

**Kingdom of Cambodia
Nation Religion King**

The Constitutional Council

CASE

N°: 358/003/2019

Of December 11, 2019

Decision

N°: 200/003/2019 CC.D

Of December 19, 2019

The Constitutional Council

- Seen the Constitution of the Kingdom of Cambodia;
- Seen Preah Reach Kram N° CS/RKM/0498/06 of April 08, 1998 promulgating the Law on the Organization and the Functioning of the Constitutional Council;
- Seen Preah Reach Kram N° NS/RKM/0107/005 of January 31, 2007 promulgating the Law on the Amendment of the Law on the Organization and the Functioning of the Constitutional Council;
- Seen Preah Reach Kram N° NS/RKM/0318/005 of March 10, 2018 promulgating the Law on the Amendment of Article 26, Article 27 (New), Article 28, Article 31, and Article 32 of the Law on the Organization and the Functioning of the Constitutional Council;
- Seen Preah Reach Kram N° NS/RKM/0516/007 of May 17, 2016 promulgating the Law on Trade Unions;
- Seen the letter N° 366 N.A of December 11, 2019 from Samdech Akka Moha Ponhea Chakeri **HENG Samrin**, President of the National Assembly, requesting the Constitutional Council to examine the constitutionality of the Law on the Amendment of Article 3, Article 17, Article 20, Article 21, Article 27, Article 28, Article 29, Article 54, Article 55, and Article 59 of the Law on Trade Unions, promulgated by Preah Reach Kram N° NS/RKM/0516/007 of May 17, 2016 adopted by the National Assembly on November 26, 2019 in the 3rd session of its 6th legislature and reviewed and entirely approved by the Senate on its legal form and substance, and declared to be urgent in the 4th session of its 4th legislature on December 09, 2019, letter received by the Secretariat General of the Constitutional Council on December 11, 2019, at 15:30;

Having heard the rapporteur,

Having deliberated in compliance with the law,

- Whereas the National Assembly and the Senate have duly implemented the procedure stipulated in Article 113 (New) of the Constitution for reviewing and adopting the Law on the Amendment of Article 3, Article 17, Article 20, Article 21, Article 27, Article 28, Article 29, Article 54, Article 55, and Article 59 of the Law on Trade Unions, promulgated by Preah Reach Kram N° NS/RKM/0516/007 of May 17, 2016;
- Whereas the request of Samdech Akka Moha Ponhea Chakrei **HENG Samrin**, President of the National Assembly, made in accordance with Article 140 (New) of the Constitution and Article 16 (New) of the Law on the Amendment of the Law on the Organization and the Functioning of the Constitutional Council, is therefore admissible;
- Whereas the form in drafting and adopting the Law on the Amendment of Article 3, Article 17, Article 20, Article 21, Article 27, Article 28, Article 29, Article 54, Article 55, and Article 59 of the Law on Trade Unions, promulgated by Preah Reach Kram N° NS/RKM/0516/007 of May 17, 2016, is in conformity with the Constitution;
- Whereas the Law on the Amendment of Article 3, Article 17, Article 20, Article 21, Article 27, Article 28, Article 29, Article 54, Article 55, and Article 59 of the Law on Trade Unions, promulgated by Preah Reach Kram N° NS/RKM/0516/007 of May 17, 2016, consists of **two Articles** with the following contents:

Article One.

Article 3, Article 17, Article 20, Article 21, Article 27, Article 28, Article 29, Article 54, Article 55, and Article 59 of the Law on Trade Unions, promulgated by Preah Reach Kram N° NS/RKM/0516/007 of May 17, 2016 shall be amended as follows:

Article 3 (New), Article 17 (New), Article 20 (New), Article 21(New), Article 27 (New), Article 28 (New), Article 29 (New), Article 54 (New), Article 55 (New), and Article 59 (New).

Article Two.

This law shall be declared to be urgent.

- Whereas the aforementioned **Article One** of the Law on the Amendment of Article 3, Article 17, Article 20, Article 21, Article 27, Article 28, Article 29, Article 54, Article 55, and Article 59 of the Law on Trade Unions, promulgated by Preah Reach Kram N° NS/RKM/0516/007 of May 17, 2016, has amended 10 Articles as follows:

- Article 3. was amended to **Article 3 (New)**:

- Paragraph 1 *“This law covers enterprises or establishments and all persons working for enterprises or establishments under the provisions of the Labor Law.”* was amended to *“This law extends coverage to all enterprises or establishments and people who fall under the provisions of the Labor Law.”*

- Paragraph 2 was deleted.

This Article is in conformity with paragraph 5 and 6 of Article 36 of the Constitution.

- Article 17. was amended to **Article 17 (New)**:

The content in point “A” was amended to *“produce an annual financial statement and activity report, based on the financial books and records kept, as information for its members at the latest by the end of March of the following year, and these reports shall be audited by an independent auditing institution legally registered in the Kingdom of Cambodia, in the event of a request from:*

- *10% (ten percent) of the total members or from any union member’s donors for local workers’ unions and employers’ associations;*
- *5 % (five percent) of the total members or from any donor for the confederation of workers’ unions, the confederation of workers’ unions and federations of employers.*

These reports shall indicate:

- *Total income during the reporting period by indicating the amount of income from all sources;*
- *All expenditures of the workers’ union or employers’ association;*
- *Activities of the workers’ union or employers’ association; And*
- *Number of members.”*

Other provisions shall retain their original contents.

This Article is in conformity with paragraph 5 and 6 of Article 36 of the Constitution.

- Article 20. was amended to **Article 20 (New)**:
 - Paragraph 1:
 - In point “A” was added *“or minors who have been emancipated.”*
 - In point “B” was added *“is in conformity with the law”*
 - Point “C” and “D” were deleted.
 - Paragraph 2:
 - In point “A” was added *“or minors who have been emancipated.”*
 - Point “D” was deleted.
 - Point “E” was amended to “D”
 - Paragraph 3 was deleted.

Other provisions shall retain their original essences.

This Article is in conformity with paragraph 5 and 6 of Article 36 of the Constitution.

- Article 21. was amended to **Article 21 (New)**:
 - Paragraph 1:
 - In point “B” was added *“is in conformity with the law”*
 - Point “C” was deleted.
 - Paragraph 2:
 - Point “D” was deleted.
 - Paragraph 3 was deleted.

Other provisions shall retain their original contents.

This Article is in conformity with paragraph 5 and 6 of Article 36 of the Constitution.

- Article 27. was amended to **Article 27 (New)** stipulating that *“all workers’ unions or employers’ associations must keep financial records in compliance with the format as set forth in the Prakas of the Minister of the Ministry in charge of the Labor and must present these financial statements to their members in accordance with their statutes, and these records are to be audited by an independent auditing institution legally registered in the Kingdom of Cambodia, in the event of request from:*

- *10% (ten percent) of the total members or from a donor for local workers' unions and employers' associations.*
- *5 % (five percent) of the total members or from a donor for the confederations of workers' unions, workers' unions and the federations of employers.*
- This Article is in conformity with paragraph 5 and 6 of Article 36 of the Constitution.
- Article 28. was amended to **Article 28 (New)**, by adding a new sentence to point 2 *“wages and other benefits have been fully paid to the workers.”*
Other provisions shall retain their original contents.
This Article is in conformity with paragraph 5 and 6 of Article 36 of the Constitution.
- Article 29. was amended to **Article 29 (New)**:
 - In paragraph 2, Point “C” was deleted.
 - In paragraph 3, [Point “A”, “B”, and “C”] was amended to [Point “A” and “B”].Other provisions shall retain their original contents.
This Article is in conformity with paragraph 5 and 6 of Article 36 of the Constitution.
- Article 54. was amended to **Article 54 (New)**, In point “C” of paragraph 2 *“having the most members with membership identification cards and a proper name list of membership”* was amended to *“having a list with the largest number of due-paying members.”*
Other provisions shall retain their original contents.
This Article is in conformity with paragraph 5 and 6 of Article 36 of the Constitution.
- Article 55. was amended to **Article 55 (New)**, the content in paragraph 1 was amended to *“ In a profession or an economic activity or a sector where there are many workers' unions, these unions shall seek the most representative status recognition by satisfying the criteria stipulated in points “a” and “b” of Article 54 (New) (The Most Representative Status at the Enterprise or the Establishments level) of this law, plus an additional criterion of having a list with the largest number of due-paying members from 30% (thirty percent) of*

the total number of workers/employees in a profession or economic activity or a sector wherein they apply for certification of the most representative status.”

Other provisions shall retain their original contents.

This Article is in conformity with paragraph 5 and 6 of Article 36 of the Constitution.

- Article 59. was amended to **Article 59 (New)**:
 - In paragraph 1, a new point was added *“I- to enable minority workers’ unions to represent their own members in collective labor disputes that do not stem from a collective bargaining agreement.”*
 - In paragraph 2, [Point “A” to Point “H”] was amended to [Point “A” to “I”].

Other provisions shall retain their original contents.

This Article is in conformity with paragraph 5 and 6 of Article 36 of the Constitution.

- Whereas **Article One** of the Law on the Amendment of Article 3, Article 17, Article 20, Article 21, Article 27, Article 28, Article 29, Article 54, Article 55, and Article 59 of the Law on Trade Unions, promulgated by Preah Reach Kram N° NS/RKM/0516/007 of May 17, 2016, is in conformity with the Constitution;
- Whereas **Article Two** stipulating this law shall be declared to be urgent and is in conformity with Article 93 (New) of the Constitution;
- Whereas all provisions of the Law on the Amendment of Article 3, Article 17, Article 20, Article 21, Article 27, Article 28, Article 29, Article 54, Article 55, and Article 59 of the Law on Trade Unions, promulgated by Preah Reach Kram N° NS/RKM/0516/007 of May 17, 2016, are in conformity with the Constitution;

Decides:

Article 1: The Law on the Amendment of Article 3, Article 17, Article 20, Article 21, Article 27, Article 28, Article 29, Article 54, Article 55, and Article 59 of the Law on Trade Unions, promulgated by Preah Reach Kram N° NS/RKM/0516/007 of May 17, 2016, adopted by the National Assembly in the 3rd session of its 6th legislature on November 26, 2016, and reviewed and entirely approved by the Senate on the legal form and substance and declared to

be urgent on December 09, 2019, in the 4th session of its 4th legislature, is declared to be in conformity with the Constitution.

Article 2: The decision made in the Plenary session of the Constitutional Council in Phnom Penh on December 19, 2019, shall be final, without recourse, shall have authority over instituted powers as stipulated in the Constitution, and shall be published in the Royal Gazette.

Phnom Penh, December 19, 2019
**On Behalf of the Constitutional Council,
The President,**

Signed and Sealed: Kittinitekorsalbandit IM Chhun Lim