



RESOLVING COLLECTIVE
LABOUR DISPUTES

The AC E-Newsletter

Memorandum of Understanding on Improving Industrial Relations in the
Garment Industry and Binding Arbitration

January 2011

Message from the Executive Director, Arbitration Council Foundation

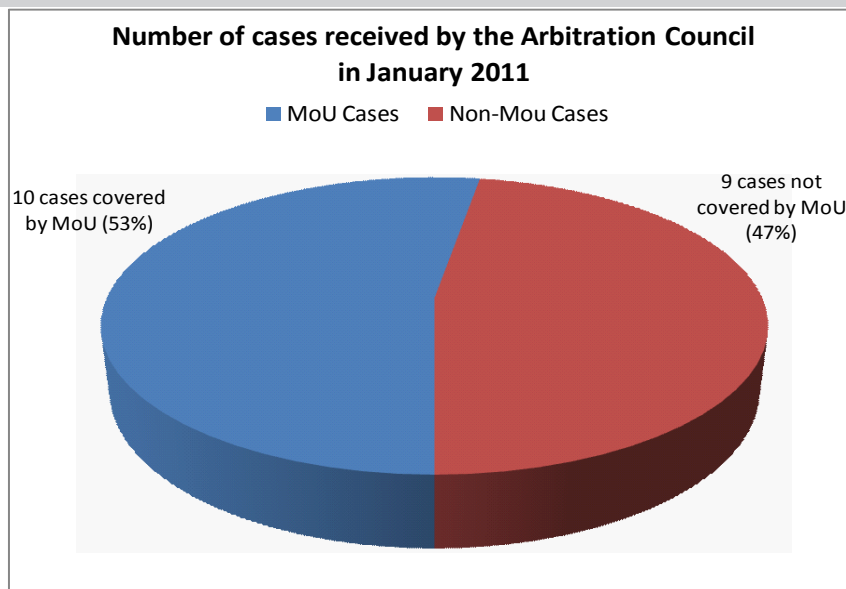
I am pleased to introduce to you, the Arbitration Council E-Newsletter – a special edition of news related to the Arbitration Council's resolution of labour disputes covered by the Memorandum of Understanding on Improving Industrial Relations in the Garment Industry (MoU), signed on 28 September 2010. I praise the commitment made by the leaders of the Garment Manufacturers Association in Cambodia (GMAC) and the six union federations and confederations to promote stable industrial relations in the Cambodian garment industry through such a landmark agreement. Successful implementation of the MoU will enhance the prosperity and welfare of GMAC and union confederations' constituents. Among other commitments, the parties to the MoU agree to submit their 'rights disputes' to binding arbitration by the Arbitration Council. Binding arbitration means that the parties to a labour dispute agree that the decision of the Arbitrators is binding on both parties and is the final step in the dispute resolution process for them. This ensures certainty for the parties, which allows them to get back to work, as well as save time and money.

In addition to the Arbitration Council Newsletter which is published quarterly and covers all labour dispute resolution by the Council, the monthly E-Newsletter is a special initiative to share the information on Arbitration Council resolution of labour disputes with the Council's stakeholders: employers, unions and workers, and others. I hope that this E-Newsletter will help you gain a good understanding of the impact of the MoU on the prosperity and welfare of the involved employers, unions, and workers – at least the extent that binding arbitration of labour dispute cases at the Arbitration Council is concerned.

Sok Lor

Resolution of Labour Disputes Covered by the MoU

In January 2011, the Arbitration Council received 19 labour dispute cases, 10 of which were covered by the MoU. The data covers the month of January 2011 only, so it is difficult to discern a pattern or assess the impact of cases covered by the MoU. However, with the accumulation of data over time, especially through our follow up with employers and unions about the implementation of the Arbitral Awards, we should be able to identify emerging themes and report to you, the effect of the MoU on the parties and more generally, the impact of the MoU on Cambodian industrial relations.



Observations on the Implementation of the MoU and Binding Arbitration Cases

For the period covering January 2011, the Arbitration Council Foundation has captured some early observations, including both encouraging developments and initial challenges regarding the labour dispute cases covered by the MoU.

1. Encouraging developments

- o Many disputant parties have good understanding about the MoU. Specifically, the parties understand well that Arbitral Awards of the Arbitration Council on rights disputes are final and binding on them immediately after the Arbitral Awards are issued. Further, they know to sign a separate agreement to confirm that they will be bound by the Arbitral Award, in accordance with the commitment made in the MoU.
- o Since the MoU came into effect on 1 January 2011, employer and union parties, with the guidance from the Arbitrators have reached settlement agreements on many labour dispute claims and issues, prior to arbitration.
- o In one case, the employer and union parties agreed to binding arbitration, not only on their rights disputes but also on their interests disputes.
- o In the same case, there were two unions involved – one which is a party to the MoU and one which is not a party to the MoU. The non-MoU union agreed to binding arbitration on its labour dispute together with the other, MoU union.
- o Union parties have been generally enthusiastic about the employers' decision to submit their disputes to final and binding arbitration at the Arbitration Council.
- o In one case, at the beginning of the arbitration process, the employer party hesitated to agree to binding arbitration with the union federation that is a party to the MoU because there is no local union at the company to implement the Arbitral Award. However, in acceptance of the agency arrangement between the workers and the union federation and in consideration of the finality of arbitration, the employer later agreed to binding arbitration.

2. Challenges in the Implementation of the MoU

- o In two cases, the unions that are parties to the MoU went on strike prior to conciliation by the Ministry of Labour and arbitration by the Arbitration Council. In these two cases, the worker party did not participate in the arbitration process.
- o In another case, the workers continued their strike during the dispute resolution process at the Ministry of Labour and at the Arbitration Council.
- o In general, the employer and union parties were not well prepared for their arbitration cases, e.g. they lacked strong arguments and evidence to support their positions.



Hearing at the Arbitration Council

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