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PARLIAMENTARY INSTITUTE OF CAMBODIA

BRIEFING NOTE

Senate Commission 5

Legal framework on migration in Cambodia and Vietnam

November 2017

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Contents

| | |
|--|----|
| 1. Introduction..... | 1 |
| 2. International legal instruments | 2 |
| 3. Visa and residency laws..... | 3 |
| 4. Labour laws..... | 5 |
| 5. Acquiring citizenship | 7 |
| References | 10 |

1. Introduction

With the perspective of an increasingly integrating ASEAN community, with free movement of labour, it is important for ASEAN states to have compatible laws on the books governing commercial and labour migration. Not only internal migration (between ASEAN members) is important; unifying migration laws will also help prevent issues with external commercial and labour migration.

In order to allow for a quick overview, as requested by the Commission, this briefing note will eschew lengthy narrative and will instead focus on providing tables comparing the legal frameworks in Cambodia and Vietnam.

In particular, these comparative tables seek to address the following two research questions raised by the Commission: What are the main differences between Cambodia and Vietnam with regard to the laws on migration and naturalisation? What are the legal requirements for investors and regular labour migrants coming to Vietnam and how are these requirements enforced?

Both questions are answered in four sections; first some international laws are outlined, then the laws about entry and residency, the third section is about labour laws (with regards to migrants), and finally citizenship laws are compared.

2. International legal instruments

Vietnam and Cambodia are both members of ASEAN and thus signatories of ASEAN declarations. Cambodia has ratified all of the eight core ILO conventions, while Vietnam only ratified five. Both countries ratified the major anti-discriminatory UN conventions, but Cambodia also ratified the optional protocol and the convention to protect migrants.

| | Vietnam | Cambodia |
|--|----------|----------|
| ASEAN Economic Community | member | member |
| ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers, 2007 | signed | signed |
| ASEAN Declaration on strengthening social Protection, 2013 | signed | signed |
| ILO core conventions: | | |
| 1. Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) | X | ratified |
| 2. Right to Organise and Collective Bargaining Convention, 1949 (No. 98) | X | ratified |
| 3. Forced Labour Convention, 1930 (No. 29) | ratified | ratified |
| 4. Abolition of Forced Labour Convention, 1957 (No. 105) | X | ratified |
| 5. Minimum Age Convention, 1973 (No. 138) | ratified | ratified |
| 6. Worst Forms of Child Labour Convention, 1999 (No. 182) | ratified | ratified |
| 7. Equal Remuneration Convention, 1951 (No. 100) | ratified | ratified |
| 8. Discrimination (Employment and Occupation) Convention, 1958 (No. 111) | ratified | ratified |
| UN international Convention on the Protection of Rights of All Migrant Workers and Members of their Families, 1990 | X | signed |
| International Convention on the elimination of all Forms of racial discrimination (ICERD), 1966 | ratified | ratified |
| Convention on the Elimination of all forms of Discrimination Against Women (CEDAW), 1979 | ratified | ratified |
| Optional Protocol to CEDAW, 1999 | X | ratified |

3. Visa and residency laws

Vietnam has more visa categories than Cambodia does; mainly due to the fact that Vietnam subdivides the visa categories in more specific groups (e.g. there are four different diplomatic visas for the various levels of the diplomatic delegation). Vietnam requires an official invitation for most visa types. While Cambodia does not require an invitation, foreigners do have to provide work documentation to obtain an ordinary visa. A final difference between the countries is that Vietnam has “residency permits” which allow a foreigner to stay in the country without a visa.

| | Vietnam | Cambodia |
|-----------------|---|--|
| Visa categories | <p>Vietnam has 20 different visa types.[1, art. 8]</p> <ul style="list-style-type: none"> • NG1 for delegations invited by the Secretary General of the Communist party, the President, the President of the NA, or the Prime Minister. • NG2 for delegations invited by a number of officials slightly lower in the hierarchy • NG3 for members diplomatic missions, representatives of UN organisations, etc. • NG4 for staff of diplomatic missions, UN personnel, etc. • LV1 for people who will work with Vietnam’s Communist Party or affiliated bodies • LV2 for people who come to work with social organisations, or Vietnam’s Chamber of Commerce | <p>Cambodia has 6 different visa types: [2, art. 9-14]</p> <ul style="list-style-type: none"> • Diplomatic (A) for those with a diplomatic passport • Official (B) for employees of organisations with an MoU with the Ministry of Foreign Affairs • Courtesy (C) given by a relevant ministry • Transit (D) for staff of ships, planes, or trains in transit • Ordinary (E) business visitors, with 6 sub categories: <ul style="list-style-type: none"> ○ Eb for employees or workers of a business in Cambodia ○ Eg for people looking for a job ○ Ep for people who wish to explore |

- T for foreign investors and foreign lawyers
 - DN for employees or workers of a business in Vietnam
 - NN1 for managers or representatives of NGOs
 - NN2 for heads of representative offices
 - NN3 for people come to work for an NGO
 - DH for students or interns
 - HN for people who come to attend a conference
 - PV1 for journalists with permanent residency in Vietnam
 - PV2 for journalist who will stay a short time
 - L for people who come to work
 - DL for tourists
 - TT for family of someone with an LV1, LV2, T, NN1, NN2, PV1 or L visa or family of Vietnamese citizens
 - VR for people who come to visit relatives
 - SQ for market surveys or medical treatment
- business opportunities
 - Er for retirees
 - Es for students
 - Et for technical experts
 - ACMECs (KHM) for tourist within the economic cooperation region of Ayetawady-Chao Phraya-Mekong
 - Special (K) for people of Khmer birth
 - Tourist (T)

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| requirements | Vietnam requires sponsorship or an invitation from a Vietnamese entity for all except short tourist visits, medical visits, or visiting family.[1, art. 10-14] | Those entering on an ordinary visa need to provide documents showing their business interests/connection.[2] |
| Residency permits | Holders of a residency permit may enter or exit Vietnam without a visa. Vietnam has different kinds of 'temporary residency permits' for investors, students and lawyers (valid 5 years), for a representative of a foreign organisation (valid 3 years) or for foreign employees (valid 2 years). There are also "permanent" residency permits (valid for 10 years) for experts, foreigners with direct Vietnamese family, stateless persons who have resided in Vietnam since before 2000, and those who contributed to the development of Vietnam.[1, art. 39] | Cambodia has no residency permits as such; foreigners staying a longer time must extend the appropriate visa for the duration of their stay. |

4.Labour laws

The labour laws in both countries are very similar in requirements for both foreign workers and companies hiring them. One difference is that Cambodia has a maximum set on the percentage of foreigners a company may hire (without permission). The laws in both countries mainly focus their punitive measures on employers.

| | Vietnam | Cambodia |
|----------------------------------|--|--|
| Requirements for foreign workers | <ul style="list-style-type: none"> • Work permit • Good health | <ul style="list-style-type: none"> • Employers must have a work permit beforehand • Fit for the job and no contagious diseases |

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| | <ul style="list-style-type: none"> • Qualifications and occupational skills • “Full capacity of civil acts”¹ • No criminal record [3, art. 169] | <ul style="list-style-type: none"> • Valid passport, legally entered, valid residency permit[4, art. 261] |
| Requirements of companies hiring foreign workers | <ul style="list-style-type: none"> • Enterprises can only hire foreigners for positions “in which Vietnamese workers cannot meet the demands of production and trade”[3, art. 170] • There is no limit on the number of foreigners an enterprise could employ. • Companies need to obtain written approval to hire foreign workers[3, art. 170], 30 days before hiring.[5, art. 4] | <ul style="list-style-type: none"> • Enterprises must “appeal to Cambodians as first priority”[4, art. 263] • There is a maximum percentage of foreigners in each enterprise[4, art.264], which is currently set by Prakas at 10%.[6] However, exceptions can be made with permission from the Ministry of Labour and Vocational Training. |
| exceptions | There are exemptions to work permits for “capital contributing members”, the Board of Directors of joint stock companies, and heads of representative offices of international organisations. | Those governed by ‘Common Statutes’ for Civil Servants or by ‘Diplomatic Statutes’ are exempt from work permit requirements.[4, art.1] |
| Punitive measures | Working without a work permit is punished by deportation within 15 working days. The employer can be sanctioned a suspension of | Employer are responsible for making sure employees have work permits[7], punishment can be fines up to 90 times the daily wages and |

¹ A concept that seems to have been borrowed from Chinese law. In general it is someone over 18 years of age, but someone of over 16 may be deemed to have full capacity of civil acts if they own property. A court may suspend someone’s capacity of civil acts in certain cases (e.g. in case of a mental illness) [Vietnamese Civil code 33/2005/QH11, art.19-20]

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| operations of up to three months and a monetary penalty of up to 75million VND (3,300 USD).[3, art. 171] | up to 6 years in prison.[4, art. 369] |
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5. Acquiring citizenship

Vietnam is more restrictive in both jus sanguinis (citizenship through parents) and jus solis (“birthright citizenship”) than Cambodia. When it comes to naturalisation, the requirements in both countries are very similar. However, while Vietnam allows fees to be waived to meritorious and/or poor individuals, Cambodia has exemptions for (some of the) conditions for those who invested or donated large sums of money.

Finally, while Vietnam has some special provisions for disadvantaged groups, Cambodian law does not make such provisions. These provisions were deemed necessary in Vietnam as it is not a party to either of the UN’s conventions on statelessness (so statelessness has to be prevented in domestic law alone) and the 2008 Nationality Law increased the ways in which Vietnamese people could lose citizenship (e.g. overseas Vietnamese who had not registered with a representative mission in over five years).[8] Cambodia is not a party to either of the statelessness conventions and, contrary to Vietnamese law, there are no domestic legal protections for stateless people specifically. However, such measures might be less urgent in Cambodia as losing (Cambodian) citizenship is more difficult and (in the law) only possible through voluntary renunciation.[9, art. 18]

| | Vietnam | Cambodia |
|-------------------------|---|---|
| by birth: Jus sanguinis | Restricted to children born to: <ul style="list-style-type: none"> • two Vietnamese parents[10, art. 15] • one Vietnamese parent if the other is stateless • one Vietnamese parent if the parents chose the Vietnamese nationality (for their child) at the birth registration.[10, art. 18] | Valid for children born to one Cambodian parent, as long as it is a legitimate child or the child is recognised by the Cambodian parent or a court judgment stated the child was born to a Cambodian parent.[9, art. 4] |
| by birth: Jus solis | Restricted to children born in Vietnam with unknown parents[10, art. 18] or stateless parents who currently live in Vietnam.[10, art. 17] | Restricted to children of foreign parents who were born and living legally in Cambodia or to children without known parents (foundlings).[9, art. 4] |

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| <p>Conditions for naturalisation</p> | <ul style="list-style-type: none"> • Capable of civil acts² • Having resided in Vietnam for five years • Sufficient knowledge of the Vietnamese language to integrate into the community • Capable of earning their living • Agree to abide by the Vietnamese constitution • Have a Vietnamese name (may be selected by applicant)[10, art. 19] <p>These conditions may be waived for those who are married to a Vietnamese person or have made meritorious contributions to Vietnam. The fees may be waived for applicants who are too poor and/or are stateless.[11, art. 4]</p> | <ul style="list-style-type: none"> • Certificate of good moral conduct • Have lived in the kingdom seven years and currently reside in the Kingdom of Cambodia. • Speak Khmer, know Khmer script, and know enough about Khmer history to “live in harmony with Khmer society” • Mental and physical aptitude • Never having been convicted of a crime <p>Foreigners married to a Khmer spouse or who have ‘special merit’ or who were born in the kingdom, only need to have resided three years in Cambodia instead of seven. Those who have invested over 1.25 billion riel are exempt from the seven-year residing period altogether. Those who donated over 1 billion riel are exempt from all conditions (e.g. is not required to speak Khmer) except the requirement to currently reside in Cambodia.[9]</p> |
| <p>Restoration of citizenship</p> | <p>Lost Vietnamese citizenship may be restored if: The person renounced it to obtain foreign citizenship but failed to get it or if the person conducts investment activities in Vietnam.[10]</p> | <p>Cambodians cannot lose Cambodian citizenship through marriage. There are no special provisions for restoration in the nationality law.</p> |
| <p>Special provisions for disadvantaged groups</p> | <p>There are some special rules for special groups:[12]</p> <ul style="list-style-type: none"> • People of Vietnamese origin living abroad can be | <p>Cambodia’s nationality law does not make special provisions for specific groups.</p> |

² A concept that seems to have been borrowed from Chinese law. see footnote 1

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| <p>Special provisions for disadvantaged groups</p> | <p>granted dual citizenship if they wish to regain Vietnamese citizenship</p> <ul style="list-style-type: none">• Displaced people living in Cambodia who suffered persecution under Democratic Kampuchea, can obtain Vietnamese citizenship under facilitated procedures that do not require application fees, proof of a command of the Vietnamese language, or proof of renouncing other citizenship.• Vietnamese women who married a foreign national but whose marriage subsequently failed would risk becoming stateless. The problem is mainly with Korean and Taiwanese marriages, as the laws of those countries require renunciation before they allow a person to take Korean or Taiwanese citizenship. Law amendments were made, in accordance with CEDAW norms, to grant these women Vietnamese citizenship in such cases. | |
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