

Ministry of Labour and Vocational Training
No. 033/08 KB/SCN

Notification
on
Procedures for Certifying the representative status and the most representative status and Organizing Election to determine the Most Representative of Professional Organisations of Workers at the Enterprise/Establishment Level

This Notification is issued with a view to improving the implementation of the existing Prakas 305 SKBY dated 22 November 2001 on the representativeness of professional organisation of workers at the enterprise level and the right to collective bargaining for the purpose of reaching/concluding collective bargaining agreement at the enterprise level.

The Ministry of Labour and Vocational Training is pleased to notify workers, unions, union federations and employers of all enterprises and establishments and all employers associations concerned of the following revised procedures with regard to the process of applying, objecting, and electing to determine the representative status and the MRS of the professional organisations of workers.

I. Process for Certifying Representativeness of a Professional Organization of Workers

Article 277, paragraph 1 of the Labour Law state that " Representativeness of the professional organisation at the enterprise level is recognized in the framework of a geographical area or a profession, or if necessary, according by the type for which the union is registered to operate. The representativeness is determined according the following criteria:

- a) be legally registered,
- b) having more members holding valid membership cards than the others.

Any union having the largest and the second-largest number in order of the

first and second majority will be considered to be the representative union within the enterprise. Any union whose number of members of workers is over 51% of the total number of workers in the enterprise shall be considered as the most representative union.

- c) receiving dues from at least 33 percent of its members,
- d) having programmes and activities indicating that the union is capable of providing professional, cultural and educational services to its members".

A. Guidelines and Procedure for applying for and certifying RS & MRS

1. Any union intending to apply for certification of RS or MRS shall complete the standard form [in a total of 15 copies], which must contain clearly the following information.

- Name of union
- Name of Federation, if affiliated
- Name and contact information of enterprise union President
- Name and address of enterprise
- Industrial sector of enterprise [garments, hotels, etc].
- Geographical area or professions for which the request for certifying representativeness is being made
- No. and date of Registration certificate and any subsequent changes,
- Total number of union members and the total number of workers in the framework of geographical area or profession and by making percentage comparison thereof,
- Number of members paying dues and the mode of payment (either directly to the union or through wage deduction by the employer),
- Work activity programme of the union
- The applying union is also required to submit with the application the following evidence:
 - Copy of Registration certificate
 - A proof of any subsequent changes (to the registration certificate

2. This standard application in **annex 1** of this notification can be obtained either at the Office of Industrial Relations of the Department of Labour Dispute of the General Directorate of Labour or through the union federations.

B. Guidelines and Procedures for receiving application form for the certification of RS and MRS

1. Upon receipt of the union's application form for RS or MRS, the Office of Industrial Relations confirms receipt of application to applying union. The confirmation will state whether the application contains all required document(s). The receipt should also confirm the date for the applicant's appointment to meet with the Office of Industrial Relations to review the application form.
2. After 7 days starting from the date of filing application, the applicant shall meet with the official of the Office of Industrial Relations to obtain information about propriety or impropriety of his/her application. In case there is any impropriety found, the founder of the professional organisation is required to take back the application for revision or further completion before resubmitting to the Office of Industrial Relations. The time taken for such revision or completion should not be counted in the application's reviewing period. In case the application file is found to be improper and that the applicant fails to meet with the Official of the Office of Industrial Relations, the file is to be returned back to the applicant.

C. Guideline and Procedure for Dissemination of RS and MRS.

1. Upon receipt of a complete and accurate application for RS and MRS, the Ministry informs the management and all other unions in the enterprise of the above application. The Ministry sends registered or hand-delivered letter to employer at the enterprise with instruction to post the application for RS and MRS on public notice board in enterprise. The posting shall last at least 15 days from receipt of the letter starting from the date of receiving the letter from the Ministry. In case the employer does not post that application, the

applying union can then lodge a complaint to the Ministry of Labour and Vocational Training for settlement.

2. The Ministry sends registered or hand-delivered letter to employer and union members of LAC. The letter requesting for observation should state the date of RS or MRS certification to be issued by the Ministry of Labour and Vocational Training for the union, in the absence of a challenge or objection. The purpose of this letter is to inform the LAC employer and union members to provide their observation but it is not intended to seek approval from them.

D. Guideline and Procedure for Certifying RS and MRS

1. The period of certifying RS and MRS process is 60 days starting from the date of receipt of application.
2. When having observed that there is a delay in certifying the representativeness of a Professional Organization of Workers beyond the above defined certifying period, the owner of the application may lodge a written complaint to the Department of Labour Dispute. Within 2 weeks following the filing of the complaint, if there is no proper clarification from the DLD, the owner of the application can directly make such the complaint to the Director General of Labour Directorate or to the Minister of MoLVT.
3. No fees shall be charged for certifying RS or MRS.

E. Guidelines and Procedure for Objecting to MRS Certification

1. In the absence of an objection based on the grounds and evidence described below received within 15 days starting from the date of the letter sent to the enterprise and to the LAC, the Office of Industrial Relations shall submit the application file to the Ministry's leadership (Minister) for issuing certification of Representative or Most Representative Status to the applying union, and notify the union and the enterprise management by certified or hand-delivered letter.

2. All objections must be filed using standard objection form and must include all of the following information:

- a. Name of natural or legal person filing objection
- b. The objecting party's legitimate interest in the MRS application
- c. Reasons or grounds for objection
- d. Evidence for objection

The standard objection form is at **annex 2** to this notification

3. Objections may only be based on the following grounds:

- a. that the applying union is not the most representative; or
- b. that the applying union has falsified its application; or
- c. that the employer exercises influence over the applying union such that the applying union is not independent from the employer

4. A union federation that has no union in the enterprise or establishment, or a union is yet to be registered in the enterprise or establishment, cannot object to the applying union.

5. Any objection must include evidence such as a worker's testimony (signed or thumb printed) or documentation.

6. Unions and employers may come to MOLVT in person within the **15 day** period to learn if objections have been filed.

7. Prior to accepting an objection, the Ministry shall meet with the relevant parties to review and verify any evidence that has been submitted.

8. If MOLVT accepts the objection, then MOLVT shall notify employer and affected union by registered or hand-delivered standard letter explaining reason(s) for accepting the objection. If MOLVT rejects the objection, then the Ministry will issue *certification* (letter) to the objecting union along with the detailed reason (for such objection).

9. The affected union shall provide the Ministry all evidence used as basis in defending (against) such objection.

10. The Ministry has the right to request from employer additional information such as the total number of workers currently employed in the enterprise/establishment or in a unit of the enterprise, a copy of payslip showing union dues being deducted on the request of the union, or other relevant information pertaining to the circumstances, which may arise as below:

- a list of payslip of all workers currently working in the enterprise/establishment,
 - if there is any objection made by another union(s) , or any natural or legal person having a legitimate interest in the information claimed in or evidence submitted with the application form as per reason(s)/ground mentioned in paragraph 2 of the Guideline and Procedure for objecting to MRS.
 - in case there is any inconsistency found with regard to the above stated information/or evidence as the result of reviewing made by the Department of Labour Dispute or its Industrial Relations Office.
11. In the case of an objection to MRS is accepted by the MOLVT, the affected union or its affiliated federation may request MOLVT to organize election. Within two weeks of receiving union request for election, the Ministry shall meet with the parties to discuss the organization of the elections, and set a date for the elections.

II. Process for Organising and Holding Election to determine MRS

A. Preparations for Elections

1. Within a maximum of **15 days** following the receipt of the union request, the Office of Industrial Relations of the Department of Labour Dispute shall invite parties concerned – including representatives from all unions in the enterprise, representatives of union federations, and the employer – to discuss the organization of the elections, including a place/venue, date and time for the election.
 - a. In case the union who requests for an election is absent without notification and valid reasons, the union shall be considered as to have abandoned the request for an election and the request for certifying the representative status.
 - b. In case the objecting party is absent and fails to attend the meeting invited by the Ministry without prior notification and valid reasons, it shall be considered that the decisions in the meeting are agreed upon.
 - c. The meeting shall establish the Committee for Organization and inspection of Elections (“Election Committee”) described below.

2. The employer shall bring to the meeting three copies of the list of workers eligible to vote in the election: one each for MOLVT, the enterprise union and the federation. The union may review and submit any changes to the list within 5 days of the meeting. The Election Committee shall then meet to review the proposed changes to the list and agree a final list no later than 7 days before the election.
3. Once the place, date and time have been agreed at the meeting by all parties concerned, the Ministry prepares the minutes of the meeting to be signed by the participants and makes available copy to everyone and informs them about necessary arrangements required for the conduct of the election.

B. Organizing Elections

1. According to Prakas No. 305 MOSALVY, dated November 22, 2001, all unions who wish to join the elections in the enterprises and establishments, as well as the employers, are invited to discuss the procedure, time and venue of the election. The organization and inspection of the election shall be handed over to a third party or any public institution, who volunteers to organize and inspect the election, if both parties agree. In this case, the third party shall carry out the tasks in accordance with the procedures described below. In case there is no one responsible for these tasks, then at the first meeting of the parties described above, the Ministry will take charge of establishing a committee responsible for organizing the election (Committee for Organization and Inspection of Elections), which comprises of the following composition:
 - A representative from the Ministry of Labour and Vocational Training as the President.
 - A representative from each union federation and three representatives from each concerned union.
2. The duties of the Committee for Organization and Inspection of Election are as follows:
 - _ Examine and verify voter list
 - _ Arrange venue and date of the election
 - _ Prepare the ballots and arrange for ballot boxes.
 - _ Coordinate the election process.

- Explain the procedure of the election, inspect the election process, and announce the result of the election.
- 3. Eligibility/voter list:

Workers, who by the date of the election, have worked for the enterprise or establishment for at least three months, including the probation period, are eligible to vote. .
- 4. Venue of elections:

The election can be conducted inside or outside the enterprises and establishment, as agreed at meeting. The election shall be held at the workplace, if agreed by the employer or at any other place nearby the workplace, if it is not so agreed.
- 5. Date and time of elections:

The date and time of election shall be determined as agreed in Para 1 above. The election shall be conducted during working hours, if it is agreed by the employer. Otherwise the election shall be conducted before or after the working hours.
- 6. Notification of workers:

The date and time of election shall be communicated/notified to workers at least 7 days prior to the election. This notification shall be posted in a conspicuous place in the enterprise at least 7 consecutive days prior to the election.
- 7. Ballots and marking of ballots:

The ballots shall contain the names of all unions participating in the election, with the picture of the union leader, next to a single tick box. Eligible workers shall tick a single box to indicate which union they are voting for. There shall also be a box marked "No union;" the worker shall check this box if s/he does not wish to be represented by any of the unions in the election. The ballot shall not be signed or marked in any other way, or it shall be considered invalid.
- 8. Role of observers: Observers from national and international organizations may, at the request of any interested party, observe the propriety of the vote.

C. Voting Place, Procedures and Ballots

1. In the voting place there will be at least two tables and a ballot box. The ballot box shall be at one table; workers shall receive their ballots from the other tables. Observers from Ministry of Labour and Vocational Training, employers, unions, and outside organizations (if invited) may be at one side of the tables; the members of the Committee shall normally play the role of observers. Each observer shall be identified with a badge. Only the representative of the Ministry of Labour and Vocational Training may talk with workers during voting.
2. Workers shall go to the voting table in an orderly fashion, standing in line if necessary.
3. Workers shall give their name to one of the observers, who shall check that the name is on the voting list. The observer will inform the representative from the Ministry of Labour and Vocational Training whether the name is on the list.
4. After the worker's name has been confirmed on the voting list, the worker shall obtain a ballot from one of the members of the Election Committee.
5. Ballots shall be marked with a single "√" or "X" only, in the box next to the union being supported or in the box next to "No Union", if the worker does not wish to be represented by any union. Ballots shall not be signed or marked in any other way. Fold the ballot and place it directly into the ballot box. No one else should touch the ballot.

D. Role of unions and employers prior to election

1. All unions who are registered in the enterprise or establishment at the time of the election may disseminate information regarding the date, time, venue, and voting procedures to their members during working hours with the consent of the employer, or outside of working hours if the employer has not given consent.
2. The following conduct is prohibited by both representatives of unions and employers prior to and during the election, and may result in the election being declared null and void or other sanctions as may be appropriate under the labour law:

- a. Threatening loss of job or benefits to influence a worker's vote
- b. Promising or granting promotions, pay raises or other benefits to influence a worker's vote
- c. Demanding or paying bribes or other emoluments to influence or cause to influence a worker's vote
- d. Threatening physical force or violence to influence or cause to influence a worker's vote

E. Counting Ballots and Announcing Results

1. Immediately upon the completion of the vote, the ballot boxes shall be gathered in one place as defined by the Election Committee.
2. The ballot boxes shall then be opened in the presence of the Election Committee and any observers that have been agreed by the parties, as noted above. Ballots shall be counted in public by the Election Committee, under the supervision of the representative of the Ministry of Labour and Vocational Training.
3. In case the ballot counting cannot be done due to time constraint or other causes, the Election Committee shall keep the ballot boxes in a secured place, locked and sealed with signatures affixed by the Election Organizing Committee.
4. The names of the unions who competed in the election shall be written on the board. Votes shall be counted from amongst the valid ballots and marked against the names of the unions.
5. The result shall be announced by the President of the Election Committee immediately after the ballot counting is completed, and the winner shall be declared. Both valid and invalid ballots shall be kept by the Ministry of Labour and Vocational Training for at least 90 days after the vote has taken place.
6. The Ministry will, within 15 days after announcement of the election result, issue a certificate certifying the most representative status. Minority unions and the employer shall respect the outcome of the elections and the MRS status of the majority union.

7. All appeals concerning the accuracy of the election or result of the election shall be submitted to the competent court within eight days counting from the date the result is announced. The complainant shall send a copy of the complaint lodged to the court to the Department of Labour Dispute and the winner of the election for their information.
8. The appeal shall not have the effect of suspending implementation of the results of the election.

III. Data collection and dissemination

All data with regard to the registration of professional organizations of workers, the application and the certification of the MRS, or its objection if any and together with the election results, will be recorded in and generated by the Ministry's database system for quarterly and yearly dissemination to all stakeholders.

IV. Effect of the Notification

Any provision(s) of the previous two notifications no. 13 & 16, which are contradictory to the provisions of this notification are null and void.

This Notification shall have an effect from the date of its signature.

The MOLVT strongly hopes that union federations, worker organizations, employer associations and all employers will cooperate with the Ministry to effectively implement this Notification.

Phnom Penh: 22 April 2008
Minister of the Ministry of Labour and Vocational Training

Signature and Seal

Vong Sauth

CC: (Not translated)

Kingdom of Cambodia
Nation Religion King
ព្រះរាជាណាចក្រកម្ពុជា

The President of Union.....

pays its respect to

H.E. Minister of Labour & Vocational Training\

Subject: Request for Representativeness ☐ Most Representativeness ☐
of the Professional Organization of Workers

Reference: - Labour Law

- Prakas No. 305 MOLSAVY dated 22 November 2001 on the Representativeness of Professional Organizations of Workers at the Enterprise or Establishment Level and the Right to Collective Bargaining to conclude Collective Agreements at that Level
- Notification No. 033/08KB/SCN dated 22 April 2008 on Procedures for Certifying the representative status and the most representative status and Organizing Election to determine the Most Representative of Professional Organisations of Workers at the Enterprise/Establishment Level

As per the above subject and reference, I am pleased to inform Your Excellency the Minister that in order to have representativity in collective bargaining to conclude CBA and (securing the right) to resolve other problem(s) with the employer, I kindly request Your Excellency to certify the Representativeness ☐ Most Representativeness ☐ for my union.

The union background information are as follow:

1. Name of union:.....
2. Having registered certificate No.....dated.....
3. Name of Union Federation:
4. Name and Contact Information of the Union:
.....
5. Name and Address of Enterprise/Establishment:
.....
6. Industrial Sector in which the enterprise/establishment operates:
.....
7. Framework of Geographical Area or profession:.....
 - entire enterprise/establishment ☐
 - some professions of the enterprise/establishment ☐ Description:.....
.....
8. Number of Union Members:.....Total Number of Workers:..... (in framework of geographical area/or professions of professional organization)

9. Union Dues:

- ☐ Number of workers paid directly: equivalent to% of members
- ☐ Number of workers paid through employer: equivalent to% of members

10. Union's Workplan/Program Activities:

.....
.....

11. Attached to this Application are:

- Copy of registration certificate
- Copy of union members list and total number of workers as per item 8
- Copy of union members' dues payslip either directly to the union or through employer as per item 9
- Evidence and/or documentation

As having informed above, I kindly request for certification (of representativeness/most representativeness) from Your Excellency as in order to have legal application status.

Please accept Your Excellency, my highest respect.

Phnom Penh, dd/mm/yy
Union President

Phnom Penh, dd/mm/yy

Having seen (the union request) and kindly ask for the certification from His Excellency the Minister

President of Union Federation

(Note: this only applies to case where the requesting union is affiliated with any union federation)

Kingdom of Cambodia
Nation Religion King
ព្រះរាជាណាចក្រកម្ពុជា

The President of Union.....

pays its respect to

H.E. Minister of Labour & Vocational Training\

Subject: Objection to the Most Representative Status of the Union.....

Reference: - Labour Law

- Prakas No. 305 MOLSAVY dated 22 November 2001 on the Representativeness of Professional Organizations of Workers at the Enterprise or Establishment Level and the Right to Collective Bargaining to conclude Collective Agreements at that Level
- Notification No. 033/08KB/SCN dated 22 April 2008 on Procedures for Certifying the representative status and the most representative status and Organizing Election to determine the Most Representative of Professional Organisations of Workers at the Enterprise/Establishment Level
- (Ministry's) Letter No.....dated.... (Letter of Notification about union's request for MRS)

As per the above subject and reference, I am pleased to inform Your Excellency the Minister that I have filed an objection against the request for MRS by the union.....

I would like to provide the following information as below:

1. Name of natural or legal person (union) filing objection:
.....
2. Address and Contact Details of Objecting Party:
.....
.....
3. Objecting party's legitimate Interest in the application form:
 - a) Representing a registered union in the enterprise ☐
 - b) Member of the Labour Advisory Committee ☐
 - c) Other interest(s) ☐
4. Reasons or grounds for objection:
 - Applying union is not the Most Representative ☐
 - Applying union has falsified its application: ☐
 - Applying union is not independent from the employer ☐
5. Please provide evidence to support your objection:
 - a)
 - b)
 - c)

As having informed above, I kindly ask for consideration from Your Excellency as in order to have legal application status.

Please accept Your Excellency, my highest respect.

Phnom Penh, dd/mm/yy

Union President

Phnom Penh, dd/mm/yy

Having seen (the union request) and kindly ask for (granting) objection from His Excellency the Minister

President of Union Federation

(Note: this only applies to case where the requesting union is affiliated with any union federation)