decision to make them redundant, do they have any potential claims against the employer? If so, what are they and in what forum should they be brought, eg, tribunal, arbitration, court? Could a union or employee representative bring a claim on behalf of an employee/employees and if so, what claim/s and where should they be brought?

Employees have a general right to file a complaint with the MLVT, the Arbitration Council, or any competent court if any unjustified termination takes place. As for filing a complaint, this would trigger a non-binding labour mediation proceeding. If the mediation proceeding does not resolve the dispute, then the parties could file a complaint with the Arbitration Council or the local courts.

18. Is it common to use settlement agreements when making employees redundant?

We are not aware of settlement agreements being commonplace in Cambodia, nor are they regulated under applicable labour rules.

19. In your experience, how long does it normally take to complete an individual or collective redundancy process?

In our experience, we would suggest planning one month for this process.

20. Are there any limitations on operating a business for a period following a redundancy, like a prohibition on hiring or priority for re-hire being given to previous employees?

Yes. Pursuant to Article 95, dismissed workers have, for a period of two years after dismissal, priority to be rehired for the same position in the enterprise. These workers are required to inform their employer of any change in address occurring after the layoff. If there is a vacancy, the employer must inform the concerned worker by sending a recorded delivery or registered letter to their last address. The worker must appear at the establishment within one week of receiving the letter.

Restructuring/Re-organisation of the business

21. Is employee consultation or consent required for major transactions (such as business transfer, mergers, acquisitions, disposals or joint ventures)?

The Labour Law does not require employers to consult employees in case of a merger, acquisition, or reorganisation transaction.

22. What are the remedies that are available if an employer fails to comply with its consultation duties? Can employees take action to prevent any proposals going ahead?

Not applicable.

23. Is there any statutory protection of employees on a business transfer? Are employees automatically transferred with the business? Are employees protected against dismissal (before or after the transfer of employment)?

Yes. According to Article 87, if a change occurs in the legal status of the employer, particularly by succession or inheritance, sale, merger, or transference of funds to form a company, all labour contracts in effect on the day of the change remain binding between the new employer and the workers of the former enterprise. Employment contracts may only be terminated as provided for in the Labour Law during a period of business transfer.

24. What is the procedure for a transfer of employment (upon a business transfer or within group companies)?

The Labour Law does not address transfer procedures.

25. Are there any statutory rules on harmonising the transferring employees' terms of employment with the existing employees' terms of employment?

The Labour Law does not address harmonisation procedures.

Changing Terms and Conditions

26. Can an employer reduce the hours, pay and/or benefits of an employee?

No. An employer may not reduce the hours, pay, or benefits without the consent of the employee.

27. Can an employer rely on an express contractual provision to vary an employment term?

According to Article 665 of the Civil Code of Cambodia, the employee has the right to immediately terminate their employment contract if the actual working conditions differ from the employment contract. The employer should therefore notify employees and obtain their consent before amending any of the terms and conditions of employment.

28. Can an employment term be varied by implied conduct?

Cambodian law does not address whether contracts may be varied by implied conduct, and we would strongly recommend that any amendments or variations be set out in writing.

29. If agreement is required to vary an employment term, what are the company's options if employees refuse to agree to the proposed change?

The company has no remedies if employees refuse to agree to the proposed change of employment terms, other than termination of employment.

30. What are the potential legal consequences if an employer varies an employment term unilaterally?

Pursuant to Article 665(2) of the Civil Code, the employee may terminate the employment contract immediately if the actual working conditions differ from those specified in the contract.

the incoming Prime Minister, Hun Manet, will follow through with this plan.

Areas to Watch

Please provide an outline of any upcoming legislative developments or other issues of particular concern or importance that are not already covered in your answers to the questionnaire. Please limit responses to the jurisdictional level rather than descriptions of wider global trends. Please limit your response to around 200 words.

In June 2023, the Prime Minister of Cambodia, Hun Sen, announced that the government plans to set up specialised labour courts in the country in the next five years, to handle all labour matters in the Courts of Cambodia. It is unclear whether

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Jay Cohen is a partner and director of Tilleke & Gibbins' Cambodia practice, leading the Phnom Penh office's commercial and intellectual property practices. Based on the quality of his client service and legal expertise, Jay is ranked as a leading commercial lawyer in Cambodia by Asialaw, Chambers Asia-Pacific, IFLR 1000, and The Legal 500 Asia Pacific.

With over 15 years of experience in Asia, Jay is an authority on inbound investments in the region. His practice covers every stage of the investment process, beginning with offshore structuring issues and market entry into Cambodia, including advising on appropriate entities, tax considerations, licensing requirements, intellectual property protection, and labor compliance matters. He also regularly assists clients with implementing appropriate corporate and investment structures, advising on ongoing operations, and negotiating and drafting commercial contracts.

Jay has particular expertise in the energy industry, in which he frequently assists clients with acquisition of energy resources and infrastructure, handles upstream licensing and transactional work, and advises on regulatory compliance in emerging Southeast Asian markets. He is also a well-respected practitioner to the technology industry, frequently advising innovative technology companies on their Southeast Asian operations, with a particular focus on the regulatory framework applicable to FinTech and other professional services technology. He is an active member of the firm's Technology Industry Group.

More broadly, Jay is a trusted advisor to businesses on a variety of general corporate, commercial, intellectual property, and compliance matters in Cambodia, including licensing and regulation; civil aviation compliance procedures (including aircraft registration and deregistration); real estate investment structuring; resource development project licensing and concessions; trademark and patent registration and enforcement; labor and employment matters; and mergers and acquisitions.

Jay is a truly global practitioner, entrusted with high-value commercial matters by both local clients in Cambodia and international clients from across Asia, Europe, and the United States alike. He consistently provides practical, innovative solutions to the dynamic challenges that arise within a developing legal framework.

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Chanvisal Lok is an associate in Tilleke & Gibbins' corporate and commercial group in Cambodia. With particular experience advising clients on labor law and employment contract matters in Cambodia, Chanvisal assists multinational, regional, and domestic clients operating in Cambodia with their employment-related and other corporate legal questions. His commercial-minded advice helps companies overcome potential regulatory pitfalls and maintain compliance with Cambodian law.

Chanvisal is also a versatile practitioner with additional expertise in intellectual property, as he previously performed a wide range of support functions in the firm's intellectual property practice. This included helping companies secure protection for their trademarks, patents, and other intellectual property, as well as drafting application forms and compiling supporting documents for filings with the relevant ministries. On the intellectual property enforcement side, this entailed market surveys, investigations, and handling infringement casework.

Chanvisal holds English language-based LLM and LLB degrees from the Royal University of Law and Economics. He has also completed the patent agent course from the Ministry of Industry, Science, Technology and Innovation as well as World Intellectual Property Organization training on intellectual property and the Madrid system.

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