



RESOLVING COLLECTIVE
LABOUR DISPUTES

AC Newsletter

NEWS AND UPDATES ON INDUSTRIAL RELATIONS AND LABOUR DISPUTE RESOLUTION IN CAMBODIA

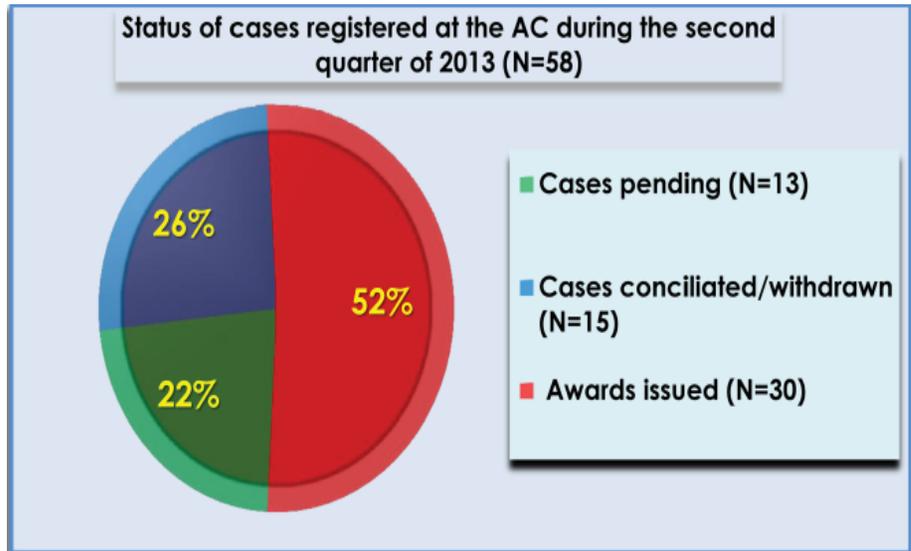
April - June 2013

AC Labour Dispute Resolution April - June 2013

Content

- AC Labour Dispute Resolution 1
- Second Quarterly Review Meeting: GMAC and Trade Unions Review MoU Implementation 3
- May 21: AC marks 10th Anniversary of Labour Dispute Resolution in Cambodia 4
- LABOUR LAW EDUCATION SERIES: Sex Discrimination in the Workplace 5
- Arbitrator Sin Kim Sean: The Secret of Success 6
- AC Community Discusses Past Practice, Legal Issue 7
- Staff Corner 7
- Keep Abreast of the Labour Law 8

Status of Cases Registered with the AC during the Second Quarter of 2013



From 1 January to 30 June 2013, 132 cases were registered for resolution at the Arbitration Council (AC), compared to 128 cases registered in the same period in 2012.

In total, 58 cases were forwarded to the AC from April to June 2013, with an average of 19 cases per month. The number of cases registered was the same as those as in the second quarter of 2012.

and termination 3) occupational health and safety. Of the 58 cases, 52% were decided through arbitral awards, 26% through conciliation or withdrawal, and 22% were pending. The pending cases were carried forward to the following quarter for settlement.

The above pie chart reflects the status of cases registered with the AC in the second quarter of 2013.

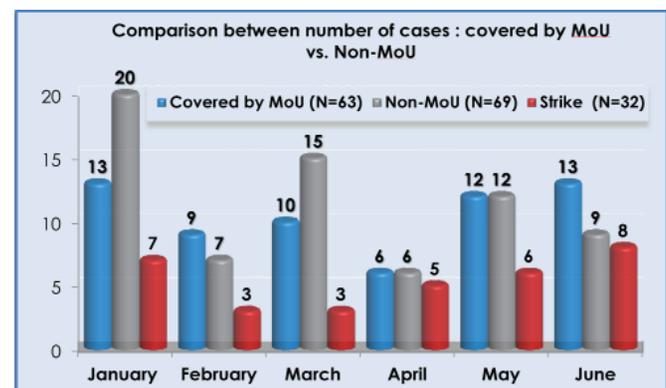
Three types of claims topped the list before the AC in this quarter: 1) wages and bonuses 2) discipline

Comparison of Number of Cases Covered by MoU vs. Non-MoU

The graph demonstrates the number of cases covered by the Memorandum of Understanding On Improving Industrial Relations in the Garment Industry (MoU), signed on 3 October 2012, on a month-by-month basis. In total, there were 63 cases covered by the garment industry MoU, 31 of which were registered from April to June 2013, with an average of 10 cases per month. Out of a total 58 cases registered in this quarter, 19 were strike cases and 13 of the 19 strike cases involved MoU signatories.

in the renewed MoU as they want to increase Labour Law compliance through final and binding arbitration of rights disputes.

31 cases covered by the garment industry MoU were registered in this quarter, one case only covered by the garment industry MoU less than the first quarter regardless of the higher total number of cases registered in the first quarter. This shows that parties keep having confidence



Continues on page 2

AC Labour Dispute...

Continues from page 1

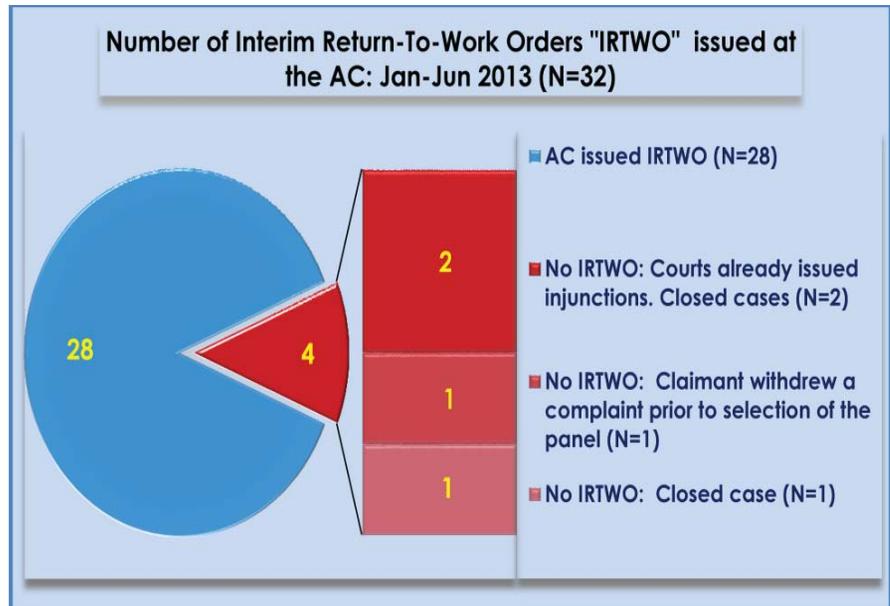
Number of Interim Return-To- Work Orders "IRWO" Issued at the AC: Jan-Jun 2013

From 1 January to 30 June 2013, 32 cases involving strikes were registered at the AC. At 32 cases, this is 6 more cases than the number registered during the same period in 2012, which indicates instability in industrial relations during the period.

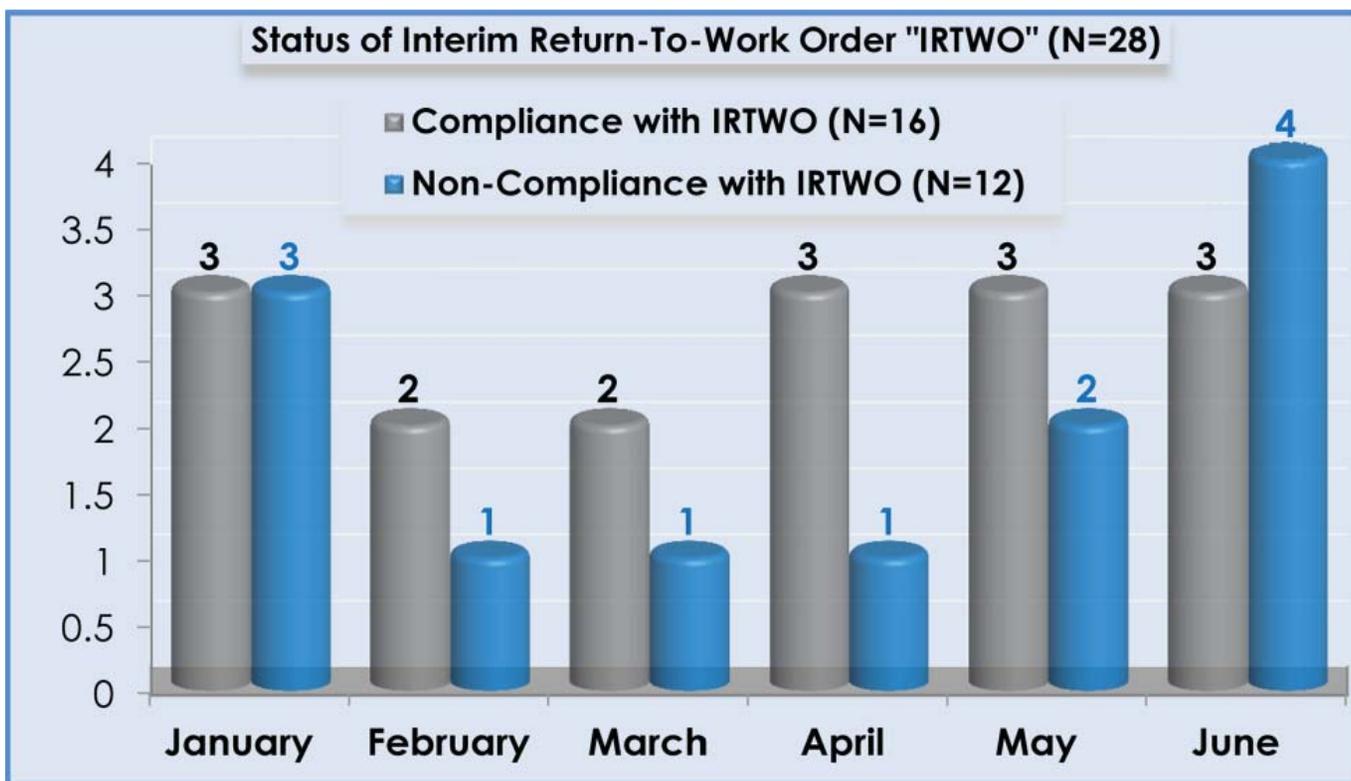
In relation to the 32 strike cases, the AC issued 28 interim return-to-work orders. Note that the AC did not issue its interim return-to-work orders in four strike cases: 1) 12/13-Winson International Garment (Cambodia) Ltd 2) 82/13-TSG 3) 97/13-Master & Frank (Cambodia) Co.,Ltd. 4) 123/13-Naga World. In Winson International Garment (Cambodia) Ltd and Naga World Limited, the courts issued injunctions ordering

the workers to cease their strikes. Among the other two cases, one was conciliated prior to selection of the panel and the other was closed

because the parties reached an agreement without withdrawing the case and did not attend the hearing.



Status of Interim Return-To-Work Order "IRTWO"



In terms of outcomes, 16 interim return-to-work orders issued by the AC were complied with, which allowed the parties to temporarily cool off and peacefully focus on

their work while having the AC resolve their disputes. The other 12 interim return-to-work orders were not adhered to by the parties. From the figures above, compliance

with interim return-to-work orders outnumbered cases of non-compliance.

Second Quarterly Review Meeting: GMAC and Trade Unions Review MoU Implementation



On 25 June 2013, the Garment Manufacturers Association in Cambodia (GMAC) and the signatory union federations and confederations of the Memorandum of Understanding (MoU) on Improving Industrial Relations in the Garment Industry discussed the implementation of the MoU on improving industrial relations in the garment industry during the second MoU quarterly Review Meeting at the InterContinental Hotel.

The Arbitration Council Foundation (ACF) in cooperation with GMAC and the American Center for International Labor Solidarity (ACILS) organised this 2nd MoU Review Meeting in order to report on the implementation of the MoU and the challenges facing implementation. Discussions centred on finding ways to improve compliance with the MoU. The meeting was attended by 35 participants from MoU signatory parties, as well as observers from the International Labour Organisation, the American Centre for International Labour Solidarity, local unions, factories, representative from Ministry of Labour and Vocational Training, Ministry of Social Affairs Veterans & Youth Rehabilitation, Ministry of Commerce and representative from

international buyers H&M, Gap Inc., Adidas, and Marks & Spencer.

According to data presented by Ms. Chum Charya, Director of the Legal Services Department of the Arbitration Council Foundation, the ACF has received 54 MoU cases in total from January to May 2013. Among these cases, 7 cases were closed due to industrial actions prior to the arbitral award. Meanwhile, 3 cases were not implemented by the factories.

Mr. Ken Loo, GMAC secretary-general said the factories were compliant on most issues as they had been already implemented.

Despite the fact that there is still some way to go in achieving full MoU compliance, Mr. Ath Thorn, President of the Cambodia Labour Confederation (CLC), acknowledged that significant progress has been made.

“Although the parties have not fully complied with the MoU, I have observed that since the signing, improvements in the implementation of the MoU have occurred”, he said.

The MoU is a good faith agreement

between the parties, and there is no law to enforce those who do not follow the agreement. It is therefore, up to signatory parties themselves to achieve full implementation.

“Commitment is the most important. Full implementation can only be achieved if the signatory parties commit to following the MoU” said Mr. Mai Vathana, representative of the Cambodia National Confederation (CNC).

As part of the MoU monitoring and evaluation process, the ACF (whose function is the Secretariat of the MoU) calls both parties in a dispute to determine whether or not they have implemented the AC’s arbitral award. It also keeps track of whether or not a labour dispute involves a strike action before it is registered at the Arbitration Council for settlement.

This is the second MoU review meeting. The third meeting will be hosted by the GMAC and conducted in September 2013.

The text of the MoU in Khmer and English is available on the AC website at www.arbitrationcouncil.org

May 21: AC marks 10th Anniversary of Labour Dispute Resolution in Cambodia



On 21 May 2013, the Arbitration Council (AC) marked its historic 10 year milestone with a National Conference on Industrial Relations entitled “Forging Ahead: How Labour Dispute Resolution Has Changed the Cambodian Industrial Relations Landscape in the Past Decade”.

Conducted at the Sunday Hotel, this 10th anniversary conference was an opportunity to reflect upon the tremendous achievements made in labour dispute resolution by the AC over the past 10 years, as well as to focus on the future of the Council and industrial relations in Cambodia. Approximately 150 participants from government, donors, the private sector, trade unions, local unions, universities students, employer associations, factory owners, ambassadors to Phnom Penh, international buyers, and local and international media attended this event.

Since 2003, the Arbitration Council’s alternative labour dispute resolution system has received more than 1,500 cases. It has provided services to over 600,000 workers from various sectors, predominantly the garment sector. The AC has helped promote and maintain industrial relations harmony and stability and in part has contributed

to the growth of the national economy. The data from the Garment Manufacturers Association in Cambodia (GMAC) revealed that the value of garment and textile exports totalled US\$1.6 billion in 2003 and it has risen to US\$4.4 billion in 2012.

Mr Alassane Sow, the World Bank Country Manager in Cambodia, acknowledged that the role of the Arbitration Council in industrial relations in Cambodia is very clear. He also said the AC ensures transparency in the arbitration process and has established an effective system of publishing decisions.

“...in its efforts to provide a mechanism for workers to obtain justice around labour disputes through mediation and arbitration, the Arbitration Council has consistently brought about both social and economic impacts,” he said during an opening remarks, adding that “...the recently completed World Bank poverty assessment shows a strong correlation between improvements in productivity and an increasing compliance with labour standards.”

Excellency Oum Mean, the Secretary of State of the Ministry of Labour and Vocational Training, said that in the past ten years, the Ministry

of Labour and Vocational Training has been working very closely with the Arbitration Council in order to resolve collective labour dispute effectively for the parties.

“Collective labour dispute that cannot be conciliated by the conciliator of the Ministry of Labour and Vocational Training are forwarded to the AC,” he said.

During the event, many participants also expressed their concerns towards the Arbitration Council’s current funding that is due to finish in March 2014 by appealing to the government and other donors to provide support to the AC.

Ms. Sin Kim Sean, Arbitrator of the Arbitration Council; member of Board of Directors of the Arbitration Council Foundation, said that in response to the AC’s funding, the Board of Directors of the AC and the ACF Executive Director have been working hard to secure the funding for supporting labour dispute resolution services. To this end, the AC has formulated a strategic plan, and engaged in high level discussions with its stakeholders, other potential donors, and the Stakeholder Advisory Group to ensure the sustainability of the AC.

LABOUR LAW EDUCATION SERIES: Sex Discrimination in the Workplace

In 2013, the AC Newsletters will continue the Labour Law Education series designed to explain key sections of the Cambodian Labour Law 1997 (“the Labour Law”). In this issue, we will address the issue of sex discrimination in the workplace: the types of discrimination that may occur, the legal protections on offer to victims and the ramifications of discrimination.

What is sex discrimination?

Generally speaking, sex discrimination occurs when a person is treated less favourably than a person of the opposite sex would be in the same or similar circumstances in the workplace. Generally, sex discrimination can be direct, whereby there are different rules for different sexes, or indirect, whereby the same rule has an unfair effect on one sex.

Who is protected by sex discrimination laws?

The categories of persons who are protected by workplace sex discrimination legislation can vary between jurisdictions. For example, in Australia pregnancy discrimination falls within the federal Sex Discrimination Act 1984, as does marital status, breastfeeding and family responsibility discrimination. In the United States however, pregnancy discrimination is unlawful, but it forms a distinct federal statute, the Pregnancy Discrimination Act 1978.

What is the position on sex discrimination in the workplace in Cambodia?

In Cambodia several laws address sex discrimination. Of direct relevance



is the Labour Law, which at Article 12 prevents an employer from taking sex into account when making a variety of workplace decisions, including but not limited to hiring, termination of the employment contract and promotion. Problematically, Article 12 does not define ‘sex discrimination’, however some guidance may be had in provisions that protect pregnant workers, such as the right to maternity leave, during which period they cannot be terminated (Article 182), and the payment of half wages and perquisites during such periods of leave (Article 183). There are also provisions covering breastfeeding (Articles 184 and 185). While an employer has a right to grant ‘special leave’ to workers with family responsibilities, this is by no means a protected activity (Article 171).

However, the Cambodian Constitution also provides some guidance in this area, stating that all citizens are equal (Article 31), that all forms of discrimination against women are prohibited (Article 45), and at Article 46, that “a woman shall not lose

her job because of pregnancy. Women shall have the right to take maternity leave with full pay and with no loss of seniority or other social benefits.”

Cambodia is also a signatory to the Convention on the Elimination of all Forms of Racial Discrimination (CEDAW), which requires States to ‘take appropriate measures to eliminate discrimination against women in the field of employment’. This includes a list of rights, such as a prohibition against dismissal on maternity grounds (Article 11(2)(a) CEDAW).

At a minimum, sex discrimination in the workplace is prohibited by the constitution and the Labour Law. The lack of definition within the Labour Law leads to some difficulties in defining what activities may be protected or what may constitute discriminatory conduct, however pregnancy, sex, and breastfeeding all appear to be protected activities.

Arbitrator Sin Kim Sean: The Secret of Success



Despite the fact women and men have equal rights under the law in Cambodia, in reality; many women continue to face significant challenges. For example, in rural areas many females drop out of school early to undertake domestic work as well as other work to contribute to their families' income. Less than 50% of females attend primary school. This puts them at a distinct disadvantage to their male counterparts, where they lack employment opportunities and leadership roles in society. However, one 53 year old lady has overcome many of these difficulties to become an important person contributing to the development of Cambodia.

Born in 1960, Arbitrator Kim Sean was a successful student who studied very hard to brighten her future. After finishing high school she then started working for the United Nations Transitional Authority in Cambodia (UNTAC) in 1990 and for the Cambodian National Election in 1993. Because of her exemplary performance in her work, Arbitrator Kim Sean landed a job at an international organization called The Asia Foundation (TAF) and at the same time received financial support from the organization to study

Law from the National Institute of Management, Cambodia and the Royal University of Law and Economics. Throughout her university studies, she was an exceptional student. With her academic achievements, commitment and diligence, Arbitrator Kim Sean was also rewarded scholarships to study and obtain: a Master of International Laws and Economics from the World Trade Institute, Switzerland; a Research Program Certificate from the University of Michigan Law School, USA; and 1999 from the University of San Francisco, USA.

Arbitrator Kim Sean has remained motivated and demonstrated a strong commitment in order to achieve her goals. Arbitrator Kim Sean said that it was not an easy task to complete her study successfully since she faced many issues during that time. However, she always felt optimistic.

Among the challenges she faced, Arbitrator Kim Sean recognises that study abroad was the hardest experience. Indeed, it involved an enormous amount of hard work, particularly at the start. She needed to settle into a new environment in term of living, food and culture. In addition,

she had to be very economical so that she could continue to support her two children in Cambodia.

Despite these difficulties, she always encouraged herself to work hard and never gave up reminding herself that only few people can have the great opportunity to study abroad. Besides this, she wanted to be a good ambassador for Cambodia and for her family and was mindful of not letting down those who offered her the scholarship.

Prior to obtaining a master degree in international law and economics, Arbitrator Kim Sean worked various jobs including: Program Officer at The Asia Foundation (human rights issues); Legal Instructor at the University of San Francisco/Community Legal Education Center; Legal Assistant of the Legal Center for Research Documentation; and Program Officer of the Human Rights Task Force in Cambodia.

After finishing her master degree from Switzerland, Arbitrator Kim Sean worked on various jobs and later was promoted to be Grants Coordinator at the East-West Management Institute (EWMI) (human rights and rule of law issues).

Continues on page 7

Arbitrator Sin Kim Sean...

Continues from page 6

With her great educational background and work experience in field of law and international law for many years, Arbitrator Kim Sean was appointed by a Prakas of the Ministry of Labour and Vocational Training as a member of the Arbitration Council (AC) on the employee list when it was established in 2003.

"I am so proud to be an arbitrator with the AC because I can contribute in seeking justice for employees and employers, as well as society as a whole," she said.

Since its inception in 2003, the AC has been recognised as an important justice platform for resolving labour dispute for management and workers in Cambodia. This is because all the AC arbitrators are independent. They issued the awards based on the Labour Law, international standards and principles of equity. .

"Independence and transparency are assets that instills trust and confidence in the parties," she said, adding that "this is not just important for the AC, but also for the professionalism of the

arbitrators"

Besides working as arbitrator at the AC, Arbitrator Kim Sean is the Bar Liaison and Legal Aid Grants Coordinator at the East-West Management Institute (EWMI), a lawyer and a commercial arbitrator of the National Arbitration Center (NAC). She is also a member of the Singapore Institute of Arbitrators (SIArb). She said that her accomplishments can be attributed to her integrity work, professionalism and perseverance to which she herself calls "the secret of success."

AC Community Discusses Past Practice, Legal Issue

On 29 May 2013, the AC community and Ms. Madeline Thoman, an international legal intern with the Legal Services Department and graduate from the Michigan Law School, USA, held discussions as part of the ACF's Continued Legal Education (CLE) program. This discussion aimed at continuing the development of the AC community and legal capacity building for providing effective labour dispute resolution services.

Ms. Madeline Thoman, who was invited to speak as part of this session, presented her knowledge and experience regarding the doctrine of "past practice" and its relationship to contract law within the context of Cambodian Labour Law and AC cases. The discussion was attended by approximately 25 members of the AC community at the AC office.

Continued Legal Education (CLE) is a part of the continued capacity



building programs for arbitrators and AC support staff in order to keep them abreast of developments in the Labour Law and other legal issues.

Staff Corner: One Legal Education & Translation Officer Joins ACF



Mr. Srey Sokmeth had served as the full-time simultaneous interpreter for the International Law Enforcement Academy-Bangkok for over 6 years. He had been involved in the training courses designed and organised by the Federal Law Enforcement Agencies of the United States of America for the capacity buildings and cooperation of law enforcement officers from Southeast Asia Region, Republic of China, and

Special Administrative Region Hong Kong & Macau. He completed his MBA at Assumption University of Thailand. He graduated from the Institute of Foreign Languages (IFL) in 2006. He was a member of the Department of Media and Communications (DMC), the Royal University of Phnom Penh and the Indochina Media Memorial Foundation Alumni (IMMF).

Keep Abreast of the Labour Law

Knowledge of the Labour Law is required of human resources professionals, employers, trade union officials and community leaders who deal with labour and employment related issues. Labour law and regulations develop as the society and econ-

omy keep evolving. For example, do you know about the latest decisions concerning labour contracts, payment of wages and bonuses and paid leave? Whether you are an Human Resource professional, labour advocate, a law student, professor

or researcher, it is important that you keep abreast of the developments in the labour law at the Arbitration Council. The Arbitration Council Foundation has published the following resources to help you do just that:



- Compilation of Arbitration Awards and Orders Volumes 1-11 (English)
- Compilation of Arbitration Awards and Orders Volumes 1-18 (Khmer)
- Compilation of Labour related Laws and Regulations 2011 (Khmer)

All of these publications are available for sale in bookstores and the offices of the Arbitration Council.

Please contact Ms. Soeung Sophea, ACF Training Coordination Officer, now for your copy: ssoeung@arbitrationcouncil.org or 023-881814 (ext. 109).

Your Purchase Supports the Platform for Peaceful Labour Dispute Resolution in Cambodia.



No. 72, Street 592 (corner of St. 327), Sangkat Boeung Kak II, Khan Tuol Kork, Phnom Penh, CAMBODIA
 Tel: +855 23 881 814
 Fax: +855 23 881 918
 E-mail: info@arbitrationcouncil.org website: www.arbitrationcouncil.org

If you have any inquiries about the AC Newsletter, please contact:
 Mr. Ly Sokheng
 Communications Officer
 Tel: 023 881 814
 H/P: 015 999 229
sly@arbitrationcouncil.org