

## **Is director an employee of the company under the laws of Cambodia?**

Under the Law on Commercial Enterprises, a company comes into existence and acquires legal personality on the date shown in the certificate of incorporation. (Article 98) The company has the capacity, rights and privileges of natural person. (Article 99) This means that the company can own properties and be party to the contracts and the disputes in its own name. Since the company is a legal entity, it needs natural persons including directors, managers and employees to manage and operate its businesses and affairs. This article discusses relationship of director and the company; and in particular, it examines whether the director is an employee of the company.

Regarding the management and operation of legal entity, Article 57 of the Civil Code provides that the director has a duty to execute the company's business faithfully in compliance with relevant laws, rules and articles of incorporation of the company; and it further rules that the relationship of the director and the legal entity is subject to provisions governing the mandate. In addition to the Civil Code, Law on Commercial Enterprises also regulates the relationship of the directors and the companies. For example, Article 118 provides for the appointment and number of the company director. Article 119 sets out the powers of the board of directors to administer the business and affairs of the company. Article 120 sets out the requirements and qualifications of the company director. Articles 121 and 122 specify the term of office for the director. Article 124 provides for the removal of the director from office and article 125 governs the resignation of the director. In view of the foregoing and the relationship of the director and the company as defined by the Law on Commercial Enterprises, it can be concluded that the director is not an employee of the company.

Notwithstanding the foregoing, in the event that the actual relationship of the director and the company satisfies the criteria of the employment relation, the director is an employee of the company. One of the criteria of employment relation which does not exist in other similar contractual relations, namely mandate and work contract, is the requirement that a party named the employer has the right to supervise and direct the other party named the worker. (Article 2 and Article 3 of the Labor Law) The Arbitration Council when resolving dispute over the employment contract uses the following elements such as (1) recruitment, (2) wage determination, (3) determination of working hours, (4) determination of day-off, (5) determination of mistake and disciplinary actions and (6) determination of contract termination, to determine whether a party has the right to supervise and direct the other party. (Case 154/09) If a party has the right to decide the above matters for the other party, it is said that such relation falls under employer-employee or employment relation. Accordingly, if the company has the right to decide the above matters for the director, it is concluded that the director is an employee of the company.

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