

**Kingdom of Cambodia  
Nation Religion King**

**Ministry of Labour and Vocational Training**

**No.: 303 K.B / Br.K.K.B.K**

**Prakas**

**On**

**Most Representative Status of Union and Formality and Procedure to Obtain Most Representative Status**

**Minister of Labour and Vocational Training**

- Having seen the Constitution of the Kingdom of Cambodia
- Having seen Royal Decree No. NS/RKT/0913/903 dated 24 September 2013 on Appointment of the Royal Government of the Kingdom of Cambodia
- Having seen Royal Decree No. NS/RKT/1213/1393 dated 21 December 2013 on Adjustment to the Composition of the Royal Government of the Kingdom of Cambodia
- Having seen Royal Decree No. NS/RKT/0416/368 dated 04 April 2016 on Adjustment to the Composition of the Royal Government of the Kingdom of Cambodia
- Having seen Royal Code 02/NS/94 dated 20 July 1994 promulgating the Law on Organization and Functioning of the Council of Ministers
- Having seen Royal Code No. NS/RKM/0105/003 dated 17 January 2010 promulgating the Law on Establishment of Ministry of Labour and Vocational Training
- Having seen Royal Code ChS/RKM/0397/01 dated 13 March 1997 promulgating the Labour Law
- Having seen Royal Code NS/RKM/0516/007 dated 17 May 2016 promulgating the Law on Trade Union
- Having seen Sub-decree No. 283 OrNKR.BK dated 14 November 2014 on Organization and Functioning of the Ministry of Labour and Vocational Training

**Decides**

**Article 1**

The most representative status of a union shall be recognized in the following frameworks:

- Enterprise/establishment or
- One profession or one economic activity or one sector.

**Article 2**

To receive most representative status at enterprise/establishment level, a union shall meet the following criteria:

- 1- Being duly registered
- 2- Having programs and activities indicating that the union is capable of providing professional, cultural and educational services to its members as provided for in the Law on Trade Union.
- 3- Having the most members with a proper membership card and name list or having received the largest numbers of votes in the enterprise or establishment as follows:
  - The union having members at least 30% (thirty percent) of the total workers/employees in the enterprise/establishment where there is only one union or

- Any union having secured the most support from other unions with more than 30% (thirty percent) of the total workers/employees in the enterprise or establishment where there is more than 1 (one) union or
- In the event that any union is unable to secure the support from members of at least 30% (thirty percent) of the total workers/employees, an election shall be organized to secure the most votes of more than 30% (thirty percent) of the total workers/employees in that enterprise or establishment. In this case, all unions in the enterprise or establishment shall have a meeting to determine the procedure, date, time and venue for the election of most representative status union and shall give notice of this information to workers/employees and employer at least 15 (fifteen) days before the date of the election.

### **Article 3**

To receive most representative status in one profession or one economic activity or one sector, a union shall meet the following criteria:

- 1- Being duly registered
- 2- Having programs and activities indicating that the union is capable of providing professional, cultural and educational services to its members as provided for in the Law on Trade Union.
- 3- Having the most members with a proper membership card of all workers/employees in the profession or economic activity or sector.

### **Article 4**

The election of most representative status union shall be organized in accordance with the following procedures:

- 1- All regular workers/employees of the enterprise or establishment have the right to participate in the election.
- 2- The union can campaign on the information related to the election, including their work program for when they receive most representative status for workers/employees as a basis for the election. This campaign shall be conducted outside working hours or during the working hours in the enterprise or establishment if there is an approval from the employer and in accordance with the formality agreed by the employer.
- 3- A union can request an observer from the representative of relevant union federation, union confederation, ministries and organizations to check the correctness of the election.
- 4- The election shall be held secretly.
- 5- The ballot shall be counted and the result be publicly announced immediately after the end of the election.
- 6- The minutes of the election shall be signed by all representatives of the unions who have participated.

To organize the election of most representative status union, the employer shall make it easy for all regular workers/employees by providing a time at the end of working hours or any time that has been agreed upon between the employer and all local unions in the enterprise or establishment.

All complaints concerning the process of the election or election result shall be submitted to the labour court within 15 (fifteen) days after the announcement of the result. This complaint has no effect to disrupt the implementation of the election result.

### **Article 5**

The union shall apply for certification of most representative status at the institution in charge of certifying most representative status as follows:

1- A local union of the enterprise or establishment located in provinces shall apply for the certification of most representative status at the Provincial Department of Labour and Vocational Training.

2- For a local union of the enterprise or establishment located in Phnom Penh, the union federation and union confederation shall apply for the certification of most representative status at the Labour Dispute Department of the Ministry of Labour and Vocational Training.

### **Article 6**

The documents for applying for the certification of most representative status include:

- 1- Application form for the certification of most representative status, 01 original copy
- 2- A copy of the letter certifying the registration or letter recognizing the union leaders, 02 copies
- 3- Name list of members with a proper identity card, 02 copies
- 4- In case of having an election, there shall be the minutes of the election and be accompanied by the name list of the unions standing for the election and name list of those who stand for the election of most representative status union, 02 copies.

Only the leadership/management and those responsible for administrative work have the right to submit the documents for applying for the certification of most representative status to the institution in charge of certifying most representative status.

### **Article 7**

No later than 30 (thirty) working days after receiving the documents, the institution in charge of certifying most representative status shall make an official decision on recognition of most representative status who has met the criteria stipulated in this Prakas.

### **Article 8**

After receiving the documents of applying for the certification of most representative status of the union, the institution in charge of certifying the most representative status shall issue a receipt stating the receipt of the documents of applying for certification of most representative status for the union. This receipt shall state that the documents have enough required documents and shall set a date for a meeting with the institution in charge of certifying the most representative status to review the documents.

In the event that the owner of the documents fails to meet with the officer of the institution in charge of certifying the most representative status on the set date without a valid reason, the application will not be proceeded.

In the event that the documents have any incorrect point, the applicant shall bring the documents to be revised or adjusted correctly, then submit them again to the institution in charge of certifying most representative status as required by the officer of the institution. The period of bringing the documents to be revised or adjusted shall not be included in the period stipulated in Article 7 of this Prakas.

In the event that the applicant fails to revise or adjust the incorrect point as required by the officer of the institution in charge of certifying most representative status without a valid reason, the application will not be proceeded.

### **Article 9**

The union may appeal to the Ministry of Labour and Vocational Training in the event of not receiving action from the institution in charge of certifying most representative status as stipulated in Article 7 and Article 8 of this Prakas.

### **Article 10**

After receiving the application for certification of most representative status which is full and correct, the institution in charge of certifying most representative status shall give notice of the application through a mailed letter or give the letter directly with signature proving receipt to the manager of the enterprise or establishment or employer and other unions in the enterprise or establishment for most representative status at enterprise/establishment level.

After receiving the above notification within 10 (ten) working days, the employer shall post the application for certification of most representative status at any proper location which is easy to see in the workplace. Within this period, relevant persons may give an observation or unexpected objection to this application.

After this period, if there is no objection, the institution in charge of certifying most representative status can issue the certification of most representative status.

### **Article 11**

Any complaint to object to the application for most representative status shall be filed to the institution in charge of certifying most representative status that has received this application within the period as stipulated in Article 10 of this Prakas.

Any union confederation or union federation that does not have its union in the enterprise or establishment or local union that has not been registered cannot file an objection to the application for most representative status of the union.

Every objection shall have evidence such as testimony provided by workers/employees (with signature or thumbprint) or other documents and based on the following reasons:

- 1- The union submitting the application is not qualified enough for applying for the certification of most representative status.
- 2- The union submitting the application has faked their documents.
- 3- Other valid reasons

Before accepting an objection, the institution in charge of certifying most representative status will meet with relevant parties to check and verify the evidence provided. The union against which an objection has been filed will have to provide the institution in charge of certifying most representative status every evidence that can be used as a basis for defence against the objection.

If the objection has been accepted, the institution in charge of certifying most representative status will give notice to the employer and relevant unions through a mailed letter or a letter given directly with an explanation of the reasons for accepting the objection. If the institution in charge of certifying most representative status rejects the objection, the institution will issue a certification to the union that has submitted the objection with an explanation of the reasons.

The institution in charge of certifying most representative status has the right to ask for additional information from the employer such as number of total workers/employees who are currently working in the enterprise or establishment or any part of the enterprise or establishment, a copy of documents related to deduction of union dues as requested by the union or other necessary relevant information.

### **Article 12**

The employer shall maintain and update the name list of workers/employees monthly by specifying the name, type of employment contract and type of work for the purpose of any immediate inspection in the event that the union requests the certification of most representative status.

### **Article 13**

For the purpose of CBA negotiation or resolution of collective labour dispute, the most representative status union shall have the exclusive right to resolve the collective labour dispute resulting from any stipulation in the CBA.

The most representative status union shall have the following duties:

- Negotiate in good faith with the employer in order to have a collective agreement on CBA focusing on working conditions, work safety and hygiene and other benefits
- Be an honest representative for workers/employees who are not its members in protesting against any issue resulting from CBA.
- Be an honest representative for workers/employees for other disputes that are not resulting from CBA at the request of workers/employees or minority union in the enterprise or establishment
- Not discriminate when accepting new members
- Allocate seats in some mechanisms as stipulated in the Labour Law.

### **Article 14**

All minority unions in the enterprise or establishment that has valid certified most representative status union shall be prohibited from demanding rights to negotiate CBA and from demanding other rights or benefits more than those stipulated in the law, regulations, CBA that are in force or internal labour rules. The rights and duties of minority unions include:

- Be an honest representative for workers/employees in resolving collective labour disputes that are not resulting from CBA
- Be a representative of their members in resolving individual disputes
- Provide training on legal and vocational knowledge
- Provide consultation on laws and actual implementation for their members
- Participate in the mechanism of cooperation in the workplace on a regular basis
- Participate in the consultation in the mechanism of job market
- Provide information related to their members
- Prepare and set up a collective which can be shop, canteen or health care etc. to facilitate the living conditions of their members
- Act as administrative role in providing benefits for their members when having no job.

The most representative status union can also carry out the duties stipulated above.

### **Article 15**

The certification of most representative status of a union cannot be protested within 2 (two) years counting from the date of receiving the most representative status, except the following cases where the union with most representative status may lose its most representative status without time limit.

- 1- When the union has been found failing to fulfil its duties regularly as stipulated in Article 13 of this Prakas based on the actual evidence, including the refusal to represent workers/employees to resolve disputes related to CBA.
- 2- When the union's registration certificate has been revoked.
- 3- When the union has been dissolved.
- 4- When there is clear evidence that the union no longer has most representative status.

When the most representative status exceeds 2 (two) years, any union in the same enterprise or establishment or the same profession or economic activity or sector can file a complaint against this most representative status by seeking recognition the same as the criteria in this Prakas.

All complaints against most representative status shall be filed to the institution in charge of certifying most representative status that has received the documents of applying for the

certification. The institution in charge of certifying most representative status can assign an observation [and] if necessary shall review the most representative status of any union. The institution in charge of certifying most representative status can suspend or revoke the union's most representative status in case of having clear evidence to prove any violation or missing of the criteria as stipulated in the Law on Trade Union.

**Article 16**

In case the enterprise or establishment has not had a union or has not had most representative status union, any collective labour dispute shall be resolved by the representative of workers/employees.

**Article 17**

Prakas 305 dated 22 November 2001 on Representative Status of Professional Organization of Workers/Employees at Enterprise/Establishment Level and Rights to Collective Negotiation to Create a CBA at Enterprise/Establishment Level of the Ministry of Social Affairs, Labour, Vocational Training and Youth Rehabilitation and any regulation contrary to this Prakas shall be abrogated.

**Article 18**

Cabinet chief, Director General of General Department of Administration and Finance, Director General of General Department of Labour, Director of Labour Dispute Department, Directors of Unions under the supervision of the Ministry of Labour and Vocational Training, Director of Municipal/Provincial Department of Labour and Vocational Training, unions and employer associations at all levels shall implement this Prakas as per their respective duties from the date of signature.

Phnom Penh, 02 July 2018

**Minister**

*(Signed and stamped)*

**Ith Sam Heng**

**Place to receive:**

- Office of the Council of Ministers
  - Secretary General of the Royal Government
  - Cabinet of Samdech Techo Prime Minister
  - Cabinet of Samdech, H.E., Lok Chumteav Deputy Prime Ministers
  - Relevant ministries/institutions
  - Municipal/provincial halls
  - Union and employer associations at all levels
- “for information”
- As in Article 18
- “for implementation”
- Official gazette
  - Archives