

**Thailand**

**National Study on the  
Employment Relationship**

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## Table of Contents

|                                                                                                              |           |
|--------------------------------------------------------------------------------------------------------------|-----------|
| <b>Introduction.....</b>                                                                                     | <b>4</b>  |
| 1 <i>Basic Data about Employment .....</i>                                                                   | <i>4</i>  |
| 2 <i>Purposes of the studies are as follows: .....</i>                                                       | <i>9</i>  |
| 2 <i>Purposes of the studies are as follows: .....</i>                                                       | <i>10</i> |
| 3 <i>Method of studies .....</i>                                                                             | <i>10</i> |
| 4 <i>Expected results .....</i>                                                                              | <i>10</i> |
| 5 <i>Definition .....</i>                                                                                    | <i>10</i> |
| <b>II    Legal frame in related to employment on Labour Protection....</b>                                   | <b>12</b> |
| 1 <i>Laws pertaining to labour .....</i>                                                                     | <i>12</i> |
| 2 <i>Legal frame works in regarding to employment contract. ....</i>                                         | <i>12</i> |
| 3 <i>Scope of enforcement of labor laws.....</i>                                                             | <i>14</i> |
| 4 <i>Scope of Protection Provided to Employees under the Labour<br/>        Protection Act BE 2541 .....</i> | <i>15</i> |
| 5 <i>Scope of Labour Relations Act BE 2518 .....</i>                                                         | <i>20</i> |
| <b>Dependent work and Independent work .....</b>                                                             | <b>23</b> |
| <i>Dependent work .....</i>                                                                                  | <i>23</i> |
| 1.    Definition .....                                                                                       | 23        |
| 2.    Legal framework.....                                                                                   | 23        |
| 3.    Problems on protection of workers in Dependent work.....                                               | 24        |
| 4.    Legal procedure .....                                                                                  | 29        |
| <i>Independent work.....</i>                                                                                 | <i>29</i> |
| 5.    Definition .....                                                                                       | 29        |
| 6.    The Legal Framework.....                                                                               | 30        |
| 7.    Employment or work performance relations .....                                                         | 30        |
| 8.    Employment or work performance relations .....                                                         | 32        |
| 9.    Commercial and Service Trade .....                                                                     | 36        |
| 10.   Problem of Protection Independent Worker.....                                                          | 37        |
| <b>IV    Ambiguous or Disguised Work.....</b>                                                                | <b>38</b> |
| 1. <i>Meaning .....</i>                                                                                      | <i>38</i> |
| 2. <i>Trend of an ambiguous or disguise hire of services.....</i>                                            | <i>38</i> |

|            |                                                                                                                |           |
|------------|----------------------------------------------------------------------------------------------------------------|-----------|
| 3.         | <i>Pattern or Relation in an ambiguous or disguised employment ..</i>                                          | 38        |
| 4.         | <i>Legal Framework.....</i>                                                                                    | 43        |
| 5.         | <i>Problems of workers protection. ....</i>                                                                    | 43        |
| <b>V</b>   | <b>Triangular of multilateral relationships.....</b>                                                           | <b>47</b> |
| 1.         | <i>Employment trend.....</i>                                                                                   | 47        |
| 2.         | <i>Types of triangular employments .....</i>                                                                   | 47        |
| 3.         | <i>Related legal frameworks .....</i>                                                                          | 48        |
| 4.         | <i>Overall protection problems.....</i>                                                                        | 49        |
| <b>VI</b>  | <b>Case Studies.....</b>                                                                                       | <b>51</b> |
| 1.         | <i>Case Study No.1: Truck drivers in cement transportation business of the Cement Transport Co., Ltd. ....</i> | 51        |
| 2.         | <i>Case Study No. 2: Salespersons in Department Stores .....</i>                                               | 54        |
| 3.         | <i>Case study No. 3: Construction Workers .....</i>                                                            | 58        |
| <b>VII</b> | <b>Conclusions and suggestions.....</b>                                                                        | <b>63</b> |
| 1.         | <i>Conclusions.....</i>                                                                                        | 63        |
| 2.         | <i>Suggestions .....</i>                                                                                       | 64        |
|            | <b>REFERENCES.....</b>                                                                                         | <b>70</b> |
|            | <b>Appendix A.....</b>                                                                                         | <b>71</b> |
|            | <i>Thai Labour Statistics.....</i>                                                                             | 71        |
|            | <b>Appendix B .....</b>                                                                                        | <b>75</b> |
|            | <i>Example of employment relationship of rural households .....</i>                                            | 75        |
|            | <b>Appendix C .....</b>                                                                                        | <b>77</b> |
|            | <i>Suggestions about legal measures regarding work to be taken and carried out at home.....</i>                | 77        |

## Introduction

### 1 Basic Data about Employment

The survey conducted by the National Statistical Office in 2000 shows that Thailand has a population of 62.61 million, of which 15.94 million are under the age of 15 and 46.67 million are 15 years and above. Among those who are 15 years and above, 33.26 million are in the labour force while the remaining 13.41 million are outside of it.

The employed are classified according to their employment status as follows<sup>1</sup>  
(Details are shown in Appendix A):

- employers: 1.10 million (3.3%)
- government employees: 2.72 million (8.2%)
- private employees: 10.35 million (31.4%)
- self-employed (independent occupations): 9.94 million (30.1%)
- working in family business without pay: 8.89 million (26.9%)

#### 1.1 Employment situation over the past 10 years

Thailand has since 1987 enjoyed remarkable economic development and growth, with extensive expansion in the industrial sector particularly those industries that employ cheap labour, such as in the fields of ready made garments, textiles, shoes, artificial flowers, jewelry, electrical circuit panels and toys. With heavy emphasis on making Thailand the financial centre of ASEAN, huge amounts of foreign investments flowed into the Kingdom. Financial businesses, namely, commercial banks, financial institutions and stock exchange have expanded as never before and made impressive profits.<sup>2</sup>

The industrial expansion has however adversely affected employment and the economy of the country in many ways, such as:

- a. A large number of workers are recruited to meet the demand for cheap labour necessitating the imposition of minimum wages by the Government and a lack of development of the quality of life, particularly of skilled labour.
- b. Heavy concentrations of labour in cities and towns, with the accompanying disparity in the standards of living between the cities and rural areas and neglected agricultural sector, give rise to a wide gap in the distribution of income.
- c. Redundant industrial workers turn to small-scale business, sub-contract and informal sectors with low pay and no welfare in the absence of laws to give them protection.
- d. Employment of a great number of children, female and alien labour is common.

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<sup>1</sup> Teerana Bhongmakapat and Team, The report on “The Impact of Trade Globalization on Labour in Thailand”, Chulalongkorn Economics Research Center, 2001, p.52-55.

<sup>2</sup> Teeranart Karnchanaugsoorn, “Capital, State, Labour in Crisis and Struggle, 1998, p.218-228.

## 1.2 The economic crisis of 1997 and its effect on employment

The unprecedented growth of the financial sector enjoyed by Thailand during this period is due largely to low interest on loan which was between 6-7% per annum while the lending rate was as high as 16% per annum.<sup>3</sup> Then in 1997, Thailand faced a severe economic crisis and with the devaluation of the Baht came the outflow of foreign capital while there were heavy foreign borrowings in the business sector. A lot of damage has been done as a result and employment is affected in the following way:

1. A large-scale unemployment is prevalent due to large numbers of lay-offs. Between 1998 and 1999, 331,425, 351,101 and 349,327 employees respectively were laid off.<sup>4</sup>

The greatest numbers of lay-offs by the industrial sector in 1999<sup>5</sup> are in the following descending order: construction, trading including wholesale and retail businesses and service sectors. In 2000, the first was the service sector followed by wholesale and retail businesses and the construction sector and in 2001, the first was the construction sector, with 20,901 lay-offs.

2. Various businesses take the opportunity to restructure the employment condition by laying off older workers and replacing them with younger ones, paying the latter the required minimum wages, with consequent job seeking competition among the workers.<sup>6</sup>

3. Changes in employment structure from permanent and continuous to short term or limited short term employment, contract and sub-contract and wage contract and distribution of production to communities in cities and rural areas. New types of employment thus come into being. For instance, work taken and carried out at home, work performed under no employers, normally known as informal sector or work in unofficial economic sector.<sup>7</sup>

The studies show that, in 1999, the number of workers in the informal sector, calculated based on independent workers and home based workers who are not paid wage, is as high as 20,887,400 or two thirds of the total work force. Of this number, 309,641 represent home workers and 644,038 are producers for sale and home workers, the total amount of home-based works are 953,679 persons.<sup>8</sup>

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<sup>3</sup> ID, P.219.

<sup>4</sup> Teerana Bhongmakapat et al., the report on "The impact of Trade Globalization on Labour in Thailand", Chulalongkorn Economics Research Center, 2001, p.57.

<sup>5</sup> Bundit Thanachaisettawut, Labour Review Newsletter, March 2002, p.23.

<sup>6</sup> Woravit Chareonlert and Bundit Thanachaisettawut, 2540. Thailand in Changing Point, 2001, Political Economic Center Chulalongkorn University, p.211

<sup>7</sup> id, p.231

<sup>8</sup> Susanha Yimyam and Team, the report on "The Synthesis of Knowledge on Informal Sector Labour, 2000, p.9

The number of independent workers or workers with no employers has greatly increased,<sup>9</sup> for example:

The number of life insurance and insurance agents was 40,820 in 1996, increased to 107,051 in 2001.

The number of salespersons and shop assistants was 241,917 in 1996, increased to 347,851 in 2001.

The number of persons engaged in laundry was 56,000 in 1996, increased to 60,694 in 2001.

In addition, there are works carried out in many other forms such as working in food shops, as hawkers, motor-cycle services, taxi drivers, sales agents normally known as direct sale and traditional or Thai massage etc.

The workers in these new forms of employment do not enjoy the status as employees and hence are not protected under the law. It presents the Government with a policy problem that is rather difficult to solve.

Figure I shows a range of business categories in Thailand. Community-based enterprises are the most vulnerable sources of employment as they remain unregulated by the government. Thailand has a range of laws regulating business and employment practices. These laws include the Commercial and Civil Code, the Cooperatives Act, and others. None of these laws provides regulations over a range of occupations existing at the community levels. Thus community members do not have provisions which protect them from the exploitation and domination of businesses, middle persons, and government officials. There shall be a law seeking to provide labour protection to community members, sustain traditional occupations in various Thai communities, protect local wisdom and resources, and support the growth of community-based enterprises (Narong and Pittaya, 2002: 228).

Figure 2 illustrates a production chain of a jeans production company in Thailand. In 1992, an entrepreneur set up a garment company. She got to know various producers. After the 1997 crisis, she had to downsize her production capacity. She set up a factory in Bangkok fully equipped with industrial-capacity machines. The goods aimed at a domestic market. But there were too many competitors.

In 2000, the company switched to the overseas market. But it faced a big loss as it did not have export quota. As a result, it adjusted its exporting strategies and returned to the domestic market.

It became interested in using rural employment creation strategy and thus formed partnership with local organizations working in rural communities. Previously, the company had used rural community as its production force but had difficulties in controlling production quality. It lost some business due to the delay and eventually, it stopped using rural production force. In this renewed interest, the

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<sup>9</sup> Faculty of Economics, Chulalongkorn University, the report "Employment Requirement and Employment Creation" submitted to Ministry of Labour and Social Welfare

company relied on the support of the Ministry of Industry which had a “Rural Industrial Promotion Program,” which provided skill training to rural residents. There were many lessons learned. The Company eventually chose five village-based groups in Mahasarakam Province as part of its production force. It also expanded its production by setting up another factory in Yasothorn province.

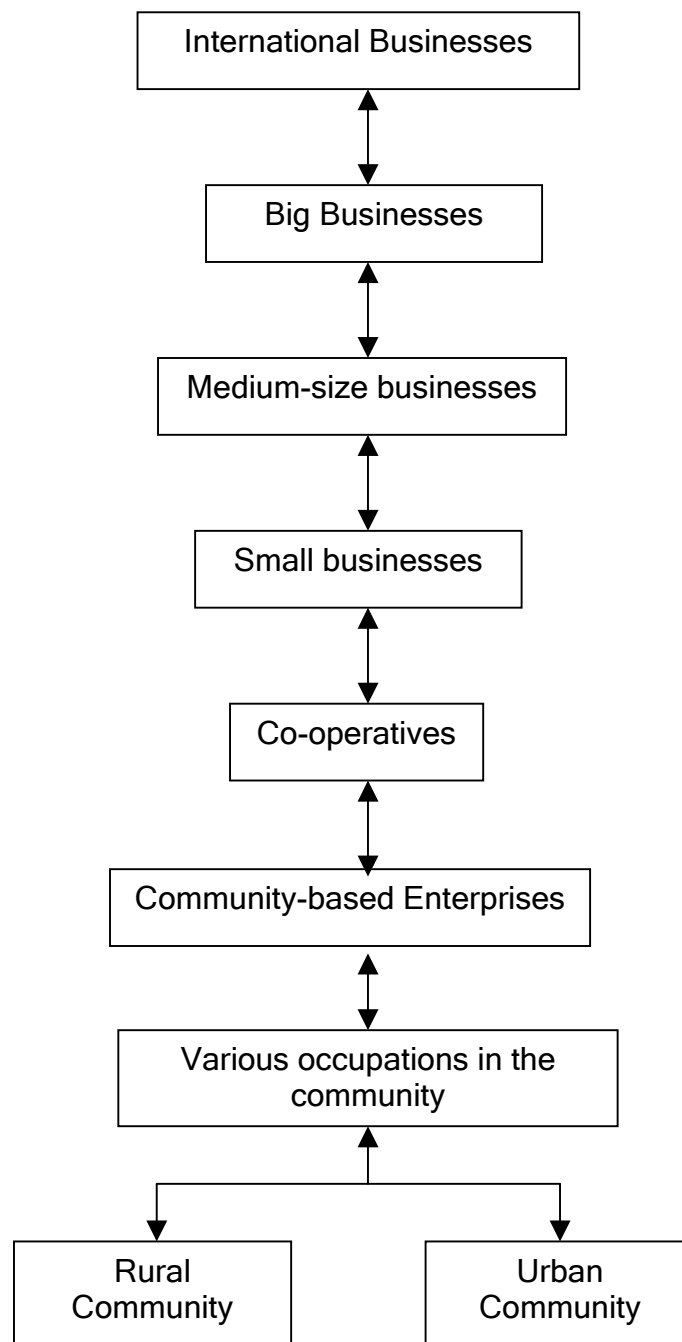
The branch offices in both Yasothorn and Mahasarakam provinces were responsible for distributing production assignments to homebased workers’ groups in the area. Each group had its own internal governance structure, like a small factory does. The groups received machines from the Company.

The Bangkok factory would undertake the production processes such as taking order from clients, producing sample goods for the clients, identify raw materials, patterning the raw materials, and embroidered or styled the patterned cloths.

The Bangkok factory would subcontract most of the remaining work to homebased workers, including sewing the patterns and finishing the product (ironing, buttoning, washing, and packing).

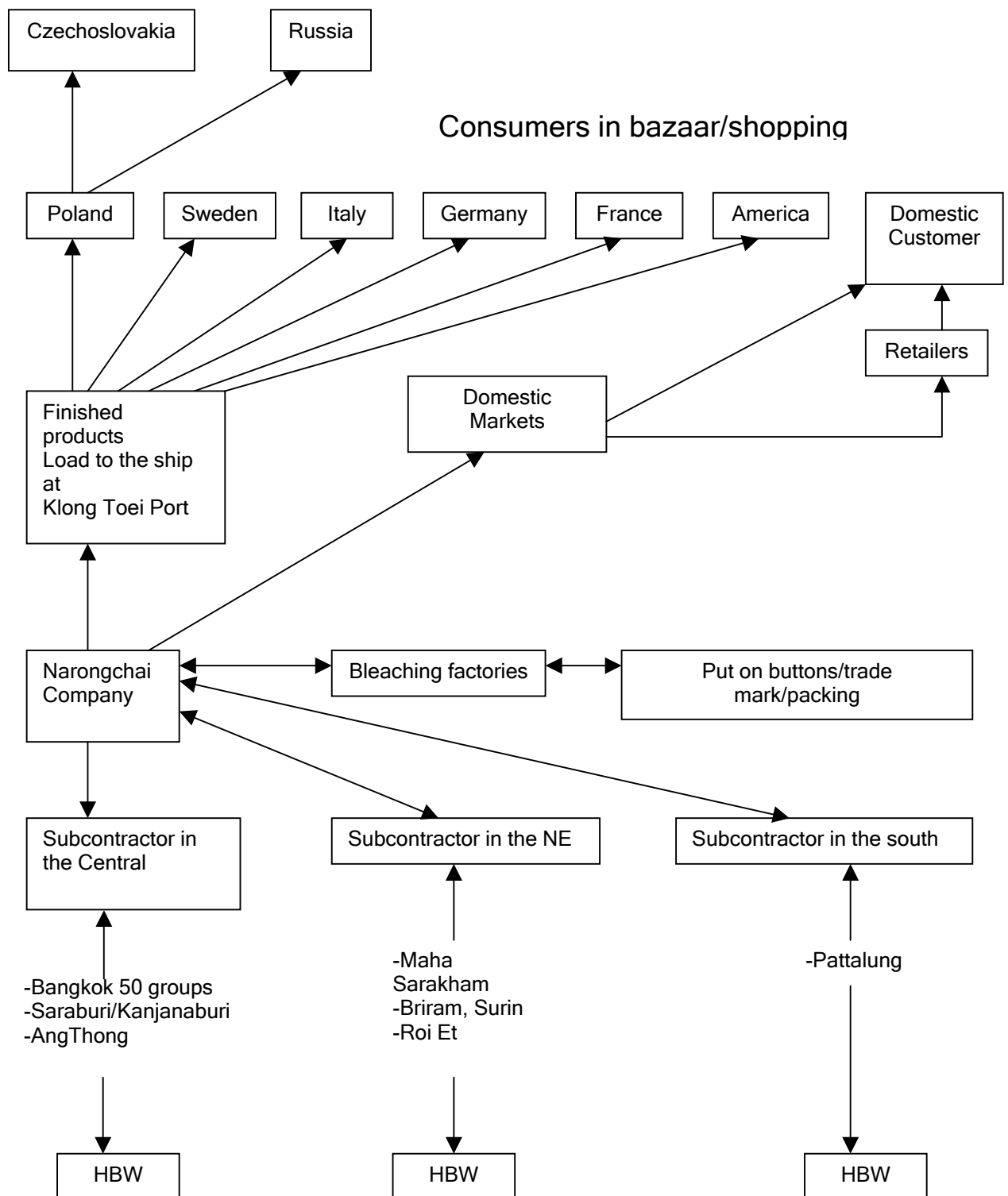
Workers in the factory get full benefits but homebased workers in rural communities received either piece rate or daily wage, depending on the nature of their work. But it is the group’s decision about when, where, and how to arrange their work. But as mentioned by Narong and Pattaya (2002), these homebased workers were out side the purview of employment-related and business-related laws in Thailand.

**Figure. 1: Thai's economic structure**



Source: Narong Petprasert and Pittaya Vongkul, *The Community Enterprise: The Instrument of Fundamental Economics*, 2002 (P 226)

**Figure. 2: Structure of production the line: Jeans Production**



Source: Homenet Thailand and Research and Development Institute of Khon Kaen University, Study Report on Homeworkers: Situation and Data in the 4 Regions of Thailand, 2002 (p. 99)

## **2 Purposes of the studies are as follows:**

- to codify the laws governing employment relations and status of workers
- to codify and revise the workers' rights and security relating to protection
- to suggest how the problems are to be tackled

## **3 Method of studies**

Because the studies have to be conducted within a very limited time frame of only 4 months, from December 2001 to March 2002, a suitable method of studies had therefore to be selected. The studies involved mainly the compilation and synthesis of the studies and researches on relevant subjects and on interviews with persons concerned. They also involved active participation in the many meetings and seminars on subjects relating to the issues under study organized in Thailand by various agencies.

As regard case studies, special stress was laid on interviews with persons concerned.

## **4 Expected results**

- 4.1 legal knowledge relating to employment, defects of the laws governing labour protection
- 4.2 suggestions as to ways to resolve problems particularly on employment relations and workers protection

## **5 Definition**

- "Hire of service" means a contract that a person called an "employee" agrees to work for another person called an "employer" and the employer agrees to pay a remuneration for such work through out the working period."
- "Hire of work" means a An act that a person called "contractor" agrees to perform any types of his/her work until completion of such work for another person called "hirer" and such person agrees to pay any remuneration for the succession of such work"
- "Agent" means an agreement in which one person is given the power to act on behalf of another person and the assigned agrees to do so
- "Broker" means a person who points out the way or arranges for persons to enter into an agreement and who receive remuneration in return for his service
- "Buy and sell" means an agreement between the buyer and the seller whereby the seller has the duty to transfer the ownership of property to the buyer and the buyer pays the price of the property to the seller
- "Laws governing labour" means the hire of services under the Civil and Commercial Code, the Labour Protection Act BE 2541, the Social Security Act BE 2533, the Workmen Compensation Funds Act BE 2537 and the Act Establishing the Labour Court and Labour Procedure BE 2522
- "Employer" means a person who agrees to accept the employee to work for, by paying remuneration and shall be include of
- Any assigned person of the employer,

- If the employer is a juristic person, means the authorized person of such juristic person, or person assigned by the authorized person of such juristic person;
- If the business conductor has hired its employee on a lump sum basis, by granting any person to control all work and liable for paying of all remuneration to the employees, or granting any person to find any worker(s) to come to work, which such work shall be as part or all of the production process or business of the business conductor's responsibility. In such case it shall be deemed that the business conductor is the employer of all employees;
- "Employee" means person who agrees to work for the employer for remuneration no matter what a hired person is called";
- "Hirer" means person who agrees to employ another person to do any or all work of his/her own benefit, by paying the remuneration in exchange of the successful and completion of such performed work;
- "Primary Sub Contractor" means person who agrees to do part or whole work until finish for a benefit of the hirer;
- "Sub-contractor" means a person who has a contract with a primary sub-contractor in order to perform part of all the work under the responsibility of the primary sub-contractor for a benefit for the hirer. The term "sub-contractor" also refers to anyone hired by a sub-contractor at any level of the production chain and any level of sub-contracting to perform part or all of the work the primary sub-contract has agreed to deliver to the hirer. That is, the sub-contractor category refers to an unlimited number of workers hired by any subcontractors in the chain of subcontract of a particular work;
- "Home worker" means a natural person or group of persons who accepts to produce or carry out partial production of goods at home or at any other place of his choice which is not the employer's workplace for remuneration and including members of the family who help with the work;
- "Home based worker" means a person or group of persons who produces goods for sale, whether under purchase order or not, for profit and who carry out production at his own home or at any other place which is not the workplace of the employer or of the person that placed the purchase order;
- "Hawker" means a person who hawks food or goods on the streets or along waterways, whether or not by the use of motor vehicles and who can be self-employed or an employee of someone who hire them to hawk goods;
- "A stall holder" means a seller of food or goods in public places or on public roads who does so not work an employee;
- "Community enterprise" means the setting up of a household production unit in the community to produce goods for profit and to share profit and also to use the profit for community development based on the principle that such production unit must be independent and self-sufficient economically or otherwise;
- "Agricultural work" means cultivation, fishery, forestry and animal husbandry.

## **II Legal frame in related to employment on Labour Protection**

### **1 Laws pertaining to labour**

At the present time, important laws in the area of labor and social welfare concerning the employment relationship between employer and employee can be summarized to 7 issues as follows:

1. The Civil and Commercial Code, Employee matter, B.E. 2472 enforcing both employment in private and government enterprise business. This Code also regulates service and work contract, for example.”
2. Labour Protection Act., B.E. 2541 specifies legal relationship between the employer and the employee as defined by the Civil and Commercial Code.
3. Compensation Act, B.E. 2537
4. Social Welfare Act, B.E. 2533 and Social Welfare Act (2<sup>nd</sup> issue), B.E. 2537, Social Welfare Act (3<sup>rd</sup> issue), B.E. 2542
5. Labor Relations Act, B.E. 2518
6. Government Enterprise Labor Relations Act, B.E. 2543
7. Labor Court and Labor Case Procedure, B.E. 2522

For each law, there is an exception in the enforcement to the group under same employees and in some types of business, which can be categorized as the following:

### **2 Legal frame works in regarding to employment contract.**

According to Thai legal system, there are two different types of employment contract in Thailand, which are: employment contract or hire of service and hire of work contract.

Under the Civil and Commercial Code, B.E. 2472, Chapter 3, Section 6, regarding the characteristic of the employment, the law specified that:

“A hire of services is a contract whereby a person, called the employee, agrees to render services to another person, called the employer, who agrees to pay a remuneration for the duration of the services.”

Regarding hire of work the law specified that it means:

“A hire of work is a contract whereby person, called the contractor, agrees to accomplish a definite work for another person, called the employer, who agrees to pay hire a remuneration of the result of the work.”

There are 19 points of difference in respect of employment relationship between labour contract and hire of work contract as follows:

| Hire of Work Contract                                                                                                                                                                                         | Hire of service Contract                                                                                                                                                        |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1. Parties called “Employer” and “Contractor”                                                                                                                                                                 | Parties called “Employer” and “Employee”                                                                                                                                        |
| 2. Contractor accepts to work for Employer                                                                                                                                                                    | Employees agree to work for the Employer for the completion of work until expiration of agreement or termination of employment.                                                 |
| 3. Completion of work considered essential                                                                                                                                                                    | Period of work considered essential                                                                                                                                             |
| 4. Payment of wage on the completion of work at the rate agreed upon                                                                                                                                          | Wages paid as long as employees work for employer                                                                                                                               |
| 5. Contractor do not work under order, but must complete work in accordance with term and condition of contract                                                                                               | Employees must work under order supervision of the employer                                                                                                                     |
| 6. Contractors are under no command                                                                                                                                                                           | Employees are under control and command                                                                                                                                         |
| 7. Contractors normally provide their own                                                                                                                                                                     | Employees need not provide tools and implements except under special agreement                                                                                                  |
| 8. Contractor must deliver work to Employer on time                                                                                                                                                           | Employees are not responsible for success of work as this comes under responsibility of their supervisor                                                                        |
| 9. Both Employers and Contractors can be juristic persons                                                                                                                                                     | Juristic persons can be an employers but not employees                                                                                                                          |
| 10. Time for commencement and end of work on normal working day not fixed                                                                                                                                     | Time for commencement and end of work on normal working day fixed                                                                                                               |
| 11. Not subjected to working rules and regulations, discipline and disciplinary action -                                                                                                                      | Subjected to working rules and regulations, discipline and disciplinary action                                                                                                  |
| 12. No weekly holidays, traditional holidays provided. No holiday pay is to be paid by Employer when asked by Employer to work on holidays                                                                    | Weekly holidays and traditional holidays must be provided. Holiday pay must be paid if asked by Employer to work on holidays                                                    |
| 13. No overtime pay on normal working days and on holidays even if Contractors work longer hours than they normally do on normal working wages) and on holidays (at the rate of 3 times days and on holidays. | Employer must pay overtime on normal working days (at the rate of 1.5 times normal wages) if employees are ordered to work longer hours on normal working days and on holidays. |
| 14. The Employer needs not provide vacation to the Contractor                                                                                                                                                 | Employer must provide vacation of not less than 6 working days per year to employees                                                                                            |
| 15. The Employer needs not pay remuneration for sick leave, maternity leave or military leave                                                                                                                 | Employer must pay remuneration to regular employees for sick leave, maternity leave and military leave                                                                          |
| 16. Employer needs not arrange welfare programmes for the Contractor                                                                                                                                          | Employer must arrange at least those welfare programmes stipulated by law such as clean drinking water, toilets, first aid necessities, infirmaries etc.                        |
| 17. Employer needs not pay remuneration in lieu of advance notice, compensation, compensation expenses upon termination of contract or when Contractor meets with work-                                       | Employer must pay remuneration advance notice in case of termination of employment without the fault of the employee and the employee is required to leave immediately.         |

|                                                                                                                                                  |                                                                                                                                                                                                                               |
|--------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| related accident                                                                                                                                 | Employer must pay compensation in case where employees who have completed 120 days of employment are terminated without their fault or even if it is through their fault, the fault is not that prescribed under labour laws. |
|                                                                                                                                                  | Employer must pay compensation expenses to employees when they meet with danger or are ill from working for the employer.                                                                                                     |
| 18. Contractors are not entitled to submit claims relating to employment condition under labour relations laws to be bargained with the Employer | Temporary employees, employees under probation, daily, monthly employees, regular employees are entitled to unite in order to submit claims relating to employment condition to the Employer                                  |
| 19. Contractors are not entitled to file lawsuits against the Employer with the Labour Court                                                     | Employees are entitled to file lawsuits against the Employer with the Labour Court.                                                                                                                                           |

### 3. Scope of enforcement of labor laws

#### 3.1 Labor Protection Act, B.E. 2541

- Central, regional, and local government organizations
- Government Enterprise according to the law pertaining to Government Enterprise Labor Relations
- Headmasters and teachers according to the law pertaining to private schools
- Agriculture
- Work done at home

#### 3.2 Compensation Act, B.E. 2537 does not enforce the following businesses:

- Central, regional, and local government organizations
- Government Enterprise according to the law pertaining to Government Enterprise Labor Relations
- Headmasters and teachers according to the law pertaining to private schools
- Non Profit Organizations
- The employer's business which is owned by an individual and the work that his or her employees perform is not part of that business, such as domestic work.
- The employer's business which is vending and stalling

#### 3.3 Social Welfare Act, B.E. 2533 does not enforce the following businesses:

- Government officers, full time employees, daily employees, hourly employees of the central, regional, local government organizations, except for monthly employees.
- Employees of foreign governments or international organizations
- Employers of employees having domestic offices and working fully abroad

- Teachers or headmasters and according to the law pertaining to private schools
- Students, nursing students, medical intern students who are employees of schools, universities or hospitals
- Employees of Thai Red Cross
- Employees of government enterprise according to the Government Enterprise Labor Relations Act
- Employees of the business pertaining to agriculture, forestry, fishery, and farming, which do not need employee all through the year and do not include other aspects of work
- Employees of employers, who are hired to work periodically, temporarily or by seasons
- Employees of employers who are natural persons and the employees' work does not include running the business
- Employees of employer whose business is vending and stalling

3.4 Labor Relations Act, B.E. 2518 does not enforce the following business

- Central government organizations
- Regional government organizations
- Local government including Bangkok Metropolitan and Pattaya organizations
- Government Enterprise according to the law pertaining to Government Enterprise Labor Relations
- Other businesses as determined in Royal Decree; at the moment, there is only one business which is the Bank of Thailand

Alien employees are not entitled to set up labor union and do not have a right to be committee, or subcommittee of the union, but a member only.

#### **4 Scope of Protection Provided to Employees under the Labour Protection Act BE 2541**

Whether or not employees are protected under the labour laws and to what extent is dependent on the scope of protection applied to any of the following 4 categories of employees to which they belong, namely:

**4.1 Employees given full protection.** Employees in general who are employed by private establishments that employ 1 or more employees will be given protection under the labour laws in all cases that are not exempted by laws.

**4.2 Employees given limited protection.** Certain groups of employees are given partial protection whose scope of protection is limited to certain matters only, namely:

**4.2.1 Employees doing domestic works which are not included as part of business undertakings,** namely, employees employed to carry out duties as servants, to take care of children, to cook, to carry out cleaning works, to do laundry, gardening works, watchmen and other domestic-related works within residential premises only. Where an employer also uses his or her dwelling place as business establishment and has his or her domestic employees carried out works that are parts of the employer's

business as well, for instance, where the employer opens a food shop at home and employs servants to do cleaning works and laundry and at the same time has them carried out the duty to serve food to customers or to cook food at the order of customers, the employer, in order to employ such employees, must comply in all respects with the entire Labour Protection Act.

Partial protection given to domestic employees includes the following: wages are to be paid by the employer in Thai baht currency, to be paid at the place of work of the employees and to be paid at least once a month. Wages may, with the consent of the employees, be paid in other currencies, or outside of the place of work or 2 times a month. Sexual molestation of woman employees and employment of child employees below 18 years are not permitted. Employees who have been working for 1 full year must be given at least 6 days annual leave.

Apart from the above, the Workmen's Compensation Act BE 2537 expressly excludes employees doing domestic works which are not a part of business undertakings from protection and consequently this group of employees will, in case of sickness or work-related accidents, have to be entirely responsible for their own medical treatment.

**4.2.2 Employees employed by establishments whose objects are not to seek economic gains**, such as employees of foundations, of charitable associations, are given protection in specific matters only which include payment of wages in the Thai baht currency at the place of work of the employees at least once a month, equal pay for female and male employees for the same quantity and quality of works, prohibition against the employer to call for performance guarantee by cash or security money against work-related damage from the employees except where the nature or condition of works under the responsibility of the employees involved in finance or property of the employer etc.

Apart from the above, the Workmen's Compensation Act BE 2537 also carries provisions excluding this group of employees from protection.

**4.2.3 Employees not entitled to overtime pay, except otherwise agreed by the employer** are the following:

- Employees having the authority and duty to act on behalf of the employer in case of employment, payment of gratuities, decrease of wages or termination of employment.
- Train-related works, namely, work to be carried out in trains and to facilitate train operations.
- Opening and closing of water gates or sluice gates.
- Reading of water level and measuring of water quantity
- Fire extinguishing or preventing of public dangers
- Works which by their nature and condition have to be carried out outside of the place of work or which by their nature and condition, it is not possible to fix their definite working hours.
- Works involving taking turns to keep watch over the place or property which are not regular duties of the employees.
- In addition, the employees under (1) shall not be entitled to holiday pay.

**4.2.4 Employees in employment with definite periods and fixed period of termination** are subjected to protection restriction as regard to compensation upon their employment's being terminated by the employer and as regard to special compensation in case they do not wish to work for the employer upon the relocation of the establishment due to the impact of such relocation on their regular living condition or that of their families.

**4.3 Employees given different protection.** Employees given protection that is different in certain matters from those provided by the labour protection laws are as follows:

**4.3.1 *Employees in petroleum business under the law governing petroleum, including repair and maintenance works and services relating to such works, carried out in prospecting plots and production areas only*** are given different protection in certain matters such as:

- **Regular working hours.** The employer shall fix the time for the commencement and the end of the working hours of not more than 12 hours per day and a total working hours of not more than 48 hours per week.
- **Working day intervals.** The employer and employees may agree to fix consecutive working periods at intervals, each interval not to last more than 28 consecutive days.
- **Holidays for each interval.** The employer must provide holidays for each interval as is deemed suitable except where the employer and employees have agreed on not fewer than 14 consecutive working days for each interval, in which case, uninterrupted holidays of not fewer than half the number of consecutive working days must be provided.
- **Traditional holidays.** Where a traditional holiday falls on a holiday for the interval, the employees will be given a holiday in lieu of the traditional holiday on the next working day or the employer may pay holiday pay instead.

**4.3.2 *Employees of professional or academic occupations, services and management, clerical staff, trade-related occupations, service-related occupations, production-related works or works related to such occupations.*** The employer and employees may agree on regular working hours of more than 8 hours per day, but the total number of working hours must not be more than 48 hours per week. Where the agreement is on more than 8 working hours per day, in case of daily employees, they must be paid additional pay of not less and one and one half times the hourly rates for working days.

**4.3.3 *Employees employed by food or beverage shops not opened in continuity for service on each working day*** are given different protection as regard to rest period, namely, the employer may provide more than 2 hours of rest per day during work.

**4.3.4 *Employees employed by the profession or academic-related prospecting, drilling, distillation and petroleum or petro-chemical products.*** Female employees in this case are given different protection as regard to works that may

cause physical or health hazards to them, namely, the employer may assign female employees to carry out such professional or academic-related prospecting works, if, by their condition or nature, such works are not health or physical hazards to those female employees.

**4.3.5 Employees in management positions or in academic and administrative works including those relating to finance and accounting.** In case of pregnant female employees, different protection is given to them as regard overtime work, namely, the employer may assign them to work overtime on working days only with their consent.

**4.3.6 Employees engaged as hawkers or peddlers of Goods** are given different protection as regard overtime pay in that where commission for the sale of goods is paid by the employer to the employees, the employees will not be entitled to overtime pay except otherwise agreed by the employer.

**4.3.7 Employees engaged in marine fishing.** Marine fishing is any work or activities relating to marine fishing by the use of fishing boats and which engage 20 and more employees and such fishing boats are to be operated outside the Kingdom for not more than 1 year.

Employees employed in marine fishing activities are given different protection as follows:

- ***It is forbidden to employ children below the age of 16 years to work in fishing boats*** except where the children below the age of 15 years are having their fathers or mothers or guardians working in the same fishing boats or the fathers, mothers or guardians have given their consent in writing.
- ***The employer must have documents relating to payment of wages made*** in the Thai language and maintain them at the place of work of the employer in order to be inspected by the labour inspection officials. Such documents are to carry at least the following particulars: Given names-surnames, positions in the marine fishing works, rates of wage and amount of pay, holiday pay and other benefits agreed to be paid to the employees.
- ***The employer must provide to the employees an annual leave*** of at least 30 days per year with pay by fixing them in advance. If the employees are required to work during his/her annual leave, they must be given additional payment of not less than 1 time their regular wages.
- ***Payment of wages in case the employees have no work to do.*** In case where the employees are stranded in foreign countries because of their being employed by the employer, the employer must pay the employees not less than 50% of the wages. However, if the employer informs the authorities in writing of this or assumes responsibilities within 60 days of the date of the employees' being stranded in foreign countries, expressing the intention to bring all the employees back to their domiciles, all expenses for the return trip paid, the employer need not pay the said sum.

**4.3.8 Employees employed in loading or unloading of goods onto or from ocean-going vessels** are given different protection in certain matters such as:

- **Regular working hours.** The commencement and end of each day's work are to be in accordance with the stipulation as announced by the Director-General of the Department of Labour Protection and Welfare. At present, day shift starts from 08.00 hrs. to 17.00 hrs. to be paid at regular wages, with lunch break from 12.00-13.00 hrs.; night shift start from 19.00 – 23.30 hrs., to be paid at the same regular wages and late night shift start from 01.00 –04.30 hrs. to be paid at the same regular wages.
- **Employment of child labour.** Employers are forbidden to employ children below the age of 18 years to do works involving loading and unloading of goods onto or from ocean-going vessels, except cleaning of vessels, fastening, binding and arranging goods in rows or other works specified in the notification of the Director-General.
- **Payment of wages.** The employer shall pay wages in accordance with the rates for the amount of work performed pursuant to the rule prescribed by the notification of the Director-General and not in fixed sums.
- **Food and travelling benefits**
  - The employer must provide nutritious food in sufficient quantities to the employees who are working. Where no food is provided to the employees, the employer must give the employees food allowance amounting to not less than one fifth of the normal wages per person per meal.
  - Where the employees are to work for the employer outside their normal place of work, the employer must provide transportation to and from the place of work for the employees who are doing work for him. Where no transportation is provided, the employer must pay actual travelling expenses deemed necessary for them.

**4.3.9 Employees in land transport works** are given different protection in certain matters such as:

- **Normal working hours.** The employer must fix the commencement and end of working period of employees employed in land transport work of not more than 8 hours per day.
- **Overtime work.** The employer is forbidden to ask employees who are drivers of vehicles to work overtime except with written consent of the employees concerned and even so, they may not be asked to work more than 2 hours except when required due to force majeure, accident or traffic problem.
- **Resumption of work.** The employer shall not ask employees who are drivers of vehicles to resume work before the expiration of 10 hours of the end of work on the preceding working day.
- **Time for rest.** The employer must give employees who are drivers of vehicles at least 1 uninterrupted hour of rest per day after having worked for not more than 4 hours. The employer and employees however may agree on time for rest of less than 1 hour each time, but it

must not be less than 20 minutes and when added together must not be shorter than 1 hour per day.

#### **4.4. Employees not entitled to protection**

Persons or employees not entitled to protection under the labour protection laws are the following:

- Persons working for central, provincial and local administration.
- Officials and employees of state enterprises
- Teachers or principals of private school
- Employees in agricultural work (if they are employees of agricultural industrial sector such as employees of sugar cane press, sugar refineries, rice mills, vegetable and fruit processing plants etc. labour protection laws shall apply).
- Home workers
- Officials and employees of the Airport Authority of Thailand due to the fact that the Airport of Thailand Act BE 2522 (Section 6) exempts them from being subjected to the labour protection and labour relations laws.
- Directors, officials and employees of public organizations set up under the Public Organization Act BE 2542, such as employees of the institute of community organization development (a public organization) formerly known as the city community development office, Ban Paew hospital etc.

#### **5. Scope of Labour Relations Act BE 2518**

In particular, Rights of employees to unite and to bargain.

##### **5.1 To unite into organizations**

Under the Labour Relations Act BE 2518, employees are entitled to unite in the following 4 forms:

- *In an establishment* with 50 and more employees, the employees may set up an employees committee in the establishment and the employer must arrange for a meeting to be organized for discussion with the employees committee at least once in 3 months.
- *Ten or more employees* of the same establishment or of the same kind of business can submit an application for the setting up of a trade union.
- *A labour federation* is formed when 2 or more trade unions whose members are employees of the same employer or whose members work in the same kind of business jointly register the setting up of the labour federation.
- *An employees' congress* is formed when not less than 15 trade unions or labour federations jointly register the setting up of the employees' congress.

##### **5.2 Bargaining**

Under the Labour Relations Act BE 2518, employees, employers and legal organizations are entitled to determine or alter employment condition as follows:

- An establishment with 20 or more employees shall maintain written agreements relating to employment condition. If none exists, rules and regulations governing work performance under the labour protection laws shall apply.
- *Submission of claims* relating to employment conditions shall be made in writing to the other party as follows:
  - 15% of the employees can jointly sign the claims to be submitted to the employer or a trade union having 20% of the total number of employees as members can submit claims on behalf of the employees who are its members.
  - Both the employer and employees must begin to negotiate within 3 days of the date of receipt of the claims.
    - *After submission of claims*
      - a. Where the employer and employees are able to ***reach a settlement***, agreements on employment condition shall be made in writing and posted in a conspicuous place and the employer shall have the agreements registered within 15 days of the date the settlement is reached.
      - b. Where the employer and employees ***are not able to reach a settlement***, even after 3 days of negotiation or where no negotiation takes place, it shall be deemed that a labour dispute has arisen and the party that submits the claims shall inform the mediation officer in writing within 24 hours.
- *The mediation officer* will conciliate between the parties in order to end the dispute within 5 days of the date of receipt of the information. If a settlement can be reached, agreements on employment condition shall be made in writing and registered. If no settlement can be reached, it shall be deemed that the labour dispute is one that cannot be settled.
- In the case of a labour dispute that cannot be settled, both parties may take any one of the following actions:
  - a. To have the mediation officer continued with the conciliation until a settlement is reached.
  - b. To agree to appoint a voluntary arbitrator.
  - c. The employer to proceed with a lockout or the employees to call a strike, on condition that a written notice to that effect must be served on the other party and on the mediation officer 24 hours in advance.
- While the employees are on strike or the employer locks out, both parties may have the mediation office carried out conciliation or negotiation between them until a settlement shall have been reached or if, in the opinion of the Minister of the Department of Labour and Social Welfare, the exercise of such right may cause damage to the economy of the country or hardships to the general public or may pose a threat to the security of the country, the Minister shall have the power to order the employees to end the strike or the employer to end the lockout and the National Labour Relations Board to arbitrate the labour dispute.

- While conciliation or arbitration is under way, it is not allowed to terminate the employment of or to transfer employees, employees' representatives or members of trade unions involved in the claims, except in case where they are found not to have discharged their duties with integrity or intentionally committed offences against or willfully caused damage to the employer etc.

## **Dependent work and Independent work**

### **Dependent work**

#### **1. Definition**

For the purpose of this study, Dependent work means work performed by employees under the express or tacit control or direction of and paid by the employer or his representatives.

#### **2. Legal framework**

2.1 being hire of services under the Civil and Commercial Code

2.2 being employer or employees and enterprises accorded protection under the laws governing labour

The main 4 laws are as follows:

- Labour Protection Act BE 2541
- Workmen' Compensation Funds Act BE 2537
- Social Security Act BE 2533
- Labour Relations Act BE 2518

2.3 Other minor facts that may be considered hire of services contracts are as follows:

- a. power to select, admit and terminate employment of workmen
- b. provision of materials, tools and equipment for workmen
- c. determination of the working hours of employees
- d. granting of rights and provision of welfare to workmen
- e. compliance of other laws by the employer such as, as regard withholding tax, payment or withholding of money for making payment required by law to be the duty of employees

2.4 Judgment basis of the Supreme Court on its ruling on the hire of services cases based on the power of command.<sup>10</sup>

The Decision of Supreme Court Nos. 316-318/2500. The rulings were that the employers had the power to order the employees to carry out works in accordance with the employers' methods while the employees were to follow the order and the decision of the employers on this matter and to obey the employers at all times.

The Decision of Supreme Court No. 2112/2524. The ruling is that the main point that shows the difference between the hire of work contract and labour contract lies in the fact that, in the hire of work contracts, the contractors, unlike the employees, are not under the command of their employers.

The Decision of Supreme Court No. 352/2524 and No. 51/2537 give different rulings on barbers.

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<sup>10</sup>Kasemsan Virawan, The Explanation of Labour Law, 2000, p.28-32

In the first case, the owner of the barbershop has no power of command over the barbers who are free to report for work at any time or not to report for work at all without being punished. In view of this, it is a hire of work contract.

In the second case, the barbers must punch the time, are given holidays, have their wages cut if they come late or fail to report for work, are subjected to disciplinary actions. Based on the foregoing, it is a labour contract.

The Decision Supreme Court No. 2707/2531. The ruling is that even though the plaintiff had agreed to work for the defendant by generating news for the latter and the latter had agreed to pay remuneration to the former, the plaintiff worked independently and was not under the command of the defendant. Based on the foregoing, it is a hire of work contract.

The Decision Supreme Court No. 4644/2540. The ruling is, whereas it appears that under the contract, the plaintiff has agreed to sing 1 hour a day for the defendant, the main objective of the contract is the success of the 1 hour a day of singing either by the plaintiff itself or by another person in the place of and paid by the plaintiff. It does not appear that the plaintiff has to work under the order or command of the defendant, has taken sick leave or leave of absence. Based on the foregoing, it is a hire of work contract.

### **3. Problems on protection of workers in Dependent work**

#### **3.1 Condition of employment and remuneration<sup>11</sup>**

##### **3.1.1 Contracts are short term contracts or contracts with definite term**

3.1.2 Contract, sub-contract, contracted wages are on the increase in almost all enterprises. Employees of contractors, sub-contractors, contracted wage earners are not fully protected by the laws. The employers in such cases are minor employers with no economic security and so do not provide labour welfare to the employees and pay the required minimum wages stipulated by the Government to the employees. No rates of wages have been adjusted from 1998 to 2000.

3.1.3 The employees take advantage of the economic crisis to lay off a large number of employees without giving them Dismissal pay or without paying them in full while at the same time take the opportunity to readjust the agreement on employment condition and on welfare that used to be given to the employees, to the great benefit of the employers.

Further, the number of working hours, working days, wages and welfare have been reduced.

3.1.4 The employers cite the economic crisis as reason for giving order to the employees to take turn to stop work at intervals and pay them only 50% of the wages

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<sup>11</sup> Bandit Thanachaisetavut, "Problem on The Enforcement of The Labour Law, published by Arom Pongpangan Foundation, 2000, p.7-12 and the documents preparing for the seminar "Female Labour and Informal Sector Labour: Cooperation and Promotion" organized by the committee for Asian Women – Caw and Homenet Thailand, 6-8 November 2001, Asia Hotel, Bangkok.

stipulated by law. As a consequence, those employees have not earned enough income for their subsistence and so they quit in order to look for better opportunities elsewhere. Thus the employers have not to pay compensation to the employees as required by law.

3.1.5 Employment discrimination against sex and race is prevalent. Almost half of woman workers do domestic work or help in family business, or are hawkers or sellers of goods in the market. More woman workers are in the service sector than men while the latter are in the fields of management, administration or are technicians.

Women construction workers and alien woman workers are paid lower than the required minimum wages, are not given special protection in accordance with the prescription of the law.

Women who are housewives or who do domestic works are, under the Labour Protection Act BE 2541, not considered to be doing economic works and hence are not protected by law.

In textile and electronics fields, positions are reserved for woman workers only while in technical fields or in management, they are reserved for men only.

During the economic crisis of 1997, a large number of pregnant employees have been laid off.

Another serious problem is the difference in retirement ages for female and male workers determined by the employers based on the condition and nature of work.

3.1.6 Law enforcement mechanisms, in labour context, are not congruous with the situation and lack efficiency. Government officials who are law enforcers often cite world market competition and economic crisis as reasons for the employees not to claim their rights in accordance with the standard labour protection and, by way of advice, talk them into not to lodge complaints or take actions against their employers with the Court, pointing out that to be in conflict with their employers in this way, their employment will likely be in danger of being terminated and that it would be better for them to be employed, even under sub-standard condition, rather than to be unemployed. The employees are thus confused as regard the exercise of their lawful rights.

This is the reason why most of those who file lawsuits with the Court are those whose employment has been terminated. Also they prefer to bring the charges to the labour court rather than to the Ministry of Labour and Social Welfare.

The mechanisms of the labour court itself have certain limitations. For instance, the judges are not really specialists in specific fields due to the fact that they have to be transferred often when they are promoted to higher positions; trial of the cases is conducted in the same manner as that of civil cases in general and is time-consuming and finally the employers usually put up a defence up to the Supreme Court.

## **3.2 Occupational health and safety**

### Major problems relating to occupational health and safety<sup>12</sup>

3.2.1 Rate of incidence of hazards to employees in Thailand is still high (see appendix A)

3.2.2 A lack of proper and clear knowledge and understanding of or responsibilities for the prevention of accidents and promotion of safety in the performance of work, such as, the use of equipment for the prevention of personal hazards that are unsuitable to working condition; failure to inform the employees of possible hazards that may arise from production process etc.

3.2.3 Employees are compelled by their employers to seek medical treatment in hospitals under social welfare programme, to avoid being inspected by factory inspection officer or paying additional sums into the Workmen's Compensation Fund.

3.2.4 Improper diagnosis of work-related diseases with accompanying improper medical treatments due to a lack of sufficient knowledge, standard practice and expertise on the part of the physicians who conduct the diagnosis.

The physicians are unwilling to say clearly that it is a work-related illness for fear that they may have to testify in the labour court or that some employers may revoke the contracts with the hospital where they are working.

3.2.5 There are many legal problems and limitations such as:

- The Ministry of Labour and Social Welfare is absolutely empowered to issue ministerial rules and regulations in detail that affect employees.
- The power of inspecting safety in work performance belongs to the state with no participation on the part of employees or of other associated parties in society.
- Absence of laws that give stress on the promotion of occupational health and safety.

3.2.6 As from 1 April 2002, enterprises with 1 and more employees shall come under the protection of the Workmen's Compensation Fund. Prior to that, this is applicable to enterprises with 10 and more employees. These small enterprises are beset with a large number of health and safety problems. Hence there would be employees under protection of the said Fund for the total amount of 10 million persons.

## **3.3 Social Security**

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<sup>12</sup> Bandit Thanachaisetavut, note on the accident at Kader manufacture on May 10, published by Arom Pongpangan Foundation, 2001, p.52-54

### Major problems of the Social Security Fund

3.3.1 A large number of employees are still not covered by the Social Security Fund.

3.3.2 A large number of employers fail to file a complete list of employees with the Social Security Fund either because they understand wrongly that those employees are not included in the scope of protection under the Social Security Fund or because they intentionally try to evade the law in order to reduce operating costs, such as the employment of probationary employees, of child workers, of construction workers, of workers employed on a year to year basis, of alien workers etc.

3.3.3 A large number of employees are not yet entitled to select hospitals of their choice, as such choice is made by the employers for them or where the employers are late in filing employment data, the employees would be deprived of the medical services of the hospitals of their choice.

3.3.4 Some hospitals refuse to give medical treatments to sick or injured employees in cases of emergency or of accident or of serious sickness requiring operations or long period of hospitalization or delay giving medical treatment to them or unjustifiably charge self-insured workers.

3.3.5 The government is still reluctant to issue a Royal Decree on Unemployment Insurance System.

### Plan for the reform of the Social Security System of the Ministry of Labour and Social Welfare

1. Extension of labour protection to cover employees in establishments that employ 1 or more employees, as demanded by the labour movement and, as proposed by the Deputy Minister of Labour and Social Welfare, approved by the cabinet on 20 November 2001, due to come into effect on 1 April 2002.

2. With regard to the plan to extend labour protection to cover unemployed workers, a sub-committee was set up to study and make preparations for the setting up of an unemployment insurance fund. Although a conclusion has been arrived at, the Ministry of Labour and Social Welfare has not yet to come up with comments and clear-cut policy as to when such fund would be set up.

3. A plan is under way to extend labour protection to cover employees in the agricultural sector and in informal sector in 2004.

4. A plan is under way to extend labour protection to cover employees in the fishery sector, forestry sector (certain groups) in 2006.

### **3.4 Freedom of association and collective bargaining**

#### **Right to set up trade unions**

3.4.1 Under the law, only persons who enjoy the status as employees and who are 20 years and are Thai nationals are entitled to form trade unions or to sit on labour union committees, to the exclusion of those who are not employees under the law. This is inconsistent with the policy on the promotion and development of labour relations system, human right principle and international labour standard.

3.4.2 The law does not give protection to employees who take part in the setting up of trades union, no provisions for the promotion and development of labour organizations. This is one of the factor that obstructs the creation of professional trade unionists.

3.4.3 The Government has not yet ratified the convention on international labour organizations No. 87 governing freedom of association and protection of the right of free assembly and No. 98 governing compliance with the principle of the right to set up organizations and to participate in collective bargaining.

3.4.4 The law confines the objects of trade unions to those that are specific to employment condition, thus separating trade unions from other entities of society. A demand made by trade unions that overlap a social or political issue will likely end in the revocation of the unions' registration by the authority.

According to labour statistics, in 2000, there were 1,063 trade unions with only 283,124 members and in 2001, there were 1,123 trade unions with 297,000 members from a total of around 10.35 million workers. The gap is very wide indeed.<sup>13</sup>

#### **Right to notify employers of the demands and to bargain with employers**

- a. Employers usually apply legal issues arising from the submission of labour demands to block trade unions' attempt at bargaining, to refuse to accept the demands, to make counter demands, to create incidence in order to terminate the employment of the leaders or representatives in the bargaining, thus disrupting bargaining processes.
- b. State mechanism or labour mediation officer plays no role in mediating an end to the dispute between the parties. When the employees exercise their right by calling a strike, the employers retaliate by hiring new workers to replace them, to the detriment of the bargaining power of the trade union.
- c. Trade union lacks supportive power as the law stipulates that the employees' advisor or a third party involving in the bargain over the demand must be registered under the law.
- d. The employers resort to closing down of business to abolish trade unions and then establishing a new company, employing contractors or sub-contractors to

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<sup>13</sup>Bandit Thanachaisetavut, "On The Way to Evolution of The Labour Relations, published by Arom Pongpangan, 2001, p.21-27

work in their establishments in order to dissolve or to set further limits on the setting up of organizations or on bargaining.

#### **4. Legal procedure**

##### **A. Labour mechanism**

1. filing of a request with the labour inspection officer requesting that the officer investigate and decide whether or not the employer has properly complied with the law
2. filing of a request with the labour inspection officer requesting that the official inspect the workplace, to see whether or not the employer has properly complied with the law
3. filing of a request with the special committee set up pursuant to each law, such as in the case of malicious termination of employment of a leader of the trade union, complaint must be lodged with the labour relations committee, etc.
4. filing of lawsuits with the labour court.

Remark: No decisions or comments on the question of law as regard the kind of employment relations to which a work belongs or the law under which it is subjected are made by independent institutes other than the courts.

##### **B. Other mechanisms**

1. seeking justice by filing petition with the provincial governor by employees or trade unions
2. filing of administrative cases where state officials are considered to have performed their duties unlawfully or issued administrative orders unjustly to the people or where officials performed their duties dishonestly
3. filing of petitions with special committees under the constitutional law, such as the national human rights committee
4. filing of petitions with the human rights committee of the Law Society of Thailand or seeking advice on question of law
5. seeking justice by filing petitions with Ministries, bureau, departments that are directly responsible for such matters and filing petitions through the mass media
6. to rally and hold demonstrations without illegal activities to demand that the Government and responsible persons solve problems.

#### **Independent work**

##### **5. Definition**

The scope of independent work could define as the careers that operate by the owner his self without govern or control by other person, whether explicit or implicit, for purpose of gaining income and no employee work for him.

In addition, the Office of National Statistic calls this worker as the private worker and also give the definition as the person who running his own enterprise or

joining with the other in form of partnership with a view of sharing the profit or income between them and without employee work for them.

In academic term, those of person are called the “ independent operator” which means self-employment and not being employer or employee. They operate their business by their own decision and they do not depend or attach to anyone of their customer.

## **6. The Legal Framework**

It is quite clear that no legal rules govern this kind of work directly. However, some professions who have high skill in performance or special knowledge such as doctor, architect, engineer or lawyer doing their job under the regulations of each professional organization.

## **7. Employment or work performance relations**

### **7.1 Agricultural work**

#### **7.1.1 Agriculture family groups**

The procedure of being Agriculture Family Groups generates from member’s investments. In connection with this, group committee or group representative will be elected. Their major role is to process the business with the third party and employment. As for profit sharing, it will be set as group agreement.

In addition to Agriculture Family Groups, structure of grouping can be formed in terms of cooperative society regarding Act Cooperative Society B.E.2542, which state that agriculture family has to apply to be one of cooperative society’s members. This is to improve relationship between the society and the company as well as the committees and its members. Members of cooperative society might be its permanent employee or the person who does freelance work.

#### **7.1.2 Manufacturer Group for Agricultural Society under society concept**

This kind of group is similarly to group in 3.1. However, the major difference is that group power will lie on manufacturers. They can make their own decision and diversify profit to employees and society.

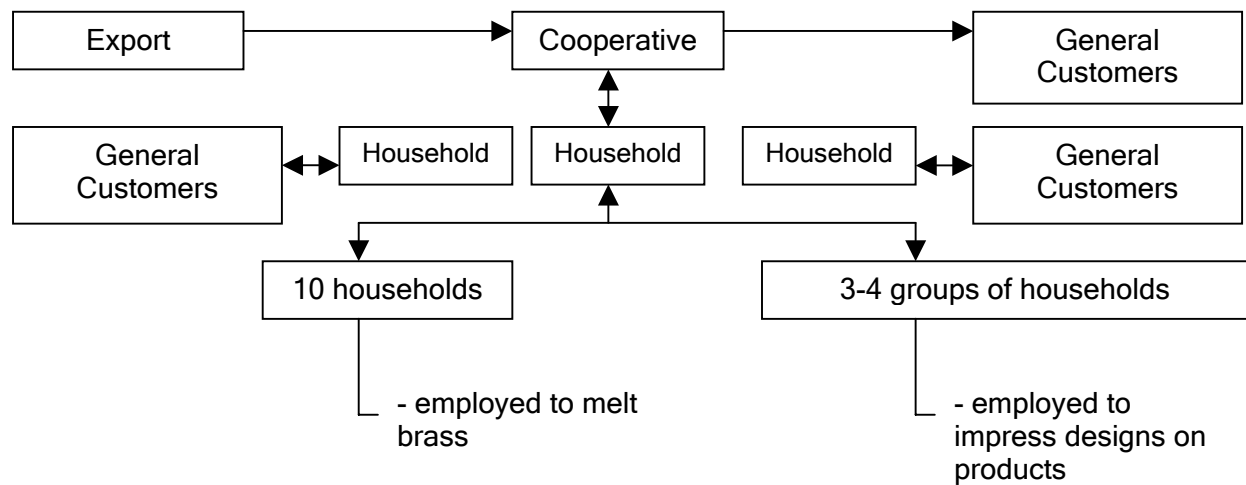
This group will be working on various tasks. However in making connection with other groups might generate complicated employment such as job distribution, subcontractor. The employment is known as community enterprise.

In relation to the employment arrangement under 3.1-3.2, it might be done by agent.

## **7.2 Industrial Work**

Overall, there is not much different between industrial work and agricultural work. Nevertheless, industrial work is seen more complicated and ambiguous employment which will be described for more detail in industrial work section.

**Fig. 3**  
**Employment and work performance relations of the groups of households that produce brass products.<sup>14</sup>**



## 8. Employment or work performance relations

8.1 Customers may place production or purchase order with the cooperatives or enter into agreements with household groups by themselves.

If the co-operatives accept the hire of work contract with non-members, it will deduct 10% of the wages or 10% of the total price of the goods, depending on the difficulties of the work, the quantifies, and the production cost born by the households. The deduction will go to the co-operatives' common fund contributed by members.

Households that are not members or members who hold shares valued at less than 10% of the wages for the work they accepted to do at home shall deposit money with the cooperatives as work performance guarantee in an amount that complete the 10%.

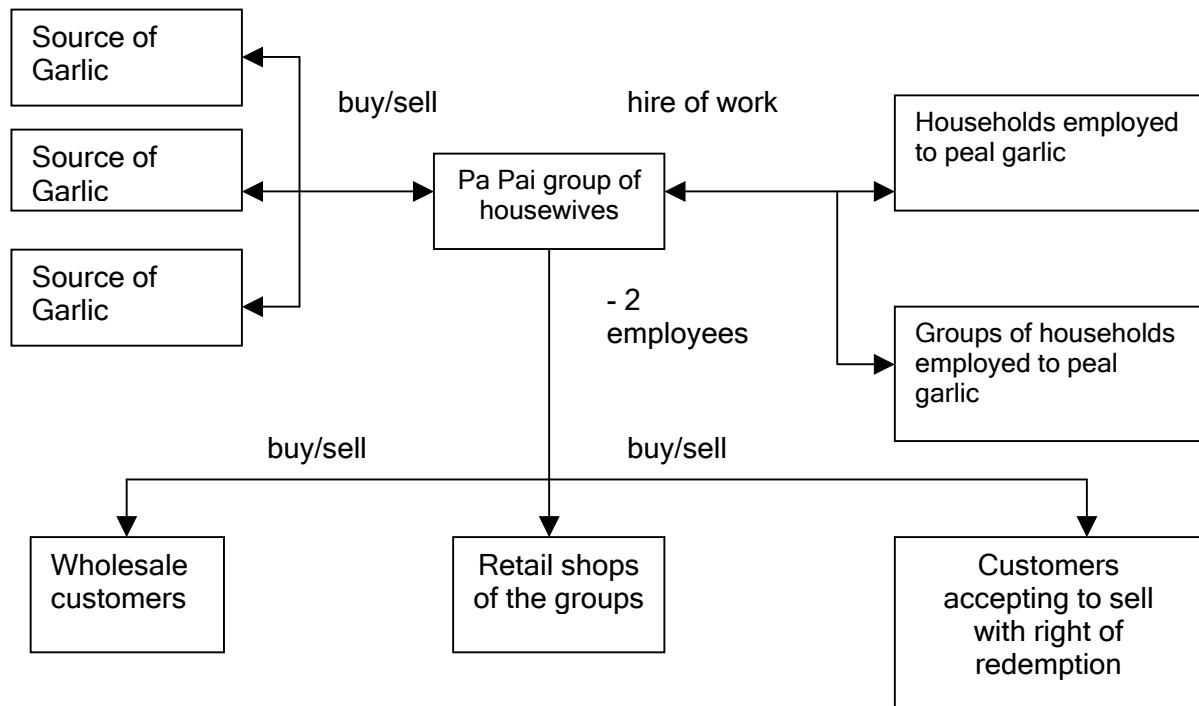
8.2 During the initial stages, the employers or customers who place production or purchase orders shall make written contracts and make advance payments of 30% of the wages or prices of goods. During subsequent periods of business dealings when both parties have trusted one another, no written contracts or advance payments will be required. The sale contract will specify the type, quantity, price per piece of the work, delivery time and daily fine for failure to deliver the goods on time under the contract.

8.3 Members are also entitled to produce goods for sale by putting them on sale with right of redemption through the cooperatives, in which case, 20% of the

<sup>14</sup>Charit Meesit and Sittisak Samsee, preliminary study on The Law of Homebased Work, 2000. Study and Develop Homenet Thailand Research Centre, study report "Recommendation for Making The Law Related to Homebased Work, 2001, p.19-20

prices of the products sold will be deducted by the cooperatives. But this type of arrangement is gradually on the decline as customers are not inclined to buy the products possibly because they are expensive and are not to the tastes of the Thai people.

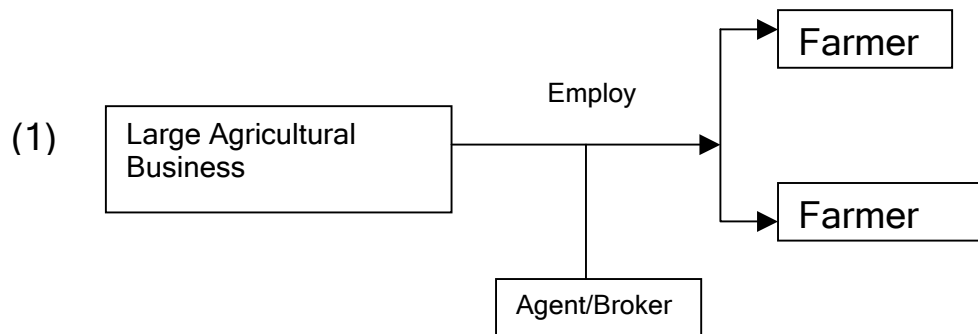
**Fig. 4**  
**Production or work relations of the food processing groups, Ban Pa Pai, Chiang**  
**Mai province <sup>15</sup>**



<sup>15</sup>Charit Meesit and Sittisak Samsee, preliminary study on The Law of Homebased Work, 2000. Study and Develop Homenet Thailand Research Centre, study report "Recommendation for Making The Law Related to Homebased Work, 2001, p.19-20

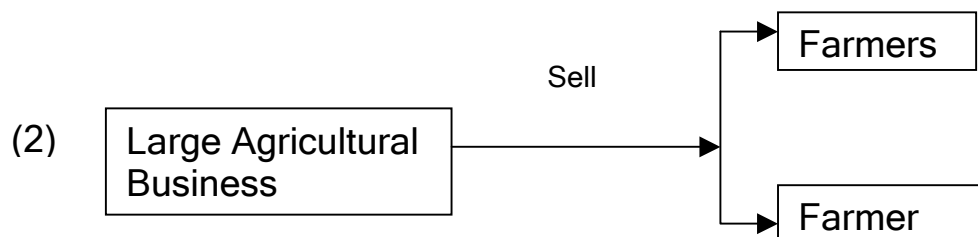
Pattern or Relation in an ambiguous or disguised employment.

Agricultural work such as a Chicken breeding (16)

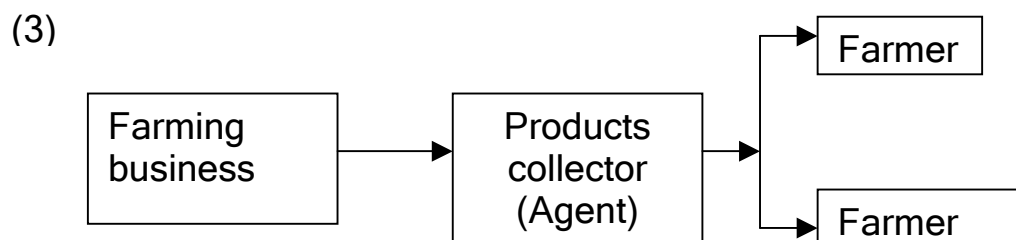


Farmers must bear expenses and labour costs in Chicken breeding

In Agricultural business, they have to provide chicks, animal food, drug, husbandry and market however the remuneration is based on the weight of each chicken.



And has a sale agreement by fixing a price in advance when delivering such chicken. An agricultural business will make a payment for chicken by deducting all amount of expenses.



Employment or work relations

- Groups of producers to produce goods at customers' purchase orders
- Retail sale at the groups' shops
- Middlemen to sell the groups' products, being paid wages by the groups. Unsold goods to be returned to the groups.

## **9. Commercial and Service Trade**

We can see Commercial and Service Trade in many businesses as follow:

### **9.1. Insurance business's agent**

Commercial and Service Trade under insurance business will be involving between the company and its agent who takes the power of attorney from the company in doing life insurance contract. There is no control from the company. Total income will be in line with total sale.

However, in this case, Supreme Court has judged although company's welfare services are provided to life insurance agent, the agent is not under company's control. Therefore, the relationship will be follow agency contract in particular life insurance business agreement. (Judgement No. 3999/2528).

#### **Remark :**

1. For insurance business, the relationship between company and its employee can be divided into 2 features as follow:
  - i. the relationship between employer and employee
  - ii. the relationship between company and insurance agentBoth employee and agency can be the same person and mostly is high executive level. It is obvious that different employment will result in different right and welfare service.
2. Sale representative in direct sale business  
In the direct sale business, the sale representative does not have an employee status.  
  
Relationship between sale representative with the product owner is a kind of contact to only sale the product. Income and fringe benefit are directly related with the sale volume.
3. Hawker and Stallholder  
Recently, both careers have been fast expanded in big cities because they are unskilled work and use small amount of investment fund. However, they take a major role in marketing as a quick commodity distributor to customer.
4. Other Services Trade  
There are many service careers such as food shop, laundry shop, translator, motorcycle riding service, and Thai traditional massage etc.

## **10. Problem of Protection Independent Worker**

Independent worker can be divided into 2 groups by the level of income. One group earns just enough for necessary living expense. Another group can earn more by making higher profit.

According to study report on home workers: situation and data in the 4 regions of Thailand(2002) found that the problem of self-employed home based works are health problem, irregular work in a year, lack of revolving fund for producing, lack of opportunity to upgrade the skill, lack of tools, machines, and equipment, no welfare, no copy-right to protect the products and marketing problem.

Most of independent workers do not have employee status because they don't have identifiable employers: therefore, they are not under labour law system.

In this system, employment relationship follows the commercial law which employer has more bargaining power than employee to set up favour conditions. Therefore, employee only earns from sale commission but has responsible on any expenses occur during sale performance.

According to independent workers are not belong to/under the labor system, they can only set up the organization in the form of council, foundation or committee under the constitution law. Furthermore, they have limit level of negotiation power because no specific law.

Each individual worker has different requirement but they also have some common need for the group such as group combining support, information, market, skill development and investment fund

### **Remarks :**

1. Most of independent or private workers usually employ some employee to assist them. Therefore, should they be considered as independent worker or employer that has different status.
2. In the case of production for sale which hire some employee but no controlling power over them. In order to classify the status and the protection standard for this type of worker should consider the level of their income and decision power on production.

## **IV Ambiguous or Disguised Work**

### **1. Meaning**

It means a hire of services which a person employing has no intention to be an employer or to avoid the responsibility in a state of an employer by making various kinds of contracts which are not a hire of service or by suppressing a labour Agreement.

### **2. Trend of an ambiguous or disguise hire of services**

An employer or large business attempts to avoid being a status of employer. The development of legal system relevant to all labour protection is able to enforce only a hire of service. So, any person who does not legally mean an employee shall not be under such legal system. The character of enact the law is to solve the problem.

In the Industries which work continuously, an employer makes an agreement in a short or fixed period and then extends such agreement occasionally. In such agreement. An employer is called as “a person who agrees to employ and an employee is called as” a worker or a contractor.” Then they agree to pay a wage by calculating upon a piece of finished product. Not with standing being an employee, a wage can be calculated upon a piece of finished product. Consequently, whether the ability to control of works is an issue to ponder.

Therefore, it can be seen that various forms of contracts are relative to an employment in order not to be a hire of services such as hire of work agreement it sell/purchase. Agent or broker agreement.

### **3. Pattern or Relation in an ambiguous or disguised employment**

#### **3.1 Agricultural work such as a Chicken breeding <sup>16</sup>**

##### **3.1.1 Farmers must bear expenses and labour costs in Chicken breeding**

In Agricultural business, they have to provide chicks, animal food, drug, husbandry and market however the remuneration is based on the weight of each chicken.

And has a sale agreement by fixing a price in advance when delivering such chicken. An agricultural business well makes a payment for chicken by deducting all amounts of expenses.

The contract between an agricultural business with farmers or farmer groups is a sell and purchase contract.

The Contract between an agricultural business with the product collector is an agent or broker agreement.

In the sell and purchase Agreement would specify that the agricultural business supports a manufacture, agent or broker.

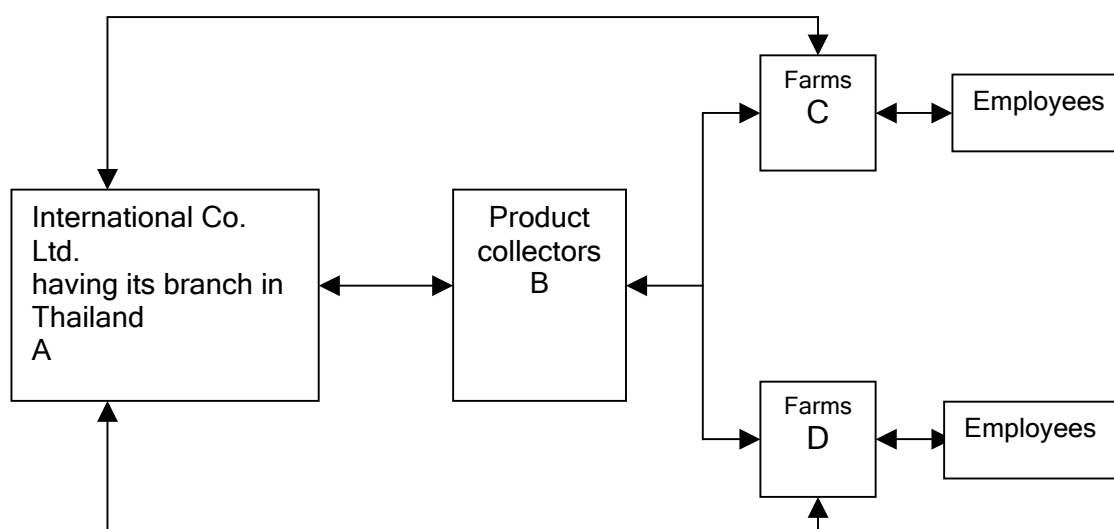
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<sup>16</sup> Buttapong Ketsomboon, Faculty of Medicine, University of Khon Kaen, “Study of The Impact of Contract Farming Agriculture to Labour’s Health” preparing document for: State Policy and Citizen Health, 3rd September 2001 (copy),

3.1.2 Seeds manufacture such as tomato, watermelon and so on.

3.1.3. In the fishery industry, a ship owner avoids to be an employer by hiring its ship to fishermen.

**Fig. 5 The relationship of the employment in the seed manufacture.<sup>17</sup>**



### **Chart Description**

- (1) The relationship of the employment between. A, C and D is a sale and purchase Agreement or an Agreement to sell and purchase of seeds which is not under the labour law.
- (2) A and B are an agent or broker Agreement in collecting of product or controlling the manufacturing system in which a sale/purchase agreement or an agreement to sell and purchase is provided that A or any proxy of A has a right to order concerning the manufacturing system or other technological application. Does it consider that A and B monitor a way of working or control Farmers as in a state of an employer.
- (3) There are many type of agreements concerned such as a hire of service agreement, a hire of work agreement, sale/purchase agreement, agreement to sell and purchase and agent or broker agreement.
- (4) The fact that should be considered is an agreement made by the company, provided that Farmers shall return all seeds even such seeds are under a standardize to the company. However all expenses and labour costs is borne by Farmers. However, the company had paid advances the payment to the farmers and will deduct such amount from the seed price later.

## **3.2 Industry work**

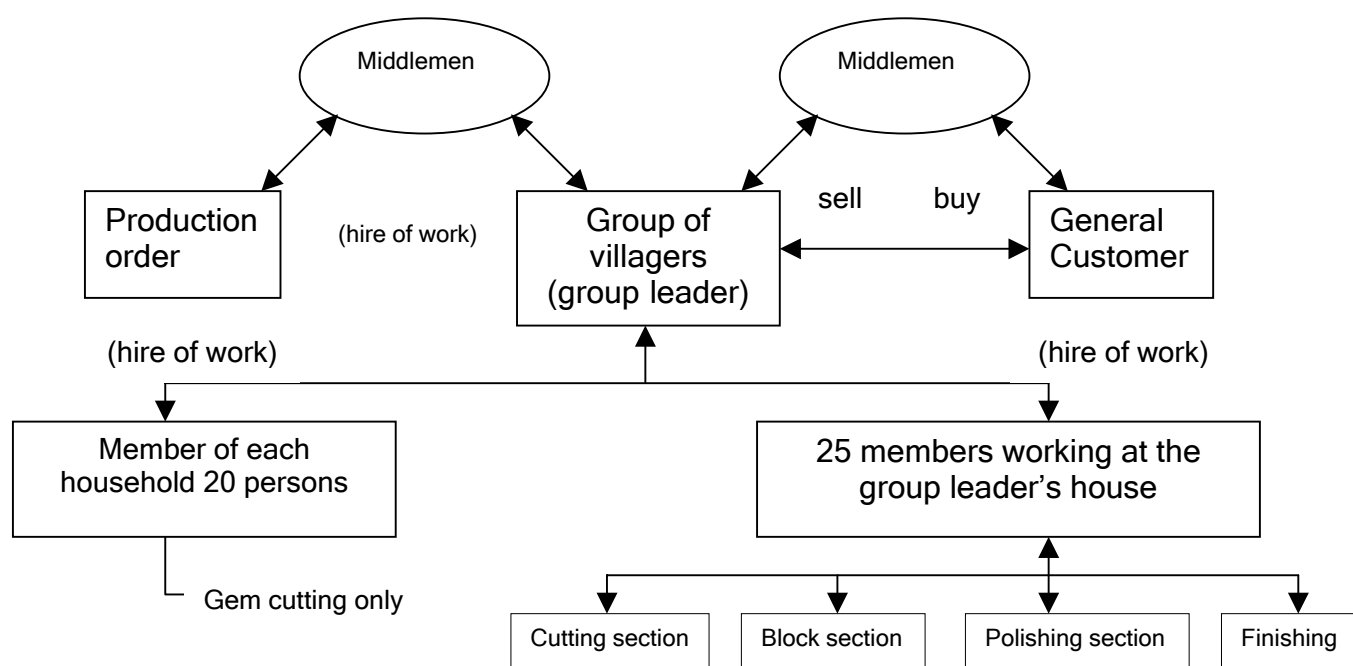
3.2.1 Subcontract the hire of work agreement and the hire of service agreement. It can be found in almost industries and regions which this pattern is used more than 20 years. Presently the increase of this pattern becomes anxious. Especially, for the purpose of manipulating labours, the subcontractors of such agreements are the chiefs of villages or districts local mafia and former leaders of labour union.

<sup>17</sup> Buttapong Ketsomboom, Faculty of Medicine, University of Khon Kaen, "Study of The Impact of Contract Farming Agriculture to Labour's Health" preparing document for: State Policy and Citizen Health, 3rd September 2001 (copy),

3.2.2 A home working is another form that increasingly enlarges especially after the economic crisis in 1987. There are in form as follows.<sup>18</sup>

- A company or factory will send its own staffs to practice people and support then to be an informal group. Moreover, if provides equipment and other facilities to them. Then, a company or factory will supply works and pay through the head or representative of a group.
- A company or factory will coordinate with a leader of community or a head of farmer's wife group to send people to work at its factory by not wearing its Uniform, not starting to work on time and not being under its control but stopping to work on time. A company or factory will pay a wage by pieces of work through the group coordinator or the head of group.
- The head or representative of villagers comes to get works from a factory in order to do at the group work place or their houses.
- A company or factory hires other company to manufacture its products whereas those company contribute such works to work at home through an agent, subcontractors or village groups. A company or factory often claims that such contribution for home working is not relative to a hire of service because there is no agreement with such home workers ( according to picture 6 and 7 and see Appendix B )

**Fig. 6**  
**Employment and working procedure relationship of the groups of gem cutters, Ban Waeng Yang, Mahasarakham province**



Source: Charit Meesit and Sittisak Samsee, Preliminary Study on The Law of Home Based Work, 2002

<sup>18</sup> The documents preparing for the seminar "Female Labour and Informal Sector Labour: Cooperation and Promotion" organized by the Committee for Asian Women – Caw and Homenet Thailand, 6-8 November 2001, Asia Hotel, Bangkok.

### 3.2.3 Production order or purchase order relations

The group produces goods for sale to customers in Bangkok (Silom area)

Company in Bangkok places production order with the production group by entering into an employment agreement with 2 representatives of the group.

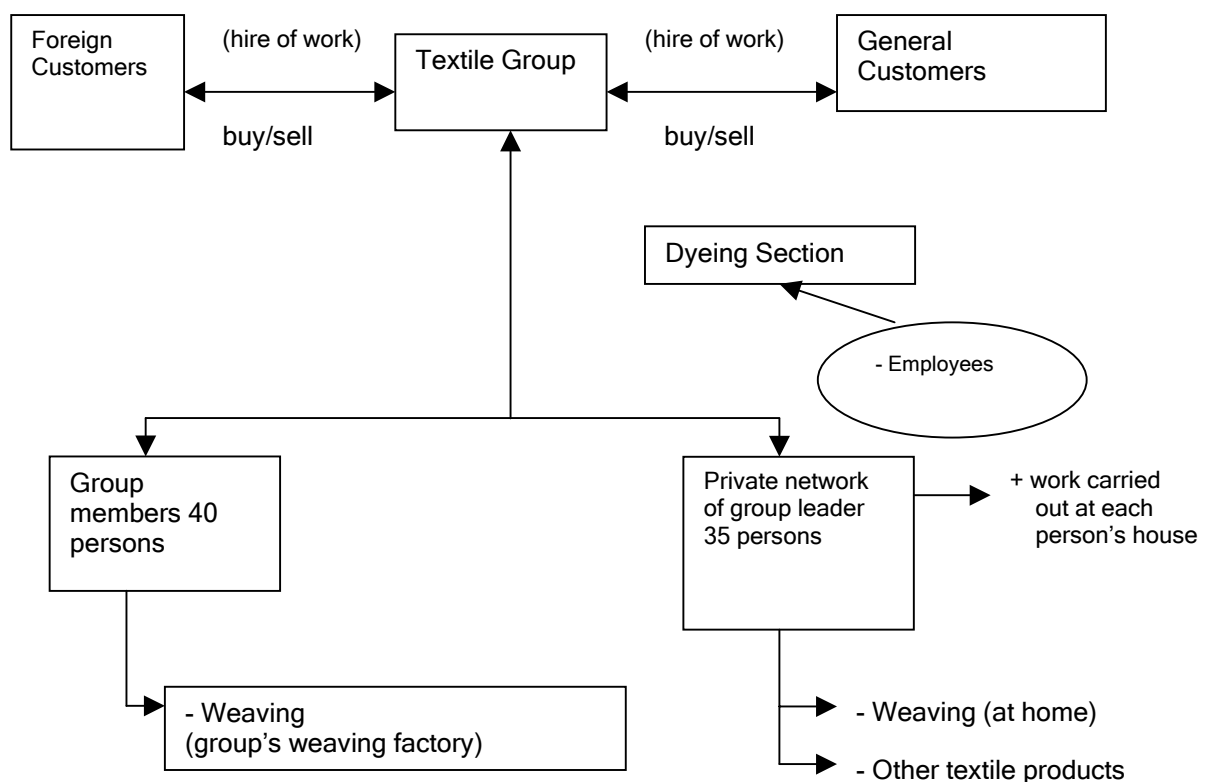
At times, purchase or production order is made through middlemen. In cases involving middlemen, payments for the goods or of wages are to be made in cash only while direct customers will make payments through banks upon delivery of the products by the group.

### 3.3.4 Working procedure is as follows:

- The person that places production or purchase order will specify the required type, size and shape of synthetic gems.
- 25 members carry out work at the group leader's house while the other 20 carry out work separately at each member's house, cutting gems only.
- Work at the group leader's house involves all production steps.

**Fig. 7**

**Purchase order and employment relations of the textile groups, Ban Klaw Rua, Chiang Mai**



Source: Charit Meesit and Sittisak Samsee, Preliminary Study on The Law of Homebased Work, 2000

### 3.3.5 Procedure for placing purchase order or production order

- Customers are the parties that place purchase orders. Major customers are Japanese traders who have invested jointly with their Thai counterparts by setting up a company in Chiang Mai.
- The customers place purchase order by telephone giving details about the products such as size, colour, stripe patterns and required quantities. Representatives of the company will take delivery of the products at the groups' place of work. Delivery time not strictly fixed as there are frequent requests for extension of delivery time.
- The customers order products for domestic sale by buying the products directly from the groups or placing purchase order by telephone for sale in the city.
- The groups set up outlets both in Chiang Mai and in Bangkok.

#### **Remarks:**

1. For home working of each family, it unites to be an informal group which invests in form of a partnership and has an agreement to share the benefits from such working (if any) except the wage payment.
2. What is the legal status of those workers? Do they consider as one unit or each individual.
3. Does the work contribution or sharing work among groups consider as a subcontract of a hire of work agreement?
4. The group employs its relatives or members of community to work at the work place and pays wages per day, so, their relationships are not as an employer and an employee.

#### **4. Legal Framework.**

There is a controversial issue concerning with a states of worker that is not an employee and not under a labour protection law.

A Majority of law enforcing presently is under the Civil Code Law which hardly finds a law of making a complaint, filing a petition or exercising its right to consider whether there is an employment status or not.

#### **5. Problems of workers protection.**

##### **5.1 Employment conditions and wages.**

5.1.1 It is popular to hire of work, subcontract the hire of work or the hire of service through an agent or broker. Also, it is frequently to make in forms of contracts such as the hire of work Agreement, the sale/purchase Agreement, the Agreement to sell, the agent/broker Agreement and so on.

5.1.2 A person who employs is a large business and an owner of such manufacturing factors, technology, Information and marketing. Workers must depend on that person so, he can stipulate any conditions in the contracts as he desires. Even though it is Unfair, it is not against the law.

In a contract farming, the person who employs will stipulate that now material prices are accorded to a market price but produce prices are fixed. Farmers have no right to choose and must give a warrantee to such person by opening the bank account

with the Bank. The person who considers whether the produce will reach a standard is a person who employs.

In a home working, there is no contract but there has a consecutive employment. Home workers are responsible for all expenses of working and providing working tools. Sometimes, they may provide or buy materials from such person who employs and then will set off when delivery such works. These workers have to work hard receive the law wages and no legal protection.

### 5.1.3 Remunerations

There are in different forms of remunerations such as wages or remunerations, prices, service charges or special remunerations etc.

A person who employs will specify a price, wage or special remuneration by itself especially in industry or farming work. However, in a service work, workers will fix a service charge by itself.

For a condition and term of payment, a person who employs will stipulate them as it deems desirous. It is frequently found that there are a late payment or incomplete payment because he claims that works are not complete and unfairly deducted wages. The manufactures for sale, home workers and Farmers are cheated of remuneration and it does not file a case to a court.

According to the survey, the remuneration of home works is found that in every industry, the average remuneration per day is 108.84 baht per person (the minimum wage is 165 baht ) The Garment industry which employs the highest number of workers, makes an average payment about 79 baht. An average family earning of all working members is 3,503 baht per month.<sup>19</sup> Based on the survey of HOMENET THAILAND CENTRE , the average income of home working member in 1996 like a garment group at Roi Ed province (in North Eastern of Thailand) earns 2,536 baht per month for 25 working days which an averages of 60 – 96 baht per day (the minimum wage of that province is 128 baht per person ).

In 1998, the average income of subcontractor workers is very low wages about 50 – 60 baht per day while the average income of harvesting is 100–200 baht per day.

In 2000, the average income in agricultural works at the first period is about 8,830 baht. While the more joining in the project, the high debt the farmers have 83.8 percent of debt per family (about 60,667 baht ).<sup>20</sup>

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<sup>19</sup> Faculty of Economics, Kasetsart University, “The Legal Measure for Homeworker Protection, 2000, p.14-15 and Pradit Chasombat. 1999. The study report on Development of Homeworker’s Groups Bangkok.

<sup>20</sup> Buttapong Ketsomboom, Faculty of Medicine, University of Khon Kaen, “Study of The Impact of Contract Farming Agriculture to Labour’s Health” preparing document for: State Policy and Citizen Health, 3rd September 2001 (copy), and Susanha Yimyam and Team, the report on “The Synthesis of Knowledge on Informal Sector Labour, 2000, p.57-58,66

## 5.2 Sanitary and Working Safety

5.2.1 There is no protection system for such workers which are not under a labour Protection law, workmen's compensation fund and social security. From the same survey, we found that:<sup>21</sup>

- In a cultivation work, large quantity of Chemical has been used a lot. Eventhough farmers know the effect, but it is necessary to use in order to protect his products.
- In a farming work, farmers have to suffer from the muscle and bone pain and the lung disease from farming and from animal diseases.
- In home working such as the fishnet weaving in the North Eastern of Thailand, workers must use their mouths to bite a lead bullet for weaving, use a chemical to fume fishnets, In a lapidary work, workers must work 10 – 14 hours per day. They have to use their eyes to concentrate and their eyes become worse because of inadequate light and dusts from a lapidary work.

5.2.2 The employment relationship has been changed and prevent a person who employs from sanitary and work protection. Moreover, it is difficult to prove whether they are ill or hurt from such working or not.

## 5.3 Freedom in meeting and negotiation.

There has no specific legal process. Frequently, they try to informally promote in form of occupation groups, or clubs which are not a legal person.

A legal person is an association, an foundation, or a college which is found under the Thai Constitution Law. Alternatively, it can be found under a special act such as the Cooperative Establishment Act 1999.

However, the labour organization pushes to amend the Labour Relations Law 2518 in order to cover workers in other fields of work to have a right to choose to found an organization and to bargain according to Labour Relations Law 2518.

There are a movement of the development of private organization and the working group called “ The informal sector group” ( a working group is not under the legal protection law) This group calls on workers to be an informal group or in form of a legal person in order to empower in bargaining and to coordinate to found a network of professional groups for helping and supporting their skill of work, work contribution and negotiation.<sup>22</sup>

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<sup>21</sup> Buttapong Ketsomboon, Faculty of Medicine, University of Khon Kaen, “Study of The Impact of Contract Farming Agriculture to Labour's Health” preparing document for: State Policy and Citizen Health, 3rd September 2001 (copy), and Susanha Yimyam and Team, the report on “The Synthesis of Knowledge on Informal Sector Labour, 2000, p.57-58,66

<sup>22</sup> Study and Develop Homenet Thailand Research Centre, study report recommendation for making the law related to Homebased Work, 2001, p.19-20

From the study, it is found that a major working group is a loose group for only earning. When the company or customer does not employ or purchase products, members having no work will separate from groups.

A group of manufacturing trends to decrease while a group of home working is enlarging all the time.

However, In agricultural work, a company has a monopoly in knowledge and technology for bargaining not to organize a group. Moreover they must depend on raw materials of such company and other factors in production. Therefore, the company will not employ or subcontract them if they organize a group to bargain.

#### **6. A legal procedure**

As a working group has a limit to access to a legal system concerning a labour law in term of a legal procedure It is similar to independent manufacturers as mentioned here in above.

## **V      Triangular of multilateral relationships**

### **1.      Employment trend**

In 1972, a reference was made in the Thai labour law to employment that is triangular in character, namely, sub-contract, which, according to the law, the sub-contractor who is the employer, the sub-contractors immediate above him and up in line to the primary contractor must be jointly responsible for certain type of money, while the employer who contracted out work is not responsible for the sub-contractors' employees, as there exist no juristic relations relating to employment between them.

Later, large business concerns had discovered a new way to facilitate management, to reduce production costs, to avoid responsibilities under the law and to solve labour relations in the establishment by employing contractors to work in certain production processes on a package deal basis. Finally, the Labour Protection Act BE 2541 was amended to the effect that a business concern that contracts out work on a package deal basis must also be an employer of the employees of the contractors.

After the economic crisis of 1997, large scale adjustments to employment structure were made and employment that is triangular in character was on the rise in almost all business sectors. New groups of workers came into being, such as salespersons in department stores who are not employees of the stores, salespersons who have become distribution agents, home workers who are independent workers working under no employers etc.

### **2.      Types of triangular employments**

The main types are as follows:

- contracts or sub-contracts, in specific undertakings such as accounting, legal works, security and cleaning
- sub-contracts and package deal in production processes, work to be performed at the place of employment
- employment under (2) above, but work is to be carried out outside of the place of employment
- recruitment of labour for business establishments where workers are employees of the recruitment agency. An increasing number of juristic persons that provide recruitment services are being set up, some to recruit workers at management levels while others recruit workmen for specific positions or to take charge of the whole production division. Instances of these are PC, BA staffs in department stores, automobile, communications, beverage sales promotion staffs popularly known as PG (Promotion Girls).
- Distribution of work to home workers by large business concerns through middlemen or brokers or sub-contractors, thus giving rise to home worker groups or groups of producers of goods for sale.

### 3. **Related legal frameworks**

- hire of work or sub-contract under the Civil and Commercial Code BE 2472, Section 587 and Section 607 (please see definition).
- agency agreement or brokerage under the Civil and Commercial Code, Sections 797-849 (please see definition).
- liabilities of sub-contractors who are employers, sub-contractors immediately above at all levels up to the primary contractor (exclusive of the employer who contracted out work or large business concerns) towards the employees of sub-contractors under the Labour Protection Act BE 2541, Section 12 (please see definition).
- Large business concerns that contracted out work on a package deal basis must be responsible under the Labour Protection Act BE 2541 as employers of the employees of contractors under package deal pursuant to Section 5 (3) (please see definition).

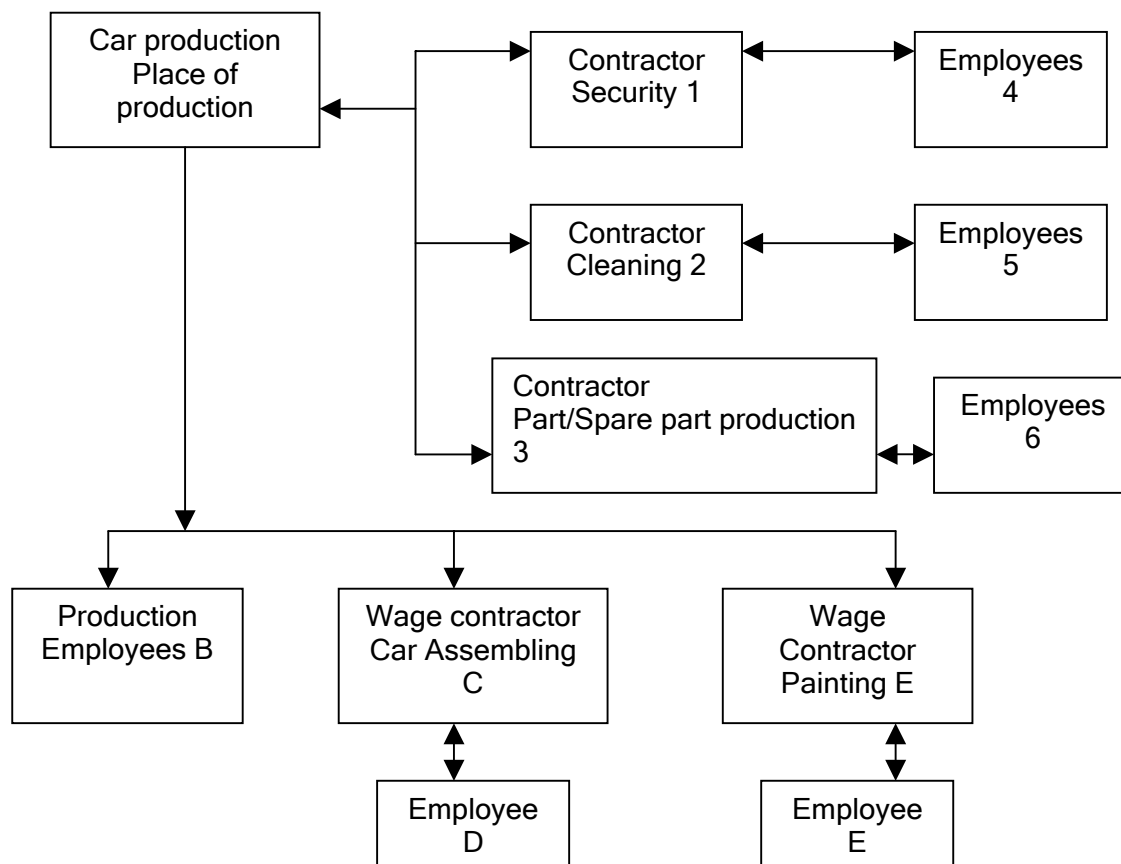
#### **Remarks :**

1. In Thailand, the words intermediary, broker and sub-contractor are often used interchangeably. They are sometimes referred to as middlemen. However, legally each carries different meanings and enjoys different status.
2. In sub-contracts where work is distributed to home workers through business agents or persons with close connection or indirect agents, such agents shall not be liable for those home workers as juristic relations have already been created between the business concern and the home workers. The agents may or may not be paid remuneration.
3. In legal connotation, a broker is a middleman who points out the possibility or arranges for any one that comes for his service to enter into an agreement with a third party. A broker is universally considered to be a kind of agent.

A person may be both an agent and a broker. For example, a middleman may seek groups of workers who would accept to carry out work at home for the principal while at the same time, once a contract has been made, takes up the duty to pay wages to the workers.

A broker or middleman is expected to work for remuneration. Hence, a person who accepts work from the principal (owner of business) and himself fixes the rates of wages for those who in turn accept the work from him is not considered to be a middleman, but a sub-contractor.

**Figure showing tripartite or multilateral employment relations**  
**Fig. 8 Employment relations in car production industry**<sup>23</sup>



#### 4. Overall protection problems

##### 4.1 Labour protection

There is an increase in the number of workers of contractors while business undertakings of the contractors are normally medium and small in size and lack security. Short-term employment contracts are generally the norm while the law is not fully complied with and employees are paid minimum wages only.

There is no law to limit the number of succeeding sub-contractors and so there can be a large number of them, each of whom in turn makes profit out of the sub-contracts.

As regard occupational health and safety, medium and small businesses are not prepared to provide them to or to set up safety systems or mechanism for workers, particularly home workers. Worse, the shortage of Government labour inspection

<sup>23</sup> Ratchadaporn Tongsook, "Legal Measure on The Contract Labour", Dhurakijpundit University, thesis submitted in partial fulfillment of the requirement for the degree of Master of Laws

officials or security officials makes it difficult to conduct inspections with any effectiveness.

## **4.2 Social Security**

There remain inequalities of welfare in the workplace, as employees of contractors or of wage contractors or of home workers are not provided with any welfare by the business concern they are working for.

Contractors, sub-contractors or wage contractors usually try to avoid complying with the laws governing social security and workmen compensation fund.

Large-scale businesses usually refuse to assume any responsibilities to solve social problems leaving small-scale businesses, or the community production units or groups of home workers to do so by themselves. Thus it is found that home workers have initiated community savings programme for the promotion of community welfare.

## **4.3 Freedom of association and bargaining**

Those who do not enjoy the status as employees or whose working status is ambiguous may find it difficult to exercise their rights under the Labour Relations Act BE 2518.

These workers may group together and set up various forms of organizations in accordance with the Civil and Commercial Code and constitution laws.

It should be noted, however, that in the amended Labour Relations Act, nothing about labour relations in respect of tripartite employment has been mentioned.

## **5. Legal procedures**

Legal procedures as specified in clause 4, chapter 3

### **Remarks :**

1. Very few employees will, on their own, exercise their legal rights as it may affect their relationships with their employers and their employment may be in danger of being terminated.
2. The rights may be exercised more effectively by trade unions
3. The Ministry of Labour and Social Welfare often directs employees to refer the cases to the Labour Court with the consequence that the Labour Court is overloaded with such cases while the Ministry itself does not improve or introduce suitable mechanisms that are in correspondence with the employees' condition.
4. There is an absence of a central institute which is neutral or which is a professional or specialized organization to give advice on various legal and other aspects of labour problems acceptable to all parties concerned.

## VI Case Studies

### 1. Case Study No.1: Truck drivers in cement transportation business of the Cement Transport Co., Ltd.<sup>24</sup>

#### 1.1 Basic Data

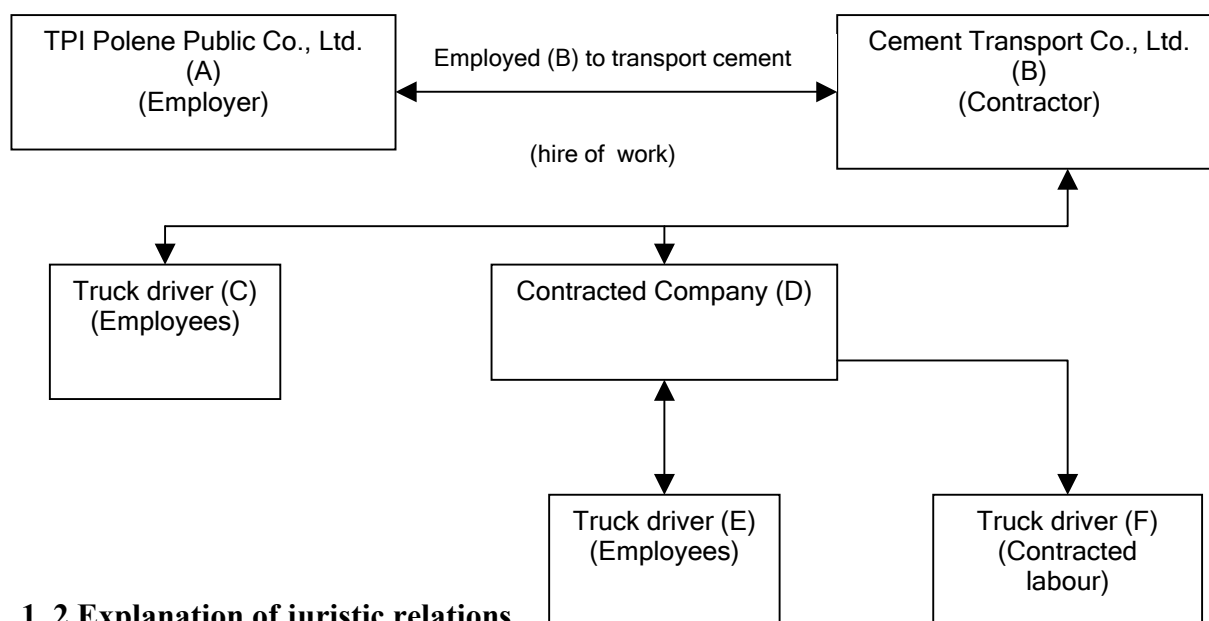
Originally TPI Polene Co.,Ltd., established in 1991 with its establishment at Muaklek district, Saraburi province, was engaged in the production and supply of cement. In 1998, the company had around 3,000 employees. There was no trade union and no employees committee. The attempt of the employees to set up a trade union was met with opposition from the management.

Towards the end of 1998, the group of major shareholders of TPI Polene Co.,Ltd. founded a new company by the name of the Cement Transport Company Limited to transport cement for TPI Polene Co.,Ltd. and transferred the employees to this new company. By 2002, the Cement Transport Co.,Ltd. has 400 employees. Among them over 300 are cement truck drivers. The company has 800 trucks.

During the end of the year 2001, a trade union was set up under the name of cement transport relations union. It is a transport union and has 270 members. It is the first and only cement transport union in Thailand.

#### 2. Form or relationship in respect of employment or work performance

**Fig. 9 Relationship in respect of employment**



#### 1. 2 Explanation of juristic relations

<sup>24</sup> Interviewed committee of Cement Transport Trade Union, Saraburi province, January 2002

1. The relationship between A and B is that between the employer and the contractor under the hire of work contract with its emphasis of the completion of work as the essential element of employment.

2. The relationships between B and C and between D and E are relationships between the employer and employees under the hire of services contracts under which the employer has the power to control the work and to give command and punish the employees.

3. The relationships between B and D and between D and F are relationships between the employer and contractors, but in this case D is a sub-contractor while F is a contractor generally known as sub-contracted labour.

Since E and F do not have employment relations with B and A, they are under no responsibilities under the contracts or to pay any damages to B and A.

B is a primary contractor, D is a sub-contractor while E is an employee of D, a sub-contractor who is an employer under the Labour Protection Act BE 2541.

E has the right to claim D and B for joint payment of wages, overtime pay, holiday pay and compensation under the Labour Protection Act BE 2541 while F does not have such rights accorded E because F is not an employee of D.

B alone has the right to claim A under cement transport agreement while the others, as shown in fig. 9, except C, do not have the right to sue A.

C and E are employees under the labour contract while F is a contractor under the hire of work contract. The three are however workers who work to earn their livelihood and who generate benefits for A, yet A is not under any responsibilities under the law and C, E and F do not have the right to claim benefits or welfare from A, except where A has made an agreement with B to give benefits to those who work or who generate benefits for A.

### **1.3. Employment condition and security system for workers**

#### **1.3.1 Employment contract**

The employment contract between C and B is a time limited contract valid for a period of 1 year, to be renewed each time for one year at the discretion of B. No rule and performance evaluation are taken into consideration in the renewal of the contract with the consequence that the employees do not have any job security and no opportunity to obtain benefits other than those stipulated by the labour laws, as none is provided by the employer.

#### **1.3.2 Wages**

According to fig. 9, C are monthly employees being paid an average of Baht 5,800 per month in the case of drivers of trailers and Baht 5,300 per month in the case of drives of ordinary trucks, however extra benefits at an average of Baht 300-500 per trip will be given in case of loading goods onto vessels, depending on the distance covered.

E are monthly employees being paid between Baht 1,500.- and 3,000. and extra pay per trip or being paid on a per trip basis only based on the weight of cement and the distance covered.

Apart from the above, D also has another system of wage calculation by fixing the sharing of income on a 50:50 basis. In this arrangement, D is the owner of the truck while E is a driver who is to be responsible for petrol, wear and tear and depreciation of the trucks.

The company had promised to give an annual wage increment of Baht 50 and did give the increment only in the first year. From then, no wage adjustments have been made for over 5 years to date.

### **1.3.3 Working condition**

1. Trucks are required to park in the narrow yard waiting for loading of cement. The constant noise and dust raised by the busy traffic of incoming and outgoing trucks are a health hazard to the workers.

2. During the export period of cement, truck drivers have to work around the clock with no holidays and no rest and this has contributed considerably to the deterioration of the health of the workers.

3. Truck drivers and particularly labourers who have to move from place to place normally take their wives and children to live with them. The whole family eats and sleeps in the truck, as no accommodation is provided for them by the company and room rent is quite high, at about Bht 2,000 per month.

4. There are insufficient toilets to accommodate the needs of workers.

## **1.4. The setting up of organizations, claims and bargaining**

1.4.1 The major factor that has given the impetus to the workers to come together and set up a trade union is the information they got about changes in shareholders and the taking over of the management by foreign capitalists which would bring about insecurity to their employment or affect their interests and welfare. In addition, they are dissatisfied with the trifling rules and regulations imposed by company that threatens to take severe disciplinary actions against them for minor offences and many other work-related problems.

For example, truck drivers in one company would face disciplinary charges such as work negligence and violation of company regulations when they tried to make sure the trucks they drive were of in good conditions for driving. At one company, the drivers had to queue up for a long time to fill up the truck tires. There were not enough air pumps and the available one are not quite good. Thus, the air pressure for the tires would be not good. To solve the problems, the drivers requested for approval to fill up the tires at a private service station outside the factory. They offered to pay for the service themselves. The company management refused and imposed disciplinary action. The truckers who did ignore the announcement would be charged with negligence and taking the trucks outside without prior approval.

#### 1.4.2 Success of the trade union in making claims and welfare.

**B** agrees to cancel the time limited employment contract which is valid for 1 year made with the 300 employees (**C**), with effect from 2002.

**B** agrees to allocate not less than half of the total cement transport work to **C**, as over the past, **B** had allocated the larger part of the work to **D**, **E** and **F**, whereby income of **C** was affected.

Other necessary welfare items such as

- annual wage increments at the rates of Baht 50, 60, 80, 100 and 110 per annum.
- diligence reward of Baht 300.- per month. However, to be entitled to the reward, the employees shall not be absent from work, shall not take leave of absence and, for drivers of ordinary trucks, must make 25 trips per month and of trailers carrying bags of cement, 18 trips per month.
- Life insurance to cover accident, at a sum insured of Baht 100,000 per person.
- Drivers will be paid extra of Baht 100.- per day in case of delay in the transport of cement that is not due to their fault.

## 2. Case Study No. 2: Salespersons in Department Stores<sup>25</sup>

Consequent upon the free trade policy, the Thai Government has opened up full opportunities for foreign investors to invest in and expand retail and wholesale business in the Kingdom. As a result, the number of large department stores, both in Bangkok and in the provinces, has mushroomed, becoming centres of tens of thousands of different kinds of goods and products. The centres are known under different names such as department store, super store, super centre, super market, convenience store; Big C and Carrefour of France, Tesco of Britain, Seven Eleven of America, Top of the Netherlands, Family Mart of Japan etc. These stores are built along major or main roads both in Bangkok and in the provinces, surrounding the cities like rings. They are either the producers of the products themselves or organize business units to procure goods and products for supply specifically to the department stores.

Such stores are found in no less than 50 provinces.

There are about 1700 Seven Eleven stores both in Bangkok and in the provinces.

Family Mart of Japan aims at setting up 1,000 branches.

Tesco of Britain will spread out to 500 district and sub-districts.

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<sup>25</sup> Interviewed staff of well-known department store in Bangkok during December 2001. and Narong Petprasert and Pittaya Vongkul, "The Community Enterprise: The Instrument of Fundamental Economic", published by Political Economic Centre, 2002

As such business has a highly important role to play in respect of the employment of workers in the country, study and research have therefore been conducted into the employment relations of salespersons in one of the leading department stores in Bangkok as regard the following issues:

## **2.1. Definition or meaning of the issues under study.**

Department store means the owner of the establishment engaged in trading.

Salespersons means salespersons who are employees of department stores.

P.C. salespersons means general salespersons who are employees of third parties who engaged in trading in department stores.

B.A. salespersons means salespersons of cosmetics who are employees of third parties who engaged in trading in department stores.

P.C., B.A. units means persons or juristic persons who enter into a contract with department stores to sell goods in the department stores.

## **2.2. Basic data**

The department store under study has 14 branches within which P.C. and B.A. units belonging to more than 100 companies, with employees numbering in the region of 6,000, take part in the programme. Within the 4 large branches alone, there are no fewer than 2,000 P.C. and B.A. salespersons working. On the whole, however, the number of salespersons and that of P.C. and B.A. salespersons are very close in proportion. P.C. and B.A. units have the responsibilities to develop the sales skills of their salespersons which must be done through the training programmes of the training centre of the department store, to familiarize those salespersons with the working rules of the department store. The P.C. and B.A. units conduct sales in the department store under various terms, some permanent, while other under fixed periods of 1, 2 or 3 years or on a temporary basis during specific short periods only. In addition, standby salespersons are kept ready by P.C. and B.A. units to take the place of those salespersons who take leave of absence.

## **2.3. Analysis**

### **2.3.1 Employment relations**

#### **2.3.1.1 Multipartite Relationship**

Sales process involves several related parties such as the department store, P.C. and B.A. units, salespersons and P.C. and B.A. salespersons. Although the department store derives full benefits from the performance of work by P.C. and B.A. salespersons, yet, by virtue of the lease agreement concerning the space in the department for the sale of P.C. and B.A. products, no employment relationship exists between the department store and P.C. and B.A. salespersons and this is in correspondence with the Thai laws that stick to the relationship between each pair of the parties to the contract which, by nature, can be severable, such as the relationship between the department store and P.C. and B.A. units has the characteristic of a lease agreement; between the department store and salespersons and between P.C. and B.A. units and P.C. and B.A. salespersons that of a hire of services. In such cases, the department store has no juristic relationship with P.C. and B.A. salespersons.

#### 2.3.1.2 Dependent Work

As the department store is the employer of the salespersons, it has the power to control the performance of the work of, to give command to and to punish the salespersons while the salespersons carry out work for wages to be paid by the department store. Consequently, the salespersons are workers who depend on the others.

The employment relationship between P.C. and B.A. units and P.C., B.A. salespersons is not different from the above.

The question of law to be considered is that while the department store enjoys the power to control, supervise and dock points from work performance of P.C, B.A. salespersons, notwithstanding that it is authorized to do so by P.C. and B.A. units, the department store should be deemed as having done so as an employer and as such should bear all the responsibilities under the law toward P.C. and B.A. salespersons.

#### 2.3.2 Problems relating to labour protection

2.3.2.1 The department store must comply with the laws governing labour only as far as its salespersons are concerned. The reason why the department store does not have to comply with the said laws as regard P.C. and B.A. salespersons is because a labour contract has not been made between the department store and the P.C. and B.A. units whereby the department store must, by the operation of law, treat P.C. and B.A. salespersons in accordance with the Labour Protection Act BE 2541, but it is because of the contract for lease of space for the sale of goods made between the two.

The P.C. and B.A. units on the other hand have the duty to comply with the laws governing labour in respect of their salespersons only.

2.3.2.2 The differences in employment terms and conditions between those of the salespersons and those of the P.C. and B.A. salespersons are as follows:

P.C. and B.A. salespersons are normally employed under temporary contract, with fixed terms of 120 days or 1 year but not longer than 2 years to avoid having to arrange welfare for them. The majority of the employees have misunderstood the law by having the impression that when employees under fixed period of employment are terminated, they are not entitled to compensation under the law.

Salespersons on the other hand are employees with no definite period of employment and so their employment status is more secure.

With regard to wages, P.C. and B.A. salespersons are paid the minimum wages pursuant to labour laws that, for employees in Bangkok and in the neighbouring provinces of Nakhon Pathom, Nonthaburi, Pathumthani, Samut Prakan and Samut Sakhon, will be Baht 165 per day as from 1 January 2002. However, for the purpose of the highest performance efficiency, the P.C. and B.A. units have agreed to pay extra to salespersons at the rates of 1-

3% if they are able to reach the target sale volume. In this way, salespersons who work hard may earn an average of Baht 10,000 per month.

As for salespersons of the department store, a different wage system and structure is applicable. They receive higher pay than the P.C. and B.A. salespersons in spite of the fact that both are doing the same kind of work and are subjected to similar working condition. Their pay rates start from Baht 5,500.-, 6,000.- and 8,000.- per month and sale emolument range from Baht 500.- to 4,000.- per month. They are given a totally different kind of welfare such as accommodation, school fees for their children, allowance in case of death of relatives, in case of marriage of the employees, New Year's day party, bonus of from .5 – 5 months of salary.

### 2.3.3 The setting up of organizations and bargaining

2.3.3.1 Salespersons and P.C., B.A salespersons have the right to join together to set up a trade union, either of the type that is specific to P.C. and B.A units or relating to trading under the Labour Relations Act BE 2518.

There have been attempts at setting up a trade union in the department store over the past 10 years but without success. Up to now, there is not a single trade union of employees of the department store or of P.C. and B.A units.

2.3.3.2 So long as there exist employment relations whereby P.C. and B.A. units are dependent on or subjected to the department store and P.C. and B.A. salespersons are, in law and in fact, under the supervision and control of P.C. and B.A. units and of the department store, it will be difficult to set up an organization as long as the department store and the P.C. and B.A. units adopt a negative attitude towards trade union.

As a consequence, the non-existence of such an organization has brought about a disparity of employment condition within the department store. The more the number of P.C. and B.A units, the greater the disparity in employment condition. This is contradictory to the principle that workers in similar production process should enjoy an equitable employment condition. In the absence of bargaining power, the disparity is becoming widened each day.

2.3.3.3 The Labour Relations Act BE 2518 has not established a labour relations system that corresponds with multipartite employment relations, such as, with the procedure for the application for claims and with the agreement on employment condition that is to be effective only between the parties that have bipartite juristic relations relating to hire of services. Although the employees are entitled to set up a business type trade union, still they are in a way restricted by the Labour Relations Act BE 2518 in that they must count to see whether membership has reached the required 20% or not. This will raise quite a problem, as employees of P.C. and B.A. units do not work in a fixed place but are quite often relocated to other units, thus making it difficult to keep track of their actual number.

### 2.3.4 The exercise of the right of claims or taking legal actions

2.3.4.1 Both the salespersons and P.C. and B.A. salespersons have the right to lodge complaints with the labour inspection officer or officials under the labour protection and social welfare laws and also to file a lawsuit against their employers with the Labour Court which is a special court.

Except where specified under the Compensation Act BE 2537 and under Social Security Act BE 2533, the employees must lodge their complaints with the official under the law first before they can file a lawsuit with the Labour Court.

Also in the case of lodging a complaint about unfair practice, under the Labour Relations Act BE 2518, the complaint must be lodged with the Labour Relations Committee first before a lawsuit can be filed with the Labour Court.

With regard to administrative requests or complaints, it is not found that such requests or complaints have been made possibly due to the fact that the employment relations are by nature dependent, as far as work and payment are concerned, on the employers.

## 3. Case study No. 3: Construction Workers

### 3.1 Basic Data

The number of construction workers increases during the period of economic expansion of the country and declines when the country faces economic crisis.

From 1995 to 1999, the number of workers in the construction industry comes to 2,248,000; 2,644,000; 2,502,000; 1,633,000 respectively and declines to 1,402,000 in 1999.<sup>26</sup>

### 3.2 Form of employment and employment relationships

There are different kinds of employment relationships, major ones being in the form of contract or hire of work agreement, sub-contract, labour contract, which may be triangular or multilateral in character, namely relationships among the project owner (employer), contractor (main), sub-contractor (minor) and construction workers.

The relationships may also be ambiguous or disguised, such as those between minor contractors and construction workers, between employers and employees and there are relationships that are unclear, that are forged between relatives or between people coming from the same home town or same domicile.

There is no clear-cut line of command as regard hire of services. Workmen often change job, moving fairly freely from one sub-contractor to the next. They are not bound by conditions and not entitled to claim damages.

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<sup>26</sup> Teerana Bhongmakapat and Team, the report on “The Impact of Trade Globalization on Labour in Thailand”, Chulalongkorn Economics Research Center, 2001, p.51

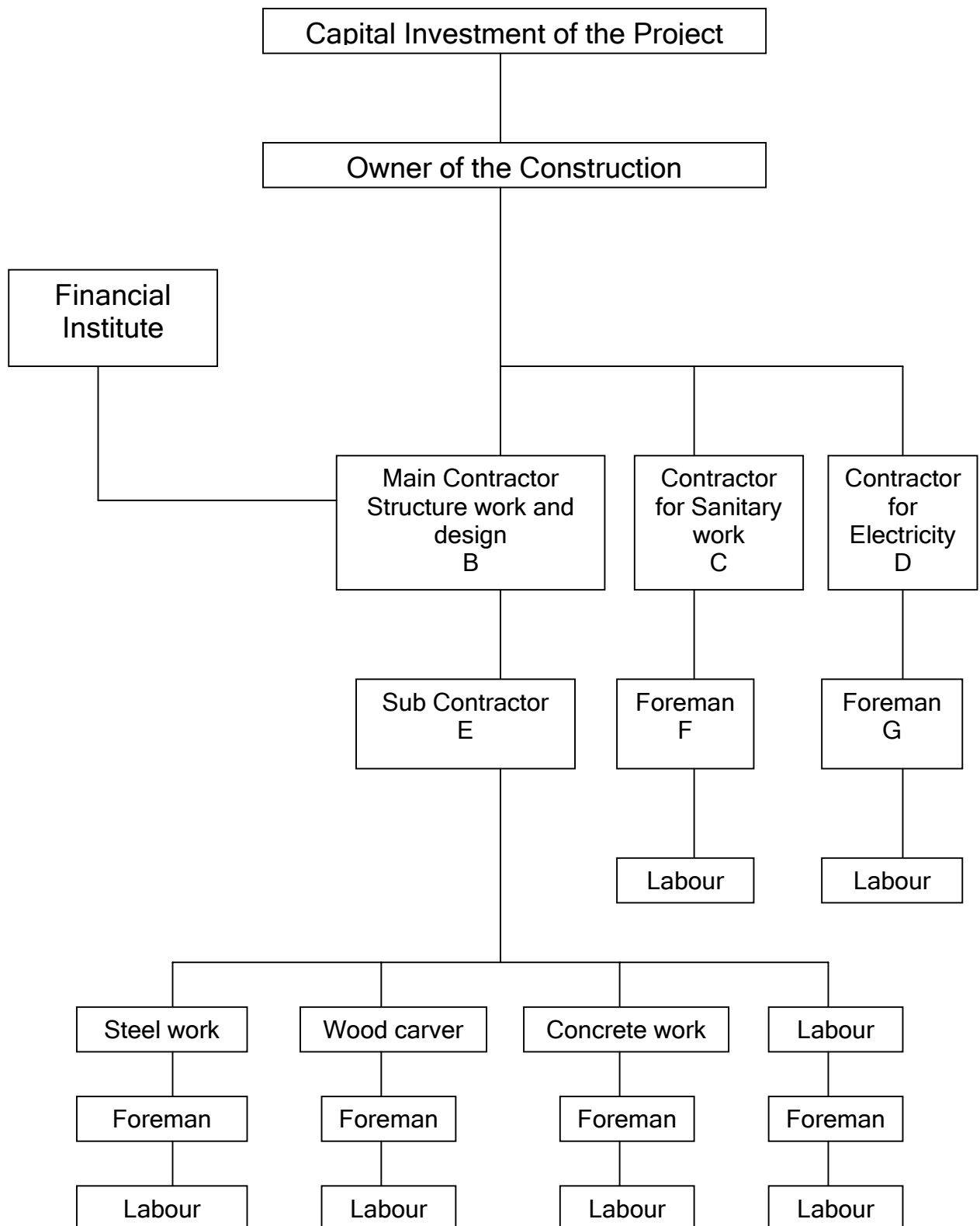
The project owner, as employer who has contracted out work, has no juristic relations whatsoever with the workers who are employees of the contractor, sub-contractor or workers under the control of minor contractors and is not responsible for those workers.

The ambiguous or disguised relationships between the minor sub-contractors and the workers under their control will, in particular, affect labour protection, workmen's compensation funds, social security funds and labour relations as those workmen may not be entitled to the rights and benefits in respect of labour and, in status, are independent construction workers (see fig.10, fig 11).<sup>27</sup>

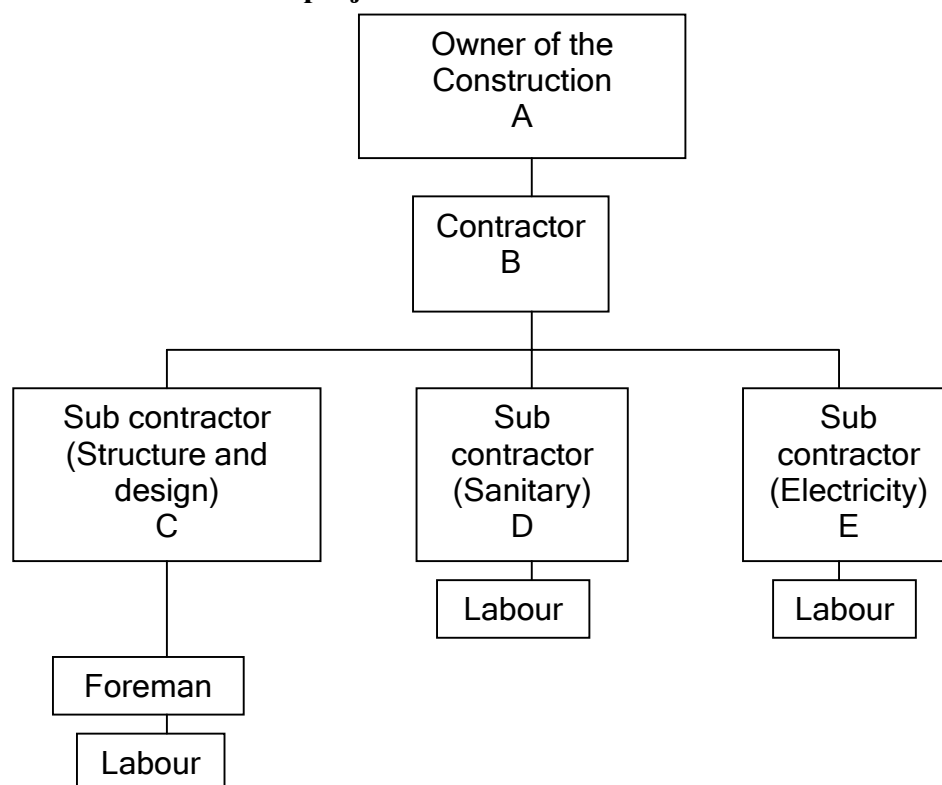
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<sup>27</sup> Nicom Chantaravitoon and Team, research, Thai Labour: 35 Years in The National Economic Growth, 1998, p.69-77 and reveal document of Medical and Public Health Information: Survey of The Problem of Site Construction Labour's Social and Health" composed by Dr.Chanpen Chooprapawan. 1996

**Fig.10 Pattern or relation of mega construction project.**



**Fig.11 Small construction project**



### **3.3 Problems relating to labour protection**

#### **3.3.1 Very low wages<sup>28</sup>**

While the country's minimum wages for all sectors are set at Baht 135 per day, those of male construction workers start from Baht 90-100 and female construction workers from Baht 70-75.

In Bangkok, a male worker will receive Baht 100-140 per day while his female counterpart receives Baht 75-135 per day. A highly skilled male worker may receive Baht 180-200 per day while a female worker, even if she is highly skilled, will receive only Baht 135 per day.

In brief, unskilled construction workers are paid lower than the minimum wages and in all cases, women workers are paid less than men workers, even in cases where their nature or condition of work is the same or similar.

In 2001, the minimum wage for Bangkok was set at Baht 165 per day. In spite of that, construction workers, particularly those toiling workers who carry or transport materials, mix cement etc., receive only Baht 130 per day.

Skilled workmen receive Baht 170-250 depending on the types of work and the experience of those workers. Again, women construction workers receive lower pay than their counterparts.

#### **3.3.2 Hard work, high incidence of hazards and no labour welfare**

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<sup>28</sup> Nicom Chantaraviton and Team, Research, Thai Labour: 35 Years in The National Economic Growth, 1998, p.69-77 and reveal document of Medical and Public Health Information: Survey of The Problem of Site Construction Labour's Social and Health" composed by Dr. Chanpen Chooprapawan. 1996

Construction workers have to work with no weekends, have to work days and nights, given no social security, have to pay their own medical bills when they are sick or hospitalized, medical bills paid by the contractor in case of work-related accidents, but wages are not paid during their convalescence.

Those workers are not given any kind of welfare whatsoever, neither from the employer nor from any contractors.

Even when the workmen's compensation funds and social security funds have been extended to cover enterprises with only one employee, problems still remain as to whose employees those construction workers are and as to how they can get access to those funds, how the Government can improve the principle on labour inspection and its public relations, to make those workers conscious of their rights.

A major factor that discourages construction workers from claiming their rights and benefits they are entitled to is the dependent nature of employment relations themselves or the feeling of gratitude among those workers, especially to minor and main contractors and project owner who have given them work. Any conflict with these people may bring about unemployment to the workers.

### **3.4 Setting up of organization, claiming and bargaining**

Under the Labour Relations Act BE 2518, construction workers are accorded the right to set up organizations and to exercise their right of claim and of bargaining regarding their employment condition. It happened however that no trade union has been set up, no claims made, due to the following 3 major factors:

The first is the nature of employment relations that are multipartite or multi-layers in character, be they relating to works contracted out to a succession of contractors or employment contract, with the consequence that workers are at a loss to know who and how many people are involved in the employment contract, thus making it difficult for them to proceed with legal actions. Worse still, the construction workers, being ignorant of the law, do not know against whom they can exercise their claims under the law.

The second is that even if the construction workers do know who their employers or who the sub-contractors are, their relationships with the employer or with the person who gives them work to do, have put them under some restraints. Because of their dependent relationships with the employer who has given them work to do to earn their livelihood and because of their feeling of gratefulness to the employer, the construction workers feel that any lawsuits filed or claims made against the employer may put their relationships in jeopardy.

Consequently, those construction workers have done nothing to claim their lawful rights they are entitled to under the law.

The third relates to the character and condition of construction work that ends with the termination of each project and the constant relocation of workers. The larger numbers of construction workers are employees of minor contractors and their relationships are rather informal than otherwise. As most of the workers return to do agricultural works during planting and harvest seasons, the possibility of their coming together and form an organization is therefore virtually nil.

Construction workers are among those who have to work harder, to work longer hours, to face higher incidence of hazards and who are given the least labour protection of all the other groups of workers in spite of the law.

## VII Conclusions and suggestions

### 1. Conclusions

#### 1.1 Study findings show the following **major problems on labour protection**:

- The Thai law system restricts labour protection to those who have employment relations under hire of service agreement only and then the prescriptions of each relevant law governing labour protection must be complied with, for example:
- An employee who does domestic work that is not a part of the employer's business will not be given labour protection even if he/she has to work hard.
- As for employees in the agricultural sector and home workers, the law prescribes that different labour protection from that given to the employees in general may be provided.
- It follows that those who are not employees under hire of service agreement will not be given labour protection. Because of the close similarity between hire of service and hire of work, the Court, in determining whether or not an employment comes under hire of service, will base its decision on whether or not the employer has the power of command over the employees.
- A large number of workers in the construction, agricultural sector and home workers are not employees and so are not given labour protection.

#### 1.2 **The application by employers or entrepreneurs of the various forms of agreements under the Civil and Commercial Code to employment has given rise to employment relations that are multipartite.** Yet, those who derive benefits from the works or products are exempted from all responsibilities as employers as there exist no employment relations between them, such as:

- Contracts under hire of work agreements
- Brokerage agreements and product sale agreements in which brokers are assigned to control and collect products from farmers
- Sub-contracts under hire of work agreements
- Wage contract which is a type of agreement
- Employment of persons or juristic persons to recruit workers without the principal assuming responsibilities as employers
- Arrange for an establishment to have numerous employers and employees, thus giving rise to disparities in wages, employment condition and welfare
- The legal system prescribes only bilateral employment relations, that is, relationships between the employer and employees, which is not correspondent with the actual employment situation that involves several parties.

#### 1.3 **Employment that is of ambiguous or disguised nature is more and more on the increase** as the principal employer does not wish to employ the employees

because that would involve a lot of responsibilities and so they hide the actual hire of service agreements under the guise of various agreements, such as

- The owner of the department store makes an agreement on lease of space in the store for the sale of goods with another person who would have to be responsible for his/her own salespersons.
- The owner of a fishing boat makes a lease agreement on the fishing boat in order not to assume the status as employer of the crew.
- The industrial entrepreneur who allows groups of agricultural housewives to work in the industrial plants and pay them on a piece per piece basis for their work, but refuses to accept them as his employees.
- The industrial entrepreneur who sets up a juristic person or person to contract works from him for distribution to one or more successive sub-contractors without any indication that those sub-contractors have any relationships as employers and employees with the workers.
- This form of employment intermingles with other forms of employment in a seemingly balanced manner such as:
- The dairy company employs a person or juristic person as its distribution agent and the distribution agent expands its distribution agencies without any power of control or command over them. etc.
- Agreements on duck and chicken breeding made between a company and farmers
- Agreements on the sale of products made between a company and farmers
- Due to the restrictions of the legal mechanisms and the dependency of workers on the employers or the generators of works, those workers are not given labour protection.

**1.4 A large number of workers have entered into new occupations as a result of employment limitations of the workplace or the unwillingness of the workplace to employ workers on a permanent basis.** To judge a worker as being in an independent entrepreneur or not based on whether or not he is under the control and command of anyone, and hence not an employee, would bring about shortcomings to the labour protection system. Among these workers some receive only subsistence wages while other independent workers have their own production equipment and can make decision by themselves as regard production without being dependent on anybody else.

1.5 There are still a lot of **problems relating to the mechanisms for the enforcement of the laws**, particularly those concerning labour protection because the mechanisms for the inspection of labour is not sufficiently efficient, thus opening up the opportunity for the employers to violate the law. Under such circumstances, the setting up of an organization by the employees to represent them in making demand for their legal rights would only cause conflicts between the employers and employees that would easily lead to a rift in employment relations and the ultimate termination of the employees' employment.

## **2. Suggestions**

## **2.1 Labour protection measures for those who enjoy a clear status as employees are as follows:**

2.1.1 Mechanisms for labour inspection. Problems relating to labour protection lie with the enforcement of law. The mechanisms for labour inspection should therefore be improved by giving the representatives of labour organizations, professional organizations and representatives of various professional groups an opportunity to play the role of volunteer labour inspection officers or assistant labour inspection officers. Special emphasis should be given on supervision, provision of advice and cooperation in solving problems. An employer found guilty of intentionally violating the law should be severely punished.

2.1.2 The setting up of an autonomous institution for solving problems relating to occupational health and safety by reforming of the occupational health and safety structure of the public sector by the establishment of a new, independent institute that is responsible for comprehensive administrative aspects, including occupational health and safety promotion and prevention, medical services and treatments, the provision of compensation, research and development and rehabilitation of working capabilities, to be under the administration of 5 parties, namely the employers, employees, public authorities, specialists and organizations of workers who suffer from occupational illness, to ensure active and genuine participation of all parties concerned. The Workmen's Compensation Fund and the National Institute for the Improvement of Working Condition and Environment, both of which are under the Ministry of Labour and Social Welfare, are to be transferred to this new institute.

The labour organizations, academicians, groups of occupational sick persons and the public sector have jointly drafted a safety, health and the environments promotion institute act BE and should have other procedure such as :

2.1.2.1 Promotion of the rights of employees and labour organizations to participate in the policy-making process, in occupational health and safety measures both at provincial and national levels, such as:

- Representatives of the national tripartite committee must come from nominees proposed by several organizations and selected by truly broad-based labour unions through a democratic process, and not to be proposed by the labour council alone and not to be selected by a 1 union 1 vote balloting system without regard to the size of membership of each union.
- Safety officers at workplaces shall not be considered and appointed by the employers alone.
- Employees should be entitled to propose their own choice of physicians to sit on the Medical Board of the Workmen's Compensation Fund.

2.1.2.2 ent to investment promotion policies, granting of tax privileges, approval for the setting up or expansion of factories in any locations must be subjected to clear-cut conditions that are linked with occupational health and safety prevention and protection.

As the draft is written within the context of the relationships between the employers and the employees, it should be improved and

amended to cover workers in other fields of professions who do not enjoy the status as employees or whose status is not clear, such as workers in the agricultural sector, home workers, hawkers and stall holders on the roads in large cities and towns etc. as well. Every law governing labour should also be amended.

2.1.3 A committee of specialists should be set up to consider a fair wage structure for the whole country, as the mechanisms for the determination of the minimum wages of the country are not efficient enough. The problems on wages are still a policy issue arising out of the opening of free trade adopted by various countries.

2.1.4 The setting up of a central institution to perform the duty of giving opinions or decision on the legal determination of whether the workers engaged in the various forms of occupations have the status as employees or not. On the other hand, the laws may be amended to enable labour organizations or groups of organizations relating to such workers to exercise their rights through the Court, requesting the Court to make the final decision on the issue. This is due to the fact that the Thai legal system is still very restrictive on this point.

## **2.2 Labour protection measures for those who do not enjoy clear employment status are as follows:**

### **2.2.1 Home workers.**

The Ministry of Labour and Social Welfare has drafted a bill governing home workers, based on the framework of the Labour Protection Act BE 2541 which governs the relationships between the employers and employees, as is shown by the definition which describes the term employer as the person who delivers works and raw materials to the persons that accept the work, while in fact a large number of those who accept the work have provided their own raw materials. There are also cases where the employer sells raw materials to the persons who accept work for the production of goods under condition that the products be delivered or sold back to the employer.

Opposite views however are held by the groups of home workers, informal sector network and human and labour right academicians. They have jointly prepared suggestions about the way to draw up the laws for the promotion, development and protection of home workers, based on the following 3 main principles: (1) home workers are those who labour in the way that is not different from that of employees and hence must be given the basic rights given to workers, only it is not necessary that they be given the same protection as that given the employees; (2) the state has the duty to promote and develop home workers as regard information, development of skilled labour, the creation of network among the groups, search for source of work as well as to give loan or working capital to home workers in view of the importance of this group of workers in the long term development of work and of the quality of life of workers; (3) special mechanisms that open up the opportunity for the community to play a part in legal management and to see that mutual benefits between the employer and home workers be based on the principle of equity. To solve problem by taking legal actions against the employer would only result in the rift in employment relations that would ultimately end in the employees' being unemployed. (see Appendix C)

2.2.2 Producers for sale or the group of general workers or workers with no employer

The Social Security Act should be amended to extend labour protection to cover those producers for sale who are not yet self-dependent economically. Thailand has a large number of this type of workers, both in the agricultural as well as industrial sectors. The tendency is to include home workers in this group.

As the production for sale is closely related to the various aspects of production in communities, particularly in rural communities, community leaders and related persons have prepared the draft bill on community enterprise BE.....It is now under the scrutiny of the Office of the Juridical Council. The main principle is the coming together of communities in cities and towns and in rural areas to produce goods and services based on the principle of self-sufficiency, of making own decision and of not seeking personal gains, but to work for the development of the community and the preservation of the natural resources and the environment of the community.

### **2.3 Suggestions for labour protection of workers with multilateral relationships are as follows:**

2.3.1 The Labour Relations Act BE 2518 should be amended to cope with the said employment relations, as the applicable legal structure or that is being amended applies only to bilateral relationships.

2.3.2 With regard to the employees of contractors, sub-contractors or wage contractors who perform works in connection with production processes or with business of the establishment by performing such works in the workplace, the law should be amended, so that those employees be treated, in respect of their wages and welfare, in the same way as those employees of the establishment.

2.3.3 Standards should be set for the various types of contractors such as registration of contractors, qualifications of contractors and more importantly contractors should be juristic persons with specialized knowledge and experience in the work to be carried out under contract. To solve the problem of middlemen, whose only aim is to seek profit from the contract, contractors should have financial stability etc. Also, the role of contractors as the major mechanisms for labour management and in the development of skilled labour should be promoted and developed, in preparation for the production of goods in the future.

### **2.4 Suggestions for the resolution of the problems are as follows:**

1. Control sub-contract and wage contract to within suitable levels by the adoption of measures concerning the registration and qualifications of contractors, sub-contractors, wage contractors as well as the security required of them.

2. The employer of contractors must, jointly with the contractors or wage contractors, treat the employees of the contractors, sub-contractors or wage contractors working in the production process or business of the employer, in compliance with labour laws.

3. As regard labour welfare, tax on contract, sub-contract or tripartite employment relations should be earmarked for the funds for basic labour welfare for workers. Labour welfare that is specific to each workplace should be negotiated separately at a different level.

4. The Labour Relations Act BE 2518 should be amended in order to be able to cope with elastic employment relations and multilateral relationships taking into account the mutual benefits of the parties and the principle that the parties that gain benefits from the employment must assume the duties of taking care of the lives of workers.

5. Protection of workers in various associations and bargaining

The Labour Relation Act BE 2518 should be amended in order that workers in various occupations and professions, regardless of whether or not they enjoy the status as employees under the law, be entitled to set up trade unions and able to make demand or enter into bargain with their employers, to be protected by labour relations laws. The Government must adopt measures to promote and develop labour organizations, to make of them important mechanisms for the future development of the economy of the country.

6. Thai government should apply Labour Codes of Conduct as a basis for good labour protection procedure. Thailand has introduced a good labour protection code of practice for implementation particularly by the textile, shoes, toys, food and jewellery industries. Major issues in respect of the code of practice are as follows:<sup>29</sup>

- Engagement of advisors to inspect goods producing companies in Thailand, to see whether or not they comply with labour standard, that will be used as the basis for making decision on placing future purchase orders.
- Notification on measures to be applied to the management of occupational health and safety (Industrial Standard 18001) for business establishments that voluntarily adopt them and on Standard SA 8000 which stipulates that the ILO Core Standard be implemented. To achieve success, there must be agreements that are binding on the parties concerned, active participation of employees in the system and a continuity of follow-up system.
- ILO Core Standard is composed of 9 sections, namely, sections on Child Labour, Forced Labour, Occupations Health and Safety, Freedom of Association and Right to Organize and Collective Bargaining, Discrimination, Disciplinary Action, Working Hours, Remuneration and Management System.
- Human rights standard for the Thai garment industry is one of the mechanisms that promotes competitive capabilities. It deals with the following 6 aspects of the industry, namely, Electronic Data, Interchange, Human Rights, Merchandising and Product Development, Productivity, Quality Assurance and Quick Response.
- A sub-committee, composed of representatives from the entrepreneurs, buyers, the Department of Labour Protection and Welfare, has been set up to draft the said principles.

7. Development of the system and mechanisms for labour inspection officers, based on the principles of independence, efficiency, practicability and continuity of development.

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<sup>29</sup> Bundit Thanachaisethavut, Labour Rights and Lasting Development, B.E. 2544 and The department of Labour Protection and Welfare, Labour Codes, Conference, Bangkok, March 2001

2.5.5 The standard responsibilities of the Nike group of companies, such as, no using of forced labour; no employment of children below the age of 15 years; payment of wages in accordance with rates applied for each industry; taking care of the environments, safety and health of workers; respect for the right of association and bargain of the employees; no employment discrimination; no employment of female workers in hazardous works; preparation and maintenance of documents relating to standard labour codes of conduct for inspection.

## REFERENCES

- Bandit Thanachaisettavut. 2001. Note on The Accident at Kader Manufacture At May 10. Prototype Co.,Ltd. Bangkok.
- Bandit Thanachaisettawut. 2001. On The Way To Evolution Of The Labour Relations Act. Prototype Co.,Ltd. Bangkok.
- Bandit Thanachaisettawut. 2001. The Problem Of The Labour Law Enforcement. Prototype Co.,Ltd.
- Battapong Ketsomboon. 2001. Study Of The Impact Of Contract Farming Agriculture To Health.
- Charit Meesit And Sittisak Samsee.1999. The Law Relating To Homebasing Work. Bangkok.
- Faculty Of Economic Chulalongkorn University. 2000. “Employment Requirement And Employment Creation. The Report Submitted To Ministry Of Labour And Social Welfare.
- Homenet Thailand And Research And Development Institute Of Khon Kaen University. 2002. Homeworkers: Situation And Data In The 4 Regious Of Thailand Bangkok.
- Kamol Sontikasettrin. 1994. The Explanation Of Civil And Commercial Law On Hire Of Service, Hire Of Work And Carriage Contract. Sawang Publishing. Bangkok.
- Kasemsan Vilawan. 1999. The Explanation Of The Labour Law. Deun Tula Publishing Co.,Ltd. Bangkok
- Narong Petprasert And Pittaya Vongkul. 2002. “ The Community Enterprise: The Instrument Of Fundamental Economic. Edison Press Co., Ltd. Bangkok
- Pradit Chasombat. 1999. “The Study For Discovering Of The Pattern Of Homebased Worker Development”. Bangkok.
- Pradit Chasombat. 1999. The Study Report On Development Of Homeworker’s Groups Bangkok.
- Ratchadaporn Tongsook. 1999. Legal Measure On The Contract Labour. Thesis. Master Of Law Dhurakijpundit University.
- Susanha Yimyam And Team.2000. The Report On The Synthesis Of Knowledge On Informal Sector Labour.
- Woravit Chareonlert And Bundit Thanachaisettavut. 2001. “Economic & Social Crisis And Future Of Thai Labour” Published In “Thailand In Changing Point. P-Press Co.,Ltd. Bangkok.

## Appendix A

### Thai Labour Statistics

**Table 1.1 Population and Labour Force**

|                          | Number (in thousands) |          |          |
|--------------------------|-----------------------|----------|----------|
|                          | Total                 | Male     | Female   |
| Population (2,000)       | 62,609.1              | 31,142.9 | 31,338.4 |
| Labour Force (June 2001) | 33,494.4              | 18,447.5 | 14,894.9 |

Source: National Statistical Office (NSO) Thailand,

**Table 1.2 Child Labour**

| Age group | Feb.1999 | Feb.2000 | Nov.2000 |
|-----------|----------|----------|----------|
| 13-14     | 15,100   | 6,900    | 19,700   |
| 15-19     | 265,600  | 189,400  | 186,300  |

Source: National Statistical Office (NSO) Thailand.

**Table 1.3 Number and Percentage of Employed Persons by Industry**

| Labour force by industrial                    | Number (in thousands) | Percentage (%) |
|-----------------------------------------------|-----------------------|----------------|
| Total                                         | 31,920.60             | 100.00         |
| Agriculture, forestry, hunting & fishing      | 14,949.20             | 46.83          |
| Mining and quarrying                          | 30.70                 | 0.16           |
| Manufacturing                                 | 4,907.30              | 15.37          |
| Construction, repair and demolition           | 1,318.20              | 4.12           |
| Electricity, gas, water & sanitary services   | 146.70                | 0.45           |
| Commerce                                      | 4,921.70              | 15.41          |
| Transport, storage and communication Services | 947.70<br>4,687.1     | 2.96<br>14.68  |
| Activities not adequately described           | 11.6                  | 0.03           |

Source: National Statistical Office (NSO) Thailand 1999-2000

**Table 1.4 Number of Private Employees by Average Wage, Fringe Benefit and Region (Round 3, August) : 2000**

| Region              | Number of Employees (Thousand persons) | Average wage (Baht/month) | Fringe benefit (Thousand persons) |       |       |         |         |       |         |
|---------------------|----------------------------------------|---------------------------|-----------------------------------|-------|-------|---------|---------|-------|---------|
| Whole Kingdom       | 10,350.6                               | 5,526.1                   | 170.9                             | 995.8 | 847.5 | 1,710.4 | 1,957.4 | 966.9 | 1,086.3 |
| Bangkok             | 2,326.6                                | 9,214.9                   | 638.5                             | 262.3 | 247.1 | 456.8   | 634.4   | 380.5 | 120.9   |
| Central Region      | 3,382.1                                | 5,338.4                   | 582.0                             | 535.0 | 371.5 | 505.0   | 1,020.3 | 364.6 | 652.0   |
| Northern Region     | 1,891.7                                | 3,650.6                   | 88.5                              | 64.2  | 70.3  | 238.7   | 126.0   | 74.2  | 150.6   |
| Northeastern Region | 1,745.5                                | 3,566.2                   | 83.0                              | 78.1  | 56.5  | 361.4   | 90.3    | 60.0  | 125.6   |
| Southern Region     | 1,002.5                                | 4,590.9                   | 78.6                              | 55.9  | 101.8 | 148.3   | 86.1    | 87.4  | 37.0    |

Source: National Statistical Office, Office of the Prime Minister

**Table 1.5 Number of Accidents or Sickness at work**

| Year      | Number of accidents | Deaths | Permanent Total Disability | Permanent Partial Disability | Sickness>3 Days | Sickness=3 |
|-----------|---------------------|--------|----------------------------|------------------------------|-----------------|------------|
| 1996      | 245,616             | 962    | 18                         | 5,042                        | 78,829          | 160,765    |
| 1997      | 230,376             | 1,033  | 29                         | 5,272                        | 68,480          | 155,562    |
| 1998      | 186,498             | 790    | 19                         | 3,714                        | 55,489          | 126,486    |
| 1999      | 171,997             | 611    | 12                         | 3,396                        | 50,239          | 117,739    |
| 2000      | 179,566             | 620    | 16                         | 3,516                        | 40,838          | 127,076    |
| 2001(Sep) | 141,858             | 463    | 5                          | 1,680                        | 36,730          | 102,980    |

\*Includes only enterprises with 10 and more employees

Source: workmen's Compensation Fund, Nov 1, 2001

**Table 1.6 Social Security Fund: Number of Insured Persons, 1994-2001**

| Month /Year | 1994      | 1995      | 1996      | 1997      | 1998      | 1999      | 2000      | 2001      |
|-------------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|
| Jan         | 4,676,094 | 4,989,259 | 5,241,333 | 5,605,431 | 6,078,618 | 5,407,424 | 5,698,358 | 5,779,591 |
| Feb         | 4,758,225 | 5,033,130 | 5,266,178 | 5,675,151 | 6,049,259 | 5,433,865 | 5,759,517 | 5,792,753 |
| Mar         | 4,769,689 | 5,073,512 | 5,318,698 | 5,716,155 | 6,046,984 | 5,441,029 | 5,759,679 | 5,804,982 |
| Apr         | 4,782,383 | 5,079,690 | 5,366,383 | 5,813,268 | 6,051,081 | 5,458,166 | 5,799,023 | 5,806,528 |
| May         | 4,863,798 | 5,119,092 | 5,430,903 | 5,897,409 | 6,057,448 | 5,489,429 | 5,822,411 | 5,841,223 |
| Jan         | 4,898,569 | 5,156,185 | 5,506,813 | 6,003,932 | 6,049,703 | 5,530,790 | 5,864,797 | 5,885,801 |
| Jul         | 4,927,989 | 5,189,500 | 5,553,654 | 6,068,714 | 6,047,578 | 5,557,126 | 5,901,845 | 5,924,671 |
| Aug         | 4,899,490 | 5,158,835 | 5,605,827 | 6,136,848 | 6,011,373 | 5,560,519 | 5,922,100 | 5,950,361 |
| Sep         | 4,893,906 | 5,158,575 | 5,630,610 | 6,202,630 | 5,912,651 | 5,589,839 | 5,932,703 | 5,959,296 |
| Oct         | 4,927,165 | 5,247,507 | 5,604,522 | 6,188,125 | 5,793,750 | 5,618,432 | 5,921,881 | 5,939,548 |
| Nov         | 4,961,700 | 5,249,742 | 5,595,742 | 6,151,270 | 5,578,893 | 5,659,871 | 5,844,248 |           |
| Dec         | 4,970,805 | 5,184,441 | 5,589,855 | 6,084,822 | 5,418,182 | 5,679,567 | 5,810,140 |           |

Source: Social Security Office

**Table 1.7 Number of Trade Unions**

| Year | Number of trade unions in private sector | Number of trade unions in public sector | Number of trade members                                   | Newly established trade unions                 | Closed trade unions  |
|------|------------------------------------------|-----------------------------------------|-----------------------------------------------------------|------------------------------------------------|----------------------|
| 1972 | 9                                        |                                         |                                                           |                                                |                      |
| 1975 | 111                                      |                                         |                                                           |                                                |                      |
| 1980 | 255                                      | 70                                      | 150,193                                                   |                                                |                      |
| 1985 | 436                                      |                                         |                                                           |                                                |                      |
| 1990 | 713                                      | 130                                     | 336,061                                                   |                                                |                      |
| 1995 | 971                                      | ---                                     | 261,348                                                   | 104                                            | 21                   |
| 1996 | 1015                                     | ---                                     | 280,963                                                   | 86                                             | 45                   |
| 1997 | 968                                      | ---                                     | 270,276                                                   | 57                                             | 104                  |
| 1998 | 999                                      | ---                                     | 265,982                                                   | 71                                             | 40                   |
| 1999 | 1,056                                    | ---                                     | 271,000                                                   |                                                |                      |
| 2000 | 1,098                                    | 43                                      | 270,000 in private sector<br>168,000 in state enterprises |                                                |                      |
| 2001 | 1,114 (as of Oct)                        | 45                                      | 295,465 in private sector<br>165,566 in state enterprises | 79 in private sector<br>2 in state enterprises | 26 in private sector |

Source: Labour Relations Division, Department of Labour Protection and Welfare, Ministry of Labour and Social Welfare, October 31, 2001

**Table 1.8 Number of Federations and National Congresses**

| Year | Trade Unions | Federations | National congresses |
|------|--------------|-------------|---------------------|
| 1980 | 325          | 3           | 3                   |
| 1990 | 843          | 17          | 5                   |
| 2000 | 1,141        | 19          | 9                   |
| 2001 | 1,159        | 19          | 9                   |

Source: Labour Relations Division, Department of Labour Protection and Welfare, Ministry of Labour and Social Welfare, October 31, 2001

**Table 1.9 Labour Relations Information**

| Year                                                | 1998                   | 1999                    | 2000                   | June 2001         |
|-----------------------------------------------------|------------------------|-------------------------|------------------------|-------------------|
| Strike (incidents/ persons/ strike days/ lost days) | 4/ 1,209/ 249/ 128,872 | 3/ 909/ 25/ 8,422       | 3/ 2,165/ 189/ 192,845 | 4/ 504/ 42/ 5,068 |
| Closure (incidents/ persons/ day off/ day lost)     | 4/ 935/ 307/ 84,688    | 13/ 6,958/ 226/ 134,491 | 10/ 3,804/ 140/ 57,403 | 0                 |
| Labour Disputes (times/ workers involved)           | 121/ 35,897            | 183/ 74,788             | 140/ 50,768            | 68/ 16,642        |

Source: Labour Studies and Planning Division, Department of Labour Protection and Welfare, June 2001

**Table 1.10 Number of Employees Laid-off, whole Kingdom, 1997-2001**

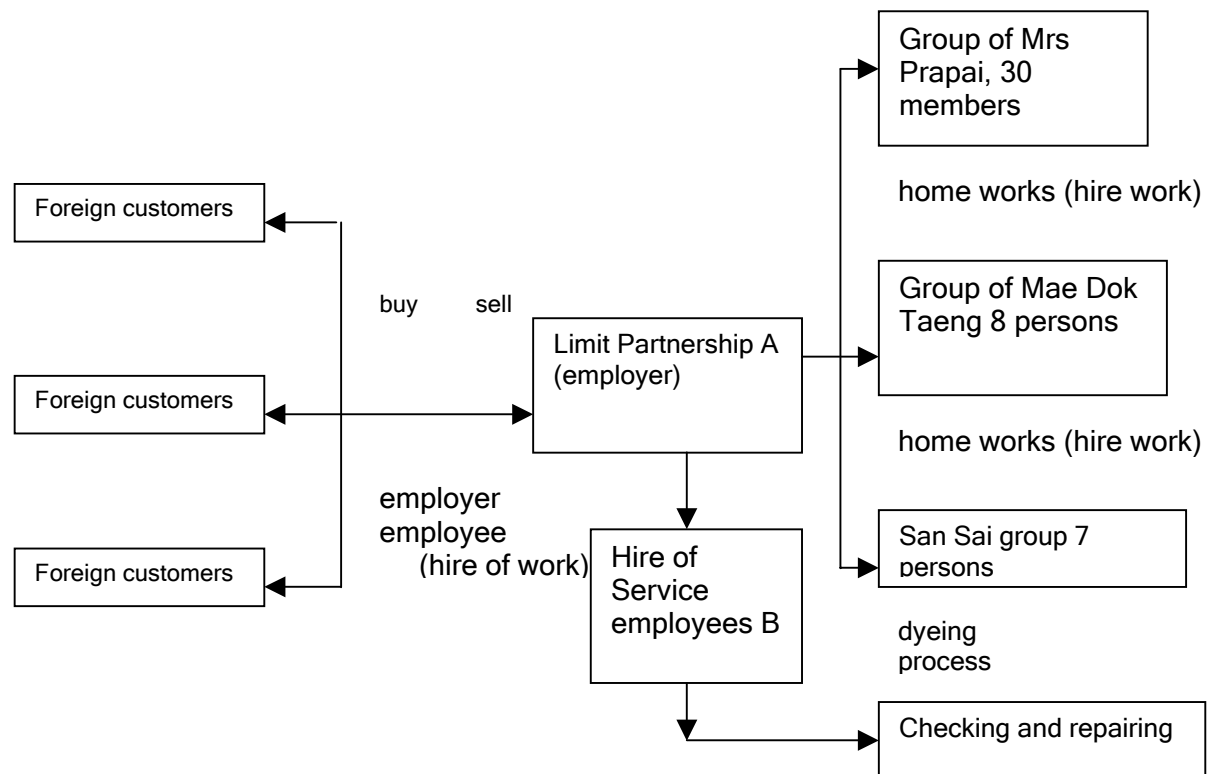
| Year       | No. of establishment | Laid-off Employees by Sector |            |         |                |
|------------|----------------------|------------------------------|------------|---------|----------------|
|            |                      | Total                        | Production | Service | Administration |
| 1997       | 837                  | 38,217                       | 27,493     | 9,307   | 1,417          |
| 1998       | 1,052                | 50,498                       | 39,847     | 7,917   | 3,734          |
| 1999       | 803                  | 20,882                       | 16,961     | 2,044   | 1,817          |
| 2000       | 372                  | 15,646                       | 13,593     | 1,164   | 886            |
| June, 2001 | 125                  | 8,034                        | 2,583      | 907     | 176            |

Source: Labour Studies and Planning Division, Department of Labour Protection and Welfare, June 2000

## Appendix B

### Example of employment relationship of rural households

Figure. 1: Employment or work relations of the groups of producers of products from Sa paper, Ban San Ton Muang, Chiang Mai province



#### Employment or work relations

1) Limited Partnership A is a contractor producing goods ordered by customers in Chiang Mai, Bangkok and foreign countries (Canada and Australia)

2) Limited Partnership A employs a number of regular employees (B). The increase or decrease in the number of the regular workers is dependent on the quantity of work. The larger part of work however is given to household groups of the area and other sub-districts and districts, such as:

The group of Mrs. Prapai, Doi Saket district, having 30 members

The group of Mae Dok Taeng, having 8 members

The San Sai group, having 7 members etc.

The Partnership has no power to control or give command or punish those household groups. Its only duty is to give training or advice to the groups and to inspect the finished products when the groups delivered them to the Partnership. Payment is made on a piece by piece basis.

**Figure 2: Employment or work relations of the groups that produce articles of clothing and dolls, Ban Kiew Lae, Chiang Mai province**

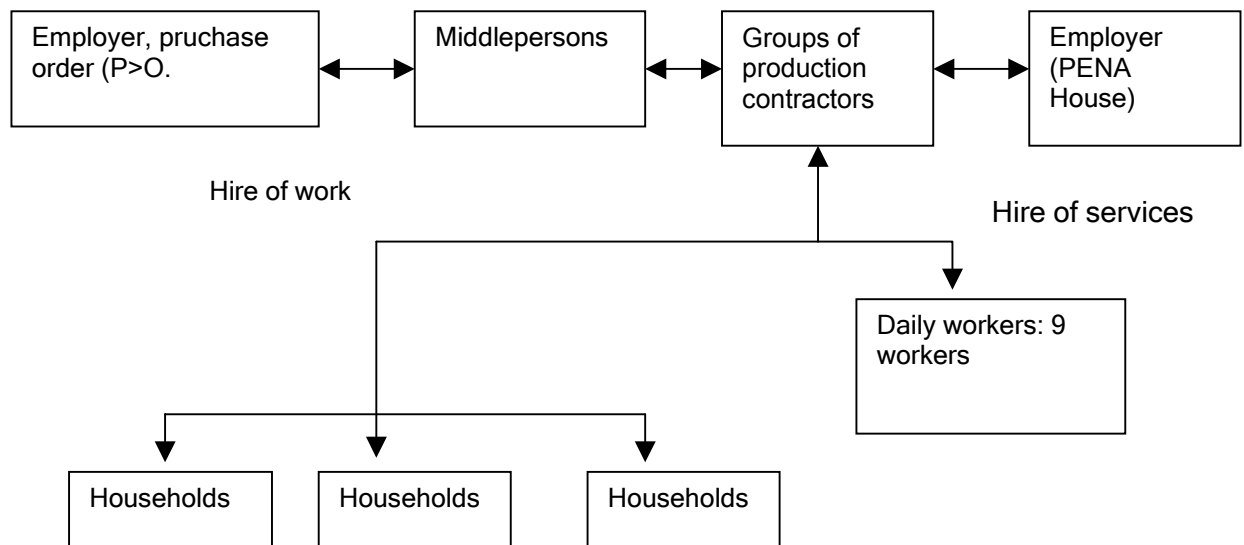


Fig 1, 2 Source : Charit Meesit and Sittisak Samsee, preliminary study on the law of Homebased Work,2000

### Employment or work relations

1) The customer or employer places purchase order or order through the leaders of the groups. No purchase and sale contract, no employment contract in writing. The groups will then divide the work among themselves and give the work to members or home workers, such as to Ban Mae Dok Taeng, Ban Nong Cua, Ban San Pa Yang and Ban San Patong etc. and fix the product delivery time. The leader of the groups will produce product samples and control the entire production.

#### 2) Materials for production

If the work is difficult or high quality is stressed, materials will be provided by the employer or by the person that places the purchase order. For ordinary work, agreement will be made on a case by case basis.

3) In the case of PENA HOUSE customer, the groups will be contacted direct while other customers normally contact the groups through middlemen or a succession of brokers.

#### 4) Equipment and tools

Individual worker is to provide own sewing machine, needles and thread while the group will provide all the materials.

## **Appendix C**

### **Suggestions about legal measures regarding work to be taken and carried out at home**

By the committee on the study of law governing work to be taken and carried out at home of the informal labour network

#### **1. Object of the preparation of this document**

To offer the concept, principle and essence of legal suggestions and for use as supplementary documents in the conference where participants express their ideas and suggestions.

#### **2. The 4 main principles that should be prescribed by the law**

##### **1. Protection of the basic rights of workers**

The persons who take the work to be carried out at home are those who should be given protection in respect of labour standard, such as fair pay, work related health and safety protection by the setting up of health insurance funds for the person who take the work to be carried out at home, protection to be given to special persons such as children and pregnant women etc.

##### **2. Promotion and development of the group of workers**

In addition to the necessity for the workers to form into groups in order to achieve working efficiency, it is expected that such groups will be important factors for the development of occupations and the creation of networks between the various groups of occupations in order that work performance and quality of life might be simultaneously and lastingly developed.

Such major measures are the setting up of funds for the promotion and development of work to be carried out at home, registration of groups of workers to carry out work at home and determination of the rights the groups are entitled to under the law.

##### **3. Participation by various parties**

The various groups relating to work to be carried out at home include the industrial sector, group workers in communities, community organizations, related private development organizations, academics, qualified persons from the central and local administration and from related government bodies.

Consequently, in order for the law to play the role in the promotion, development and protection of the persons who would carry out work at home, it would be necessary that there be bodies of persons or agencies comprising multi parties entrusted with duties and responsibilities, such as the committee for the promotion, development and protection of persons to carry out work at home, appointment of voluntary labour inspectors with the participation of the community.

##### **4 Fair harmonious coordination of interests**

In the relationship in which one party is to be dependent on the other party for its source of labour, bipartite (the employer and the worker), or tripartite (the employer, the worker and the government) mechanisms might have their limitations in solving problems. In the end the conflicts would have to be referred to the Court.

The more the workers have recourse to the power of the Court, the worse the conflicts would have become and this would lead to the destruction of good relationship in the employment.

So, the law must create mechanisms or body of persons which comprise members from multi parties, selected from among persons whose knowledge and experience are apparent to everyone, to take charge of fair coordination of interests of the various parties, with emphasis being laid on mediation and reconciliation based on the principle of justice, such as the setting up of a committee to mediate and settle disputes.

### **3. Essence of the law**

#### **3.1 General**

To determine clearly the types of works to be taken and carried out at home, the persons to take the works and carry them out at home, the persons relating to the works to be taken and carried out at home and the rights and duties under the law.

##### **(1) Works to be taken and carried out at home mean**

- works relating to production, services and any activities which are a part of goods production process or of services or work being undertaken
- works to be carried out at the house of the persons that take the works or at any other place at the persons' choice and not at the employers' place or at the places under the control of the employers
- regardless of who procures materials or equipment for the carrying out of the works
- works performed in exchange for pay
- works to be performed in accordance with the employers' assignment

##### **(2) Persons to take and carry out works at home mean**

- natural persons including members of their families
- cooperatives, associations, foundations or other juristic persons whose object is to promote occupations or whose business operations relate to the works to be carried out at home and to share income thereof and registered as such under the law
- works are to be performed by the persons themselves, whether or not assisted by members
- excluding production work or work performed solely for sale

##### **(3) Employers mean**

- natural persons or juristic persons whose object is to seek economic gains
- persons who employ or provide works and who agree to pay remuneration
- persons responsible for the preparation of the registration book of works to be carried out at home for submission to the registrar in accordance with the law

##### **(4) Subcontract involved the following persons:**

Work originators employ persons or juristic persons who seek economic gains, called primary contractors, to carry out production of goods. The primary contractors then pass on the work to subcontractors who pass it on to the employers of the work to be carried out at home in order to pass on the work to the persons who will carry them out at home (see the chart showing the employment relationship among parties involved in the works to be carried out at home)

### **3.2 Labour protection, as follows:**

#### **A. Remuneration**

- (1) fair remuneration
- (2) payment of remuneration as per delivery of work by installment to be made within 7 days of delivery of work
- (3) employer entitled to make deduction for defect and damage amounting to not more than 20 per cent of the remuneration for work delivered each installment
- (4) employer to be responsible for expenses in connection with work performance such as cost of materials and equipment, transport, public utilities and cost of maintenance of machines
- (5) in case of default on payment of remuneration, employer to pay interest at the rate of 15 per cent per annum from the date of default
- (6) where the employer fails to pay remuneration in the case of subcontracting of works, each subcontractor up to the primary contractor is to be jointly responsible with the employer to pay remuneration, expenses incurred in connection with work performance and interest

#### **B. Work related health and safety protection**

- (1) determination of the type of work which might be hazardous to the health and safety of the persons who take and carry out works at home
- (2) determination of important and necessary measures relating to health, such as
  - to require that the employers make known the danger from work performance
  - to require that the employers procure suitable and necessary personal safety equipment
  - to require that the employers arrange annual physical check-up for the persons who take and carry out works at home at least once a year (general check-up and specific check-up in accordance with the type of business)
- (3) to set up funds for health insurance of the persons to work at home to cover
  - medical expenses
  - cost of capability rehabilitation
  - cost of the community's environmental rehabilitation with the employers paying into the funds.

#### **C. Protection for special persons such as children, women and pregnant women**

- to prohibit the employment of children of lower than 15 full years old
- to prohibit the use of child labour from 18.00 hrs.
- to prohibit children to work at places other than their home
- to prohibit pregnant women to carry out work that might be hazardous or to work at night between 22.00 – 06.00 hrs. or to work without holidays

#### D. Protection by registration

- The employers are to prepare 3 sets of registration books of the works taken to be carried out at home, 1 set to be kept by the employer, 1 set by the persons who are to carry out the works at home and 1 set by responsible government authority
- Important information to be recorded
- Names and domiciles of the employers, of the employers next in line (if any) and of the persons who are to carry out works at home. In case of juristic persons, juristic person registration and the persons authorized to act on behalf of the juristic persons are also to be recorded
- Particulars of the works, wages and payment of wages and responsibilities
- Signatures of the employers and of the persons to carry out works at home

### **3.3 Promotion and development of the persons to carry out works at home**

There are 2 important measures as follows:

#### A. The setting up of funds for the promotion and development of works to be carried out at home

- Object: to promote and develop skill and workmanship in working, to develop the groups of workers at home and their networks, to provide the groups with credit services or working capital and to promote the conduct of related researches
- Sources of funds such as government subsidies, donations, fruits of the funds, fines under this law, monies or other property
- Composition: the committee on the funds for the promotion and development of works to be carried out at home is composed of 7 members, namely, the Under-Secretary of State for Labour and Social Welfare, representative of the Ministry of Finance, 4 qualified persons appointed by the committee for the promotion and development of works to be carried out at home and the director of the office of persons to carry out works at home

#### B. Organization of persons to carry out works at home

To register the groups of persons to carry out works at home for the purpose of work performance and determination of the rights and duties to be entitled under the law, of statistics on workers in various businesses and of promotion, development and coordination among the various groups, for the long term development of the works to be carried out at home and of the quality of life of workers.

#### **4. Mechanisms for the enforcement of the law**

##### **4.1 Committee for the promotion and development of works to be carried out at home**

- having the power and duty in matters relating to policy, law, determination of fair remuneration, study and research and coordination with all parties concerned
- being composed of government agencies, representatives of the groups of workers to carry out works at home, representatives of the employers, qualified persons
- representatives of the groups of workers to carry out works at home, the employers, private development organizations with object and business operations relating to works to be carried out at home and with no object to seek economic gains whose performance is apparent shall be the selectors of qualified persons.

##### **4.2 Mechanisms for inspection**

- (1) A labour inspection officer is to be appointed by the committee on the promotion, development and protection of the works to be carried out at home
- (2) A volunteer labour inspector is to be appointed to assist the officer and to oversee and give advice, that everything is in compliance with the law.  
In appointing the volunteer labour inspector, participation of the community must be taken into account

##### **4.3 Committee on mediation and settlement of disputes**

- (1) having the power and duty to mediate, make inquiry and give final decision on the disputes between the parties over the works taken to be carried out at home. In case where the parties are not satisfied with the final decision, the dispute is to be referred to the Court within 1 year of having known of the decision
- (2) being composed of persons whose knowledge or experience of labour, economics, law, social welfare and community are apparent and recruited by the committee on recruitment and proposed to the Minister of Labour and Social Welfare for appointment.

#### **5. Penalty clause**

Penalty should be in the form of fine only as imprisonment or other criminal punishments would be too severe and would affect employment relationship while the persons to carry out works at home are still dependent on the employers.