



**DEMAND FOR GOOD  
GOVERNANCE**

**PROJECT PROPOSAL**

**Support to the Arbitration Council**

20 November 2008



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## Acronyms and Abbreviations

AC	Arbitration Council
ACF	Arbitration Council Foundation
AC/F	Arbitration Council and Arbitration Council Foundation
ADB	Asian Development Bank
AIRC	Australian Industrial Relations Commission
ALDR	Alternative Labour Dispute Resolution
APR	Annual Progress Report
AusAID	Australian Agency for International Development
AWP	Annual Work Plan
BFC	Better Factories Cambodia
CAMFEBA	Cambodian Federation of Employers and Business Associations
CBA	Collective Bargaining Agreement
CCMA	Commission for Conciliation, Mediation and Arbitration
CSO	Civil Society Organisations
DFGG	Demand for Good Governance
EU	European Union
FM	Financial Management
FMM	Financial Management Manual
GGF	Good Governance Framework
GMAC	Garment Manufacturers Association in Cambodia
IBTS	Institution-Building Training Seminar
IC	Individual Consultant
ICB	International Competitive Bidding
IDA	International Development Association
ILO	International Labour Organization
IPA	Independent Procurement Agent
IR	Industrial Relations
M&E	Monitoring and Evaluation
MEF	Ministry of Economy and Finance
Ministry	Ministry of Labour and Vocational Training
MOI	Ministry of Interior
MOLVT	Ministry of Labour and Vocational Training

MONASRI	Ministry of National Assembly-Senate Relations and Inspection
MOSALVY	Ministry of Social Affairs, Labour, Vocational Training and Youth Rehabilitation
NCB	National Competitive Bidding
NGO	Non-Governmental Organisation
NIRC	National Industrial Relations Conference
NSA	Non-State Actor
NZAID	New Zealand Agency for International Development
PAC	Project Advisory Committee
PCC	Project Collaboration Committee
PCO	DFGG Project Coordination Office at Ministry of Interior
PLO	Provincial Labour Office
PPF	Project Preparation Facility
PSA	Public Service Announcement
RAC	Representatives of the Arbitration Council
RAM	Regular Arbitrators Meeting
RGC	Royal Government of Cambodia
RNK	Radio National of Kampuchea
SAC	Secretariat of the Arbitration Council
SAG	Stakeholder Advisory Group
SI	State Institution
SSS	Single/Sole Source Selection
TA	Technical Assistance
TAF	The Asia Foundation
TAG	Technical Advisory Group
TOR	Terms of Reference
TWG	Technical Working Group
US	United States
USAID	United States Agency for International Development
WB	World Bank

## INTRODUCTION

Good governance is a critical challenge facing Cambodia in its efforts to sustain economic growth, reduce poverty and attain the Cambodia Millennium Development Goals. Accordingly, the Royal Government of Cambodia (RGC) gives prominence to improving governance in its Rectangular Strategy 2004-2008, the Governance Action Plan, and the Decentralization and De-concentration Strategic Framework. One important initiative of RGC in this regard is the planned Demand for Good Governance (DFGG) Project, which will be supported by grant financing from the International Development Association (IDA).

The overall development objective of the DFGG Project is to enhance demand for good governance in priority reform areas of Cambodia by strengthening institutions, promoting partnerships, and sharing lessons. This is to be achieved by supporting selected state institutions (SIs) engaged in DFGG through promotion, mediation, response or monitoring functions; supporting non-state actors (NSAs) to develop DFGG programs in partnership with SIs or independently; and promoting learning, awareness raising, and capacity building on demand-side governance approaches in a broader context.

The Ministry of Labour and Vocational Training (the Ministry) and the Arbitration Council (AC) are pleased to present this project proposal seeking DFGG funding to strengthen, scale up, and improve the labour arbitration system, mechanics, and services in Cambodia. Addressing labour disputes, which often can result in strikes, demonstrations or even violence, and building the capacity to resolve them expediently and fairly, are critical to improving the climate for investment, increasing economic growth and furthering social development.

This project proposal details the basis for the further development of an effective and credible institutional system of labour dispute arbitration carried out by the Arbitration Council. It aims at improving the Council's dispute resolution services and to expand these services to other parts of the country and into a broader range of industrial sectors (currently nearly all of the cases brought to the Arbitration Council come from the garment manufacturing sector in or around Phnom Penh). To this end, the Arbitration Council plans to use DFGG funds for strengthening its governance structure; providing critical training for arbitrators and staff; developing strong and broad partnerships with relevant stakeholders; implementing a targeted outreach and communication strategy, including improved media relations; and providing necessary training and capacity building for its stakeholders throughout the country. Most importantly, this project proposal provides for the development and implementation of strategies which will help the Arbitration Council to become a sustainable institution in the future.

The project proposal finds its rationale in the Joint Vision Statement of the Ministry and the Arbitration Council, issued in June 2007, cited below and attached in **Annex 1**, which sets out the key goals and guiding principles that are imperative to the further development of a mature and effective industrial relations system in Cambodia:

*Economic growth and social development with a stable investment climate based on harmonious industrial relations, stakeholder involvement, and credible, effective dispute prevention and resolution mechanisms.*

- *Dispute prevention based on workplace cooperation, dialogue and collective bargaining between workers and employers, supported by government*

- *Dispute resolution through an effective conciliation function and a credible, transparent and independent Arbitration Council*

In developing this project proposal, the Ministry and the Arbitration Council have been working closely together through a Technical Working Group (TWG), which comprised representatives of both institutions and which convened frequently. The project proposal is also based on inputs from a Technical Advisory Group (TAG), composed of key stakeholders, which provided advice and feedback to the TWG. Participants in the TAG included representatives from employer associations, union federations, the Ministry, Arbitration Council and Arbitration Council Foundation (ACF), the International Labour Organization (ILO) and civil society. Feedback from stakeholders was also collected through other consultation meetings. A brief description of this participatory planning process and a list of members of the TWG and participants in the TAG can be found in **Annex 2**.

As noted above, DFGG funding will permit the Arbitration Council to continue to carry out its core mandate and to expand its activities and services in both scale and scope, and thus to further promote, mediate and respond to demands for good governance in Cambodia. Project activities would start in 2009 (with some pre-implementation activities starting in 2008) and would be scheduled to be carried out over a period of four years. Proposed project activities and budget are detailed below.

## 1. SECTOR AND INSTITUTIONAL BACKGROUND

### *Historical background: the call for a new culture of industrial relations*

Cambodia's road to recovery from decades of conflict has been paved with exports, jobs and growth. Over the past decade, the country has become increasingly integrated into the global economy with strong growth in the industrial sector, particularly in garment manufacturing. In 1995, this sector employed 20,000 workers; currently, there are approximately 340,000. The country's tourism industry is also re-emerging, with over 1.7 million international arrivals in 2006. Cambodia expects to earn US\$1.2 billion in tourism revenues in 2007.

Increased economic growth and investment means more jobs in more enterprises – but also more room for disputes between managers and workers. In 1997, 17 collective disputes were reported to the labour ministry; by 2005, this figure had risen to 155. These disputes, often resulting in strikes, demonstrations and even violence, not only affect the climate for investment in Cambodia, but also jeopardise social development.

To accompany its transition to a market economy, Cambodia needed a new culture of industrial relations. The Government has taken important steps towards this goal, including revising its Labour Law<sup>1</sup> and ratifying all eight of the International Labour Organization's fundamental conventions. Private sector employment in Cambodia is regulated by the Labour Law, and the Government has given official mandate to the Ministry through a sub-decree<sup>2</sup> for *inter alia* enforcing the Labour Law and resolving labour disputes between workers and employers.

To this end, Cambodia needed a credible and efficient dispute prevention and settlement system that had the confidence of all the parties. Without it, labour disputes were likely to continue escalating and economic and social progress was unlikely to be sustainable. With the end of the quota system for textiles approaching<sup>3</sup>, it became even more important for Cambodia to enhance its positive market image and to ensure increased labour productivity by effectively dealing with disruptive industrial conflicts. With this in mind, in 2003 the Ministry of Labour established the Arbitration Council, pursuant to the Labour Law of Cambodia, with support from employer associations and union federations and assistance from the ILO. In 2004, the Ministry of Labour developed a National Strategy on Labour Dispute Prevention and Settlement in Cambodia; the Strategy was considered to be a blueprint for Cambodia's industrial relations system and has been endorsed jointly by the Ministry, employer associations and union federations. And in 2005, the Ministry restructured its departments that are responsible for inspection and dispute resolution services in order to more efficiently handle industrial relations challenges.

The Ministry's Department of Labour Inspection is responsible for disseminating and clarifying industrial relations related law and regulations, and inspecting and monitoring for legal compliance.

The Department of Labour Disputes is tasked with conciliating both individual and collective labour disputes. In accordance with the law, collective disputes which the Ministry cannot resolve through conciliation are forwarded to the Arbitration Council for mandatory arbitration. If the Council is not able to resolve a dispute successfully, the law provides the parties with

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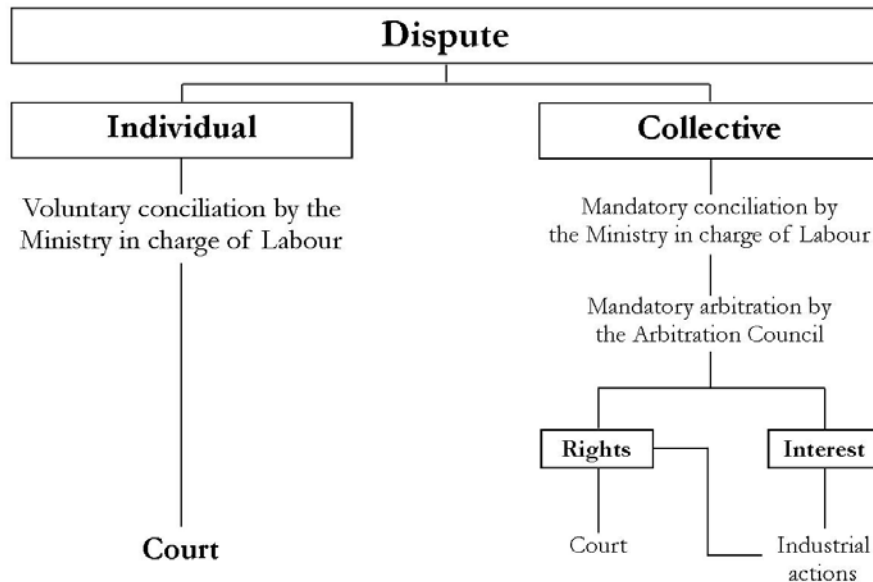
<sup>1</sup> Labour Law of 1997.

<sup>2</sup> Subdecree 52 ANK.BK.

<sup>3</sup> The quota system for textiles ended with the expiry of the Multi-Fibre Agreement on 31 December 2004.

recourse to the courts or to industrial action (strikes and lock-outs). An overview of this labour dispute resolution process is illustrated in **Figure 1** below.

**Figure 1. Overview of Labour Dispute Resolution Processes**



### ***The Arbitration Council***

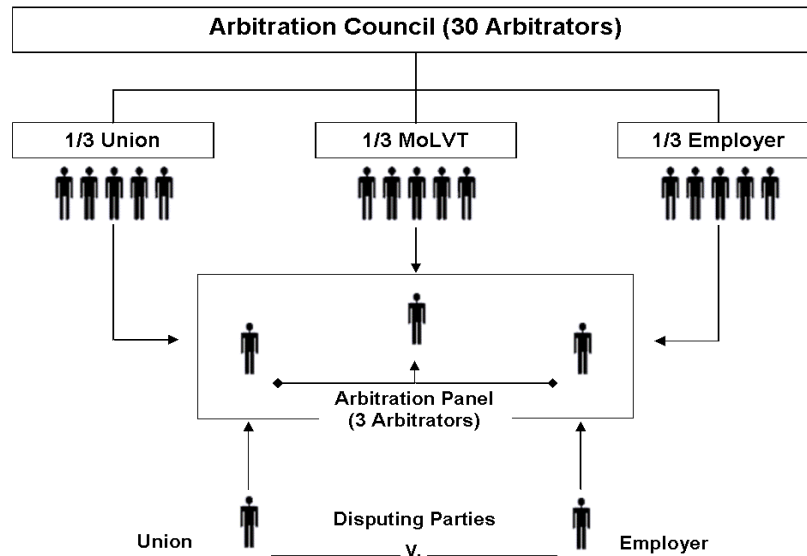
The Arbitration Council is provided for in the Labour Law and related *prakas* of the Ministry.<sup>4</sup> Its legal status is that of a national state institution with quasi-judicial authority. That is, the Arbitration Council is a tribunal established according to Cambodian statutes which endow it with legal and equitable decision-making authority with regard to labour dispute cases. The Council is mandated to resolve labour disputes through voluntary mediation and mandatory arbitration of collective disputes which cannot be resolved through prior conciliation by the Ministry’s Department of Labour Disputes. These disputes are either ‘rights disputes’, related to existing rights under the law, contract or collective bargaining agreement (CBA) or ‘interests disputes’, related to future benefits (mostly in the context of collective bargaining). The collective nature of these disputes means that such disputes could threaten the effective operation of an enterprise or jeopardise social peace.

One of the keys to the Arbitration Council’s success lies in its tripartite structure: it is comprised of 30 part-time arbitrators nominated by unions, employer organisations, and the Ministry. The Arbitration Council’s tripartite structure is replicated at the level of each particular dispute. Once a case is referred to the Council, an arbitration panel is formed comprising three arbitrators, two of whom are selected by the parties themselves (from the respective lists of union- and employer-nominated arbitrators), and who, in turn, select the third arbitrator (from the neutral list of Ministry-nominated arbitrators). Arbitrators receive a modest honorarium for each case that they are selected to hear.

<sup>4</sup> Prakas 99 MOSALVY – 2004 (supersedes Prakas 338 MOSALVY - 2002), hereinafter referred as the “Prakas on the Arbitration Council”.

The composition of the Arbitration Council and its arbitral panels is illustrated in Figure 2 below.

**Figure 2. Composition of the Arbitration Council**



***The arbitration process: How the Arbitration Council works***

When a labour dispute arises, if the parties are not able to settle the matter among themselves at the enterprise level, Cambodian law provides that the Ministry of Labour will attempt to conciliate the dispute. If the Ministry’s conciliator is unsuccessful in assisting the parties to resolve the dispute, the conciliator writes up a Non-Conciliation Report, which is forwarded to the Arbitration Council via the Secretariat of the Arbitration Council (SAC). The SAC is composed of (currently three) Ministry officials co-located at the Arbitration Council who carry out specific clerical and registry tasks – similar to the functions performed by a tribunal registry or court clerk – in accordance with law and *prakas*. It is at this point that the Arbitration Council process begins, following the steps outlined broadly below:

- Referral of dispute, appointment of arbitral panel, scheduling and procedural matters  
The SAC receives the case from the Ministry’s Department of Labour Disputes. The SAC then registers the case; facilitates the selection of the arbitration panel members; schedules and notifies parties of the arbitral hearing date; and provides them with information on procedural matters.
- Preliminary discussions and interim orders  
If any industrial action (such as a labour strike or lock-out) is in effect at that time, the panel can invite the parties to attend an informal meeting to inform them of the Arbitration Council process and encourage them to use it to resolve their dispute; the panel can also issue an interim order, known as a Return-to-Work Order, directing that the industrial action cease so that the Arbitration Council process can proceed.
- Mediation and arbitration

On the hearing date, the panel offers the two parties an opportunity to resolve the dispute via attempted mediation by the panel. If the parties decline the panel's offer, or if all points in dispute are not able to be successfully mediated, then the panel proceeds with formal arbitration. The arbitrators inform the parties of their rights (including their options for binding or non-binding arbitration) and the Arbitration Council procedures for arbitration. During the arbitration proceedings, the arbitrators assess the parties' claims and arguments and examine any witnesses or documentary (or other) evidence related to the case.

- Issuance of arbitral award

After the hearing, and within 15 days of receiving the case, the panel issues their decision on the case in the form of an arbitral award. Arbitral awards follow a prescribed format, setting out the issues in dispute; the panel's finding of facts; the relevant law applicable in the dispute; and the panel's reasoning for the final decision and its orders.

- Parties' recourse under binding vs. non-binding awards, enforceability

If the parties opted for binding arbitration, the award will be immediately enforceable. If they did not opt for binding arbitration, then they have eight calendar days to examine the award and, if they so choose, to file an objection via the SAC. If either party files an objection (also known as an opposition), the award is not legally enforceable: this triggers the parties' rights to take industrial action or, in the case of a rights dispute, to proceed to the courts. If no objection is filed within the eight-day period, the award automatically becomes binding and enforceable.

This process and the time limits for the various steps (as specified by the Labour Law and related *prakas*) are summarized in **Figure 3** below.

**Figure 3. Timeframe for Conciliation and Arbitration of Collective Labour Disputes**

<b>Maximum Time Limits</b>		
<b>Process</b>	<b>Interim Steps</b>	<b>Total</b>
<b>Conciliation</b>	Collective dispute reported to labor Inspector (Art. 303) 48 hours	<b>19 days</b>
	Minister appoints conciliator (Art. 304) 15 days	
	Conciliation agreement/report (Art.305) 48 hours	
	Report sent to Minister (Art. 308)	
	Referral to Arbitration Council	<b>3 days</b>
<b>Arbitration</b>	Appointment of Arbitration Panel (Art. 310) 3 days	<b>15 days</b>
	Arbitration Panel meets (Art. 310)	
	Decision by Arbitration Panel (Art. 313) Immediate	
	Notification of Minister Immediate	
	Notification of parties	
<b>Opposition</b>	Parties have opportunity to lodge opposition	<b>8 days</b>
		<b>45 days</b>

Once an award becomes enforceable the Labour Inspectorate can assist in its implementation. If either party refuses to abide by an enforceable award, the other party can ask the court to enforce the award; the Arbitration Council itself has no control over implementation of its decisions. In the absence of a Labour Court in Cambodia, the common courts have jurisdiction over labour (rights) disputes. In practice, however, parties rarely take their cases to the courts as they have little trust in the Cambodian justice system because of its lack of transparency, its unpredictability and its tardiness.<sup>5</sup>

One of the ways that the Arbitration Council addresses these issues is through the publication and dissemination of all arbitral awards and decisions (including Return-to-Work and other interim orders). All awards and decisions are publicly available on the Arbitration Council website and from the SAC, and are published and disseminated in hardbound editions – making the Arbitration Council the sole legal body in Cambodia that consistently publishes its decisions.<sup>6</sup> This allows parties (and potential parties) to see that the Arbitration Council decides issues in a consistent manner, and respects its own previously held interpretations of law. One consequence of such transparency is that it would be much harder for the Arbitration Council process to be improperly influenced or corrupted, as the reasoning upon which decisions are based is stated explicitly in the awards. Publication of awards also signals to potential parties how the Arbitration Council interprets the law, and allows parties to monitor and respond to the Arbitration Council's evolving interpretations of the law, as well as encourages parties to analyse how the Arbitration Council might rule in a given dispute; this in turn encourages the early settlement of disputes.

### *The Arbitration Council's track record*

It is critical for parties and stakeholders that collective labour disputes be settled fairly and expediently so as to limit potential damage to the productivity and profitability of the enterprise and to Cambodia's economy as a whole, as well as to the future relationship between employer and workers. As noted above, the Arbitration Council answers these demands for a speedy and transparent process by issuing well-argued decisions based on the law within only a few weeks. Its efficiency, competence and credibility have been widely acknowledged nationally and internationally<sup>7</sup>. Therefore, as the first tribunal of its kind in Cambodia, the Arbitration Council

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<sup>5</sup> As of 2004 [o]nly one in six of Cambodia's 117 judges has a law degree, and only one of the nine Supreme Court judges. Only 10% of public prosecutors has a law degree. Thus the judiciary inherited by democratic Cambodia is ill-equipped to do its job, conditioned to being subservient to the executive branch, poorly paid and allegedly corrupt'. World Bank, *Cambodia at the Crossroads: Strengthening Accountability to Reduce Poverty* (November 2004). A more recent study by the World Bank notes the following assessment of the judicial system in Cambodia: 'A review of the literature on legal and judicial reform in Cambodia reveals a limited but informative body of empirical research. Survey research conducted in 2003 (CAS) showed that Cambodians perceived only a slight improvement in the performance of the courts over the period of 1998 through to 2003. More strikingly, the same survey indicated that, although taking into account improvements, Cambodians retained little or no faith in the courts as institutions of justice. Similarly, respondents identified judges and prosecutors as the public officials whom they were least likely to trust. These findings support other research and expert opinions, which stress the continued weaknesses of the Cambodian judicial system, including endemic corruption, lengthy delays before hearings, difficulties with the enforcement of judgments and a shortage of legal aid, all of which present major barriers to justice for the average Cambodian.' World Bank, *Justice for the poor? An exploratory study of collective grievances over land and local governance in Cambodia* (October 2006).

<sup>6</sup> Cambodian courts do not publish their decisions, and copies of court rulings are generally made available only to the parties.

<sup>7</sup> The content of ten awards issued by the Council was reviewed by an independent expert, Commissioner Michael Gay of the Australian Industrial Relations Commission. He concluded that "[t]he decisions considered ... are ... lucidly argued, with the statutory scheme applied to the facts as declared. No superfluity or gratuitous findings are evident. The decisions are brief and developed around a framework of background narrative, relevant law, claim and findings." He finalises his remarks with the following statement: "When one considers the short period of the

is seen as a prototype institution for justice which has the capacity to play a significant role in the ongoing push for legal and judicial reform in Cambodia.<sup>8</sup>

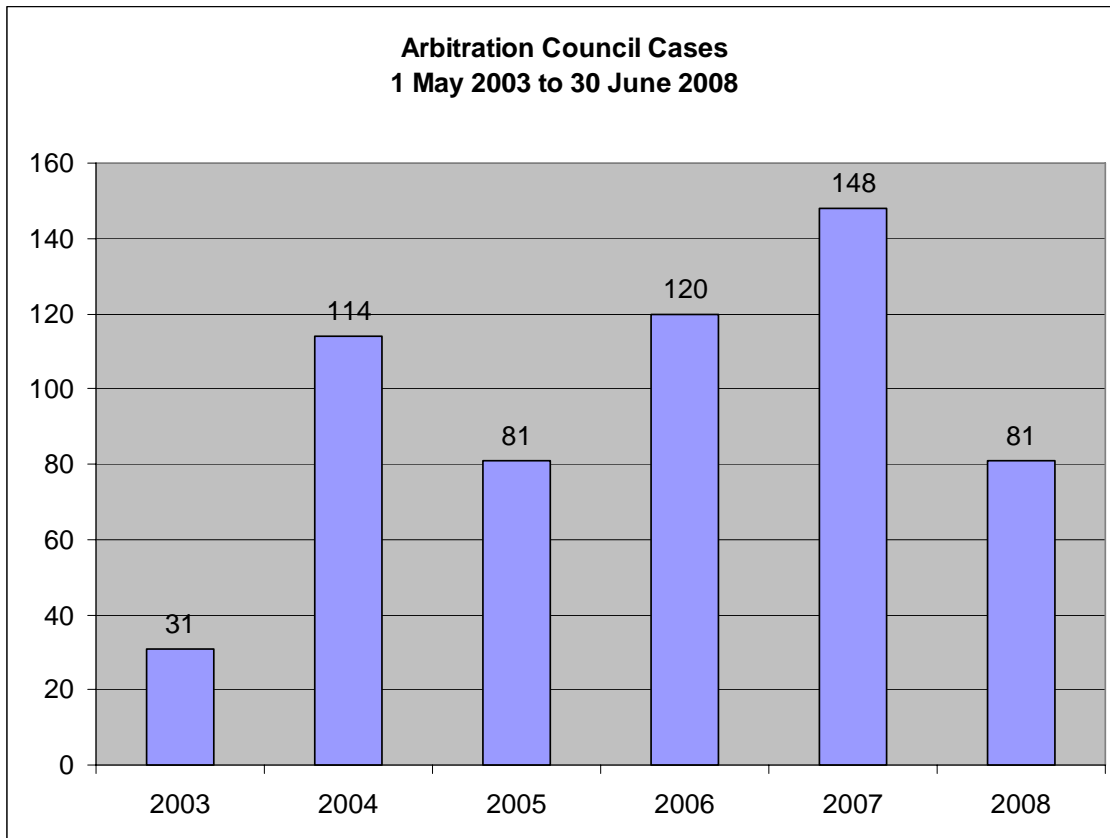
In just over five years of operations, the Arbitration Council's records show that it received 575 collective labour disputes. These cases involved enterprises employing a total of more than 290,000 workers, the large majority of them women. The yearly caseloads for the period of 1 May 2003 to 30 June 2008 are shown in **Figure 4** below. As may be expected, the caseloads have generally increased over time, from under four cases per month in 2003 to over 13 cases per month in the first half of 2008.

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Council's existence the achievement represented by this body of decisions is monumental." M. Gay, Commissioner, Australian Industrial Relations Commission, *Quality assessment of awards of the Arbitration Council* (May 2005), p. 4.

<sup>8</sup> See for example recent reports by UNDP and USAID; "The Arbitration Council has very clear procedures and time limits... The arbitrators are independent, have a high level of professional training, and enjoy prestige among the legal community. None of the workers interviewed complained of corruption in the Arbitration Council." UNDP, *Pathways to Justice* (Phnom Penh, 2005) at 13. "The one bright light in the Cambodian commercial dispute resolution landscape is the Labor Arbitration Council, which has authority to resolve collective labor disputes. The Arbitration Council is only in its second full year of operation, but is gaining the respect of both labor and employers, and has already caused a reduction in the number of unauthorized strikes and a significant decrease in the time it takes to resolve a labor dispute. The success of the Labor Arbitration Council makes it a promising regional model." Booz Allen Hamilton, *Southeast Asia Commercial Law & Institutional Reform and Trade Diagnostics – Cambodia* (USAID: forthcoming 2007) at 55. "The **Labor Arbitration Council**, along with its supporting Arbitration Council Foundation, is perhaps the most successful commercial dispute resolution body in Cambodia, and offers an inspiring best practice for the region." Id at 60.

Figure 4. Arbitration Council Caseload



Source: Arbitration Council data

Notes: - 2003 is a partial year (eight months: AC operations started on 1 May 2003).

- 2008 is a partial year (six months: cases received through 30 June 2008).

Overall, the large majority of cases brought to the Arbitration Council have been resolved successfully, often through mediated agreements. A successful outcome is considered to be one where the Council has either:

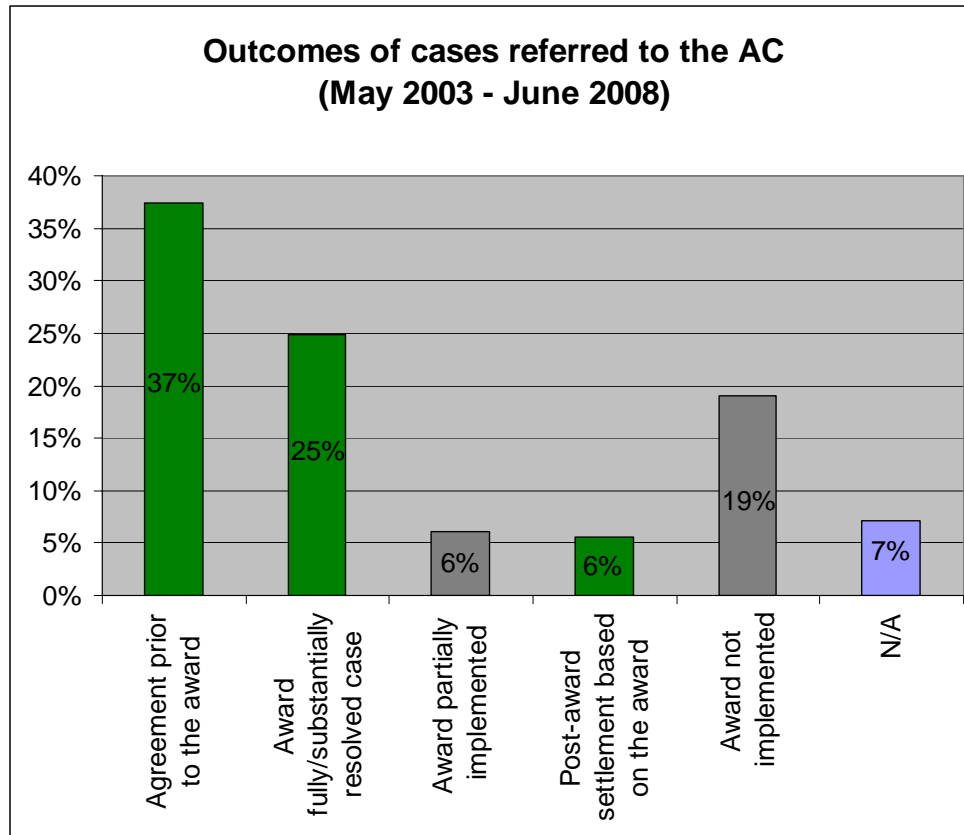
- a) facilitated an agreement between the parties to settle the dispute (37% of all cases received from 1 May 2003 to 30 June 2008); or
- b) issued an award which (even if it was a non-binding award that was opposed in a timely manner) has been fully or substantially implemented to resolve the dispute (25%); or
- c) issued an award which (although it was opposed) has formed the basis for a post-award settlement between the parties and which resolves the dispute (6%).

A negative outcome is one where the arbitral award has either not been implemented (19%) or only partially (6%). (Implementation is considered to be partial where the arbitral award comprises decisions on multiple issues, and a party has implemented only one or several of these decisions.)

Under the criteria defined above, the Arbitration Council had a success rate of 68% in the period May 2003 to June 2008, as shown in **Figure 5** below. The category 'Not applicable' (7%) in the figure below includes cases where the Arbitration Council rejected a claim on jurisdictional

grounds (e.g., the claim was improperly brought before the Arbitration Council; or the complainant lacked standing to bring the claim), procedural grounds (e.g., the moving party failed to take part in the proceedings), or where follow-up was not possible (parties could not be contacted due to bankruptcy or other reasons).

**Figure 5. Outcomes (Percentage) of Cases Referred to the Arbitration Council<sup>9</sup>**



68%	Positive outcomes
25%	Negative outcomes
7%	Not applicable

### ***The Arbitration Council Foundation***

As noted above, the Arbitration Council currently comprises thirty arbitrators. However it does not itself employ any support staff. Initially, and on an interim basis, the ILO, through its Labour Dispute Resolution Project, carried out the necessary managerial and technical functions for the Arbitration Council. However in order to provide for a permanent management structure for the Arbitration Council, and as a first step in making the Council a self-sustaining organisation, the

<sup>9</sup> Latest available data as at 30 June 2008. Outcomes are determined after 60 days from the Arbitration Council decision, and so this data covers all cases through Case 49/08. Source: Arbitration Council Foundation.

Arbitration Council Foundation (ACF) was established in 2004 by the arbitrators of the Arbitration Council, with the support and endorsement of the Ministry of Labour, union federations and employer associations, and with the assistance of the ILO.

The ACF is a non-government entity, which has been registered by the Arbitration Council with the Ministry of Interior. The ACF is specifically mandated by its statute<sup>10</sup> to:

- a. Support and facilitate the work of the Arbitration Council;
- b. Enhance the independence, reliability and efficiency of the Arbitration Council's work; and
- c. Develop individuals and institutions to resolve labour dispute.

The Arbitration Council has oversight of the ACF through the election of one arbitrator from each list (union-nominated, employer-nominated and neutral list) to be Representatives of the Arbitration Council ("RAC"). The three arbitrator members of the RAC sit on the five-person ACF Board of Directors, where they form a majority.

Over the past few years, the ACF has gradually taken over all the managerial and technical functions from the ILO.<sup>11</sup> Such functions cover the gamut from operational services (including day-to-day managerial and administrative tasks such as the acquisition and maintenance of supplies, equipment and property), to broader responsibilities such as financial control and management (including fundraising); planning, critical capacity development; public relations and raising stakeholder awareness and understanding of the Arbitration Council; and legal research and development of legal tools for the arbitrators.

Two important considerations informed the establishment of the ACF as a permanent management structure for the Arbitration Council (as compared with developing and enlisting the Ministry itself or some other regulated agency to take over such functions). Firstly, since the arbitrators at the Arbitration Council oversee the ACF via their majority on the Board of Directors, the establishment of a foundation helps to ensure the independence of both the ACF and the Arbitration Council from competing demands of stakeholders or other third parties. Secondly, a foundation enables the three stakeholder groups equal representation in the management of the Arbitration Council through the election of arbitrators from the lists of the three stakeholder groups (employers, unions and government) to the foundation's Board of Directors. This was particularly important in view of the historical mutual distrust between the three stakeholder groups.

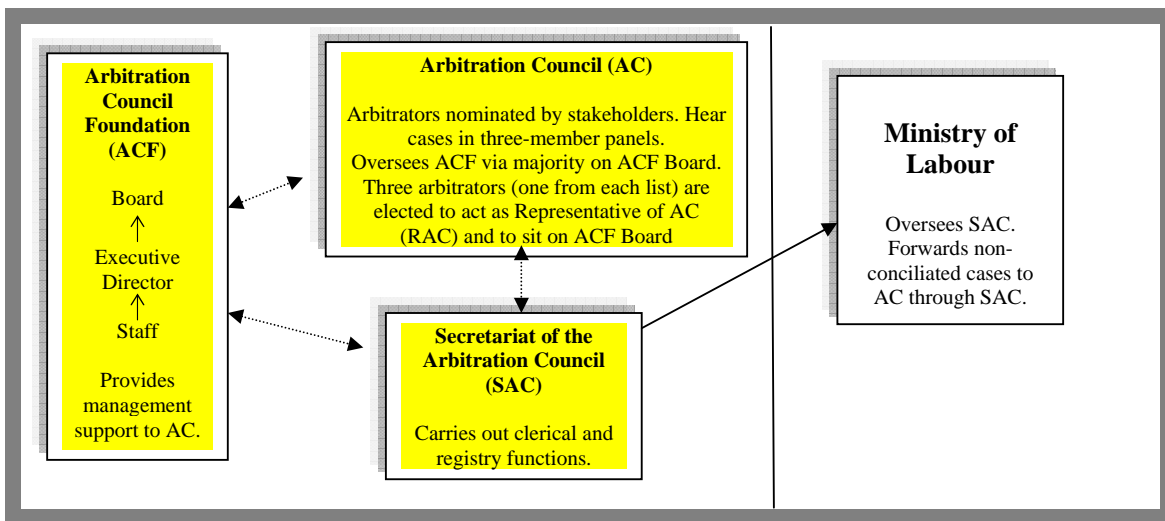
Therefore, the institutional arrangement among the Ministry, the Arbitration Council and the ACF ensures that the Arbitration Council remains a credible and independent forum for the resolution of labour disputes. This arrangement is shown in **Figure 6** below.

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<sup>10</sup> Statute of the Arbitration Council Foundation, registered with the Ministry of Interior by letter no. 121 SCN dated 2/09/2004 (hereinafter "ACF Statute").

<sup>11</sup> ILO, in conjunction with the ACF, will continue to have a role with respect to facilitating the selection and recruitment of arbitrators; see Section 4, Module 1.1, below. In addition, the ACF Board of Directors has proposed amending the ACF Statute in order to provide a non-voting seat for the ILO on the ACF Board of Directors.

**Figure 6. The Arbitration Council, ACF and the Ministry**



In June 2007, the Ministry and the ACF memorialised and clarified the respective roles of the SAC and ACF by executing the *Agreement Between Department of Labour Disputes and Arbitration Council Foundation on the Roles of Secretariat of the Arbitration Council and Arbitration Council Foundation*. The Agreement is attached in **Annex 3**.

### *The ACF's structure and staffing*

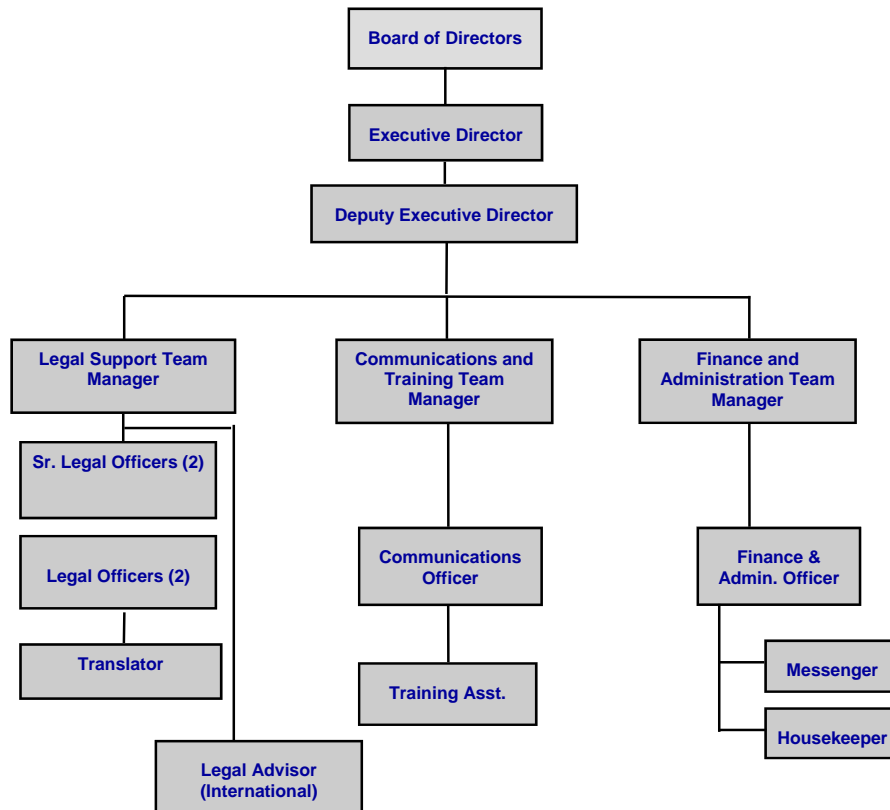
The day-to-day management of the ACF is under an Executive Director, who reports to the Board of Directors, and a Deputy Executive Director<sup>12</sup> who is responsible for managing one of the functional units as well as assisting the Executive Director in the overall management of the ACF.<sup>13</sup> In addition to its Executive Management, in 2008 the ACF budgeted for 15 full time staff who work in three different units: the Legal Support Team (8 staff); the Communications and Training Team (3 staff) and the Finance and Administration Team (4 staff). Each unit is headed by a manager who reports to the Executive Director and the Deputy Executive Director. In addition, the ACF is in the process of recruiting a Monitoring and Evaluation Coordinator to oversee monitoring and evaluation activities and to assist with reporting required under the project. The position is expected to be filled by the end of 2008.

**Figure 7** below shows the ACF's current structure in more detail.

<sup>12</sup> The Deputy Executive Director position was created in 2007 because of the increased workload over the previous few years; currently the Deputy Executive Director is also the Legal Support Team Manager. The executive management role includes drafting and implementing policies and systems for carrying out the ACF's core activities (including legal support, capacity building and professional development of arbitrators, and stakeholder outreach and training); organisational administration; financial management; monitoring and evaluation; and donor reporting.

<sup>13</sup> International Legal Advisors within the Legal Support Team also provide assistance to ACF executive management, as may be appropriate.

**Figure 7. ACF Structure**



The heart of the Arbitration Council’s activities is formed by its direct dispute resolution work: mediating and arbitrating labour cases. The ACF supports this work through its Legal Support Team (LST). This full-time team works hand in hand with the part-time arbitrators, providing the arbitrators with legal research and support, tracking jurisprudence and assistance in drafting the arbitral awards. As a result, the LST members have extensive knowledge of the jurisprudence of the Arbitration Council and its interpretation of the Labour Law: what claims have been brought, how they have been decided and the legal basis for the decisions. The LST is also involved in capacity building and the development of tools and systems for legal and industrial relations research (such as benchbooks and a legal research database) for the arbitrators and the SAC, and in the ACF’s capacity building and training program for stakeholders.

Organising capacity building and training programs is the primary responsibility of the Communications and Training Team (CTT). It works together with the LST in order to design, develop and implement training activities and tools that will provide accurate information on the Arbitration Council process. During 2007 and the first half of 2008, the CTT carried out over 25 direct training activities, involving over 1300 participants, primarily to explain the Arbitration Council and the process for bringing claims and resolving labour disputes. Many of these participants were representatives of employers or unions, so the resulting impact has presumably been even greater than the direct number reached. The CTT is also responsible for outreach and dissemination of publications, media relations and promotion.

Finally, the Finance and Administration Team takes care of all of ACF’s matters concerning finances and administration, including accounting; the preparation of operating budgets, financial

reports and forecasts; maintenance of all financial and administrative records; audit planning; procurement of goods and services; asset and facilities management; and human resources management.

All ACF staff are recruited, hired and work subject to a range of established policies and procedures, which provide extensive guidance to staff with respect to workplace performance and attitude. These include the ACF Workplace Manual; Financial Manual; Administration Manual; Fund-Raising policy; Staff Development and Performance policy; Confidentiality policy; Conflict of Interest policy; Workplace Harassment policy; Access to Case Files policy; Computer, Internet and E-mail policy; and Travel Policy.

ACF (and SAC) staff positions in 2008 are shown in the table below.

**Table 1. Number of ACF and SAC staff positions – as at June 2008**

	Unit	Position	Number	Number per Unit	Number Total
<b>ACF</b>	Executive Management	Executive Director	1	2	17 <sup>14</sup>
		Deputy Executive Director	1		
	Legal Support Team	Legal Support Team Manager	1	8	
		Senior Legal Officers	2		
		Legal Officers	2		
		International Legal Advisors	2		
		Translator & Liaison Officer	1		
	Communications and Training Team	Communications and Training Manager	1	3	
		Communications Officer	1		
		Training Assistant	1		
	Finance and Administration Team	Finance and Administration Manager	1	4	
		Finance and Admin Officer	1		
		Driver/ Messenger	1		
Housekeeper		1			
<b>SAC</b>	Management	Head of the Secretariat	1	1	3
	Secretariat	Officers	2	2	

The budget for all Arbitration Council operations (including ACF and SAC costs) is \$475,146 in 2008. Since 2003, the majority of the Council's funding has been provided by the governments of the United States (US Department of Labor and USAID) and New Zealand (NZ AID); this support has been channeled via the ILO's Labour Dispute Resolution Project to ACF.<sup>15 16</sup> ACF

<sup>14</sup> Currently there are 16 staff employed to fill 17 positions: the Deputy Executive Director is also undertaking the duties of the Legal Support Team Manager.

<sup>15</sup> ACF became operationally independent at the start of 2006. Prior to this point, funding was channelled by the ILO via the Community Legal Education Center's Arbitration Council Support Project.

has also received direct support from the Dutch NGO ICCO<sup>17</sup> and Levis Strauss & Company and the Levi Strauss Foundation.<sup>18</sup> Additional support has been provided by the Australian government, primarily in the form of technical assistance from the Australian Industrial Relations Commission and AusAID contractors.<sup>19</sup> The Arbitration Council also receives limited in-kind support from the Royal Government of Cambodia. Contributions in kind primarily consist of the Ministry of Labour and Vocational Training personnel who have been assigned to staff the Secretariat of the Arbitration Council.<sup>20</sup>

In 2007, the ACF Board of Directors selected KPMG to conduct the first financial audit (covering the period 1 June 2005 to 31 December 2006), which gave positive results. The second financial audit (covering the period 1 January to 31 December 2007) was carried out by KPMG in April 2008 – again, with positive results. A copy of the KPMG audit reports are attached as **Annex 4**.

### *The Arbitration Council: moving forward under the DFGG Project*

As noted above, more than two-thirds of the cases brought to the Arbitration Council are being resolved successfully, often through mediated agreements between the parties. This is a remarkable achievement in a country where the judicial system is weak, the industrial relations system still immature, the capacity of unions and employers in bargaining and settling disputes low and where labour relations are barely ‘legalised’. The Arbitration Council’s success has been widely acknowledged nationally and internationally and has led to strong support from the tripartite stakeholders.<sup>21</sup> It has also aroused increasing interest from international buyers in the

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<sup>16</sup> In 2008, ILO channeled approximately \$325,950 to ACF from US and NZAID sources.

<sup>17</sup> ICCO support has included the provision of technical assistance (placement and direct funding of an international advisor for the three-year period 2006-2008) and financial support earmarked for capacity building (approximately €184,000 for the same period).

<sup>18</sup> Levi Strauss & Co. provided around \$12,000 in 2005; the Levi Strauss Foundation has granted \$44,000 for the two year period of 2008-2009.

<sup>19</sup> AusAID has provided technical assistance through a number of programs, including Australian Youth Ambassadors for Development, Australian Volunteers International, Australian Business Volunteers and Volunteering for International Development from Australia.

<sup>20</sup> To date, the staff of the Secretariat of the Arbitration Council has consisted of one Head of Secretariat and two Secretariat officials. During the DFGG Project period, as a result of expansion of Arbitration Council services, it is proposed that the Secretariat staff increase in size to cope with the increased caseload. For all such staff, the Ministry of Labour and Vocational Training continue to pay the staff salaries. The Arbitration Council’s practice to date has been to supplement this salary with further funds; during the DFGG Project, it is proposed that such supplements be paid out of the expected stakeholder contributions rather than IDA funds.

<sup>21</sup> During a survey, conducted among stakeholders by ILO in August 2005, the Arbitration Council was credited with having improved the situation with regard to labour dispute resolution in Cambodia to *a great to very great extent* and with having improved compliance with the labour law in Cambodia to *a moderate to great extent*. The survey indicated a high degree of satisfaction with the establishment of the Arbitration Council. ILO, *Research Report, Assessment by Stakeholders of Labour Dispute Prevention and Resolution Capacity in Cambodia* (August 2005). This stakeholder view is shared by independent analysts. Researchers for DFID and the World Bank analysing legal reform found “few of the reform efforts we examined to be credible” and that “[e]ven cursory examination of the reality behind the rhetoric reveals neither substance nor political will”. As an exception, however, it notes that “[s]ome early successes in the Arbitration Council suggest that structures which are outside the main justice system, especially with internal checks and balances (e.g. union and business involvement as well as government) may have more success” and concludes that “[t]his example could be supported itself in future, or could be used as a template for other efforts”. A. Burke and N. Vanna, *Options for increasing social accountability in Cambodia*, DFID and the World Bank (15 February 2005), p. 14. Similarly, a USAID report states that “[w]here Government interests are not unduly affected, or where international pressure has been relatively strong, donors and other international organizations have achieved some modest successes in eliciting reforms”, to conclude that “[u]nder the Industrial Arbitration Council established under ILO sponsorship . . . , arbitrators are independent and sound decisions are being reached.” USAID/Cambodia, *Cambodian Corruption Assessment*, (May-June 2004), p. 9. An independent review of the Arbitration Council commissioned by the ILO in 2005 concluded that “[i]t is clear

garment industry: consistent with the trend toward corporate social responsibility within international companies concerned with the industry's social impact and the public image of their brands, the Arbitration Council has become an important tool in verifying labour law compliance because it makes its decisions publicly available and because it has become an independent and credible forum to address violations of the labour law. ILO's *Better Factories Cambodia* for example, which is supported by the government, employers and unions and which works closely with international buyers, monitors and reports on working conditions in more than 200 Cambodian garment factories according to national and international standards, including their compliance with awards of the Arbitration Council.

Though the success and effectiveness of the Arbitration Council are undeniable, the Council faces three key challenges, which it plans to address through the DFGG Project.

First, the reach of the Arbitration Council is largely limited to only one sector (garment sector, from where currently 94% of the cases originate) and to one region (greater Phnom Penh area<sup>22</sup>, from where 96% of the cases originate). While this is understandable in view of the fact that the garment industry is Cambodia's biggest industrial sector, concentrated in and around Phnom Penh, economic activities have in recent years expanded outside the garment sector and into new regions. The country's booming economy, partly resulting from a remarkable increase in foreign investment over the past few years,<sup>23</sup> has led to increased investments in other sectors and regions, such as the tourism industry, which is largely concentrated in and around Siem Reap in northern Cambodia. Other promising sectors include the oil, natural gas and mineral sector, the construction sector, and agriculture (plantations). These recent economic developments and an assessment amongst key stakeholders indicate that there will be increased demand for the Arbitration Council's services from these new sectors and regions. A primary goal of the DFGG Project is to enable the Arbitration Council to meet this demand by increasing its service provision in scale and scope. The necessary pre-conditions for such an expansion, such as the mobilisation of unions and employers, are discussed in detail in Section 4 below.

A second challenge concerns the Arbitration Council's success rate. While a success rate of 68% (including mediated agreements) is promising, it also means that between 25% and 32% of the cases remain unresolved.<sup>24</sup> In particular it would be desirable to improve the 49% rate of implementation of arbitral awards<sup>25</sup> as this would further enhance the credibility of the

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that the Arbitration Council is considered a resounding success. The tripartite structure of the Council, the independence and neutrality of the arbitrators, the level of transparency provided in the structure and publication of the Council's awards and the speedy decision-making process of 15 days, have combined into making the Arbitration Council a highly credible and the most well respected (quasi) judicial body in Cambodia at this time. Its functioning is praised widely by local stakeholders and international observers alike and it is frequently cited as a model for wider judicial reform.' Lejo Sibbel, *Arbitration Council Review* (ILO: Phnom Penh, 2005). Finally, in its newsletter dedicated to commercial arbitration in Cambodia, the IFC highlights the Arbitration Council as "one of Cambodia's most successful legal reforms" and "highly effective at resolving labour disputes". It goes on to say that "the Arbitration Council demonstrates that it is possible to establish a high quality ADR institution in Cambodia that is effective and corruption-free ..." IFC/MPDF *Business Issues Bulletin*, No. 14, August 2007.

<sup>22</sup> Municipality of Phnom Penh and Kandal Province.

<sup>23</sup> The annual growth rate for Cambodia was 10.5% in 2006, slowing somewhat to 9.6% in 2007. Foreign investment increased from \$121 million (2004) to \$600 million (2007). World Bank, *Cambodia: Key Indicators* (April 2007) and *East Asia Update* (April 2008).

<sup>24</sup> Figure 5 above on outcomes show that 7% of the cases fall into the "N/A" category. It is not clear how this figure should be considered with respect to a successful resolution.

<sup>25</sup> See Figure 5. According to SAC and ACF records, awards have been issued in **63%** of the total number of cases. An award is considered to be implemented a) if it has been fully or substantially implemented to resolve the dispute (25% of total number of cases); or b) if it (although opposed) has formed the basis for a post-award settlement

Arbitration Council. Though the Arbitration Council itself has no direct control over implementation of its decisions, and the causes of non implementation are both nuanced and varied, it anticipates several actions to address this issue. To this end, DFGG funds would be used to help further increase the success rate, by:

- a. strengthening cooperation with social partners to promote collective bargaining agreements that provide for binding arbitration by the Arbitration Council;
- b. strengthening the mediation function at the Arbitration Council through a designated mediator pilot project and training programmes for arbitrators to further develop their mediation skills;
- c. improving the capacity of stakeholders' to engage in the arbitral process effectively and raise their awareness of the benefits of binding arbitration through targeted training sessions; and
- d. continued publication of arbitral awards, allowing third parties to monitor compliance with awards

Proposed actions are described in further detail in Section 4, *Detailed Project Description* and Section 13, *Risk Assessment and Mitigation*.

A third key challenge is to make the Arbitration Council a sustainable institution, with increased capacity to deliver its services to Cambodia's citizens upon completion of the DFGG Project. To this end, DFGG funds would be used obtain expert advice (for example, via Institution Building Training Seminars) and to develop and implement strategies to produce a wide range of outcomes and impacts, lasting beyond the life of the DFGG Project, in the areas of partnerships, branding and awareness raising, capacity building, development of legal tools and material resources. In addition, the success of the Arbitration Council ultimately depends upon an effective collaboration between the Arbitration Council, the ACF, the Ministry of Labour and employer associations and union federations. Ensuring the Arbitration Council's institutional and financial sustainability beyond the implementation timeframe of the DFGG Project is thus a primary goal of this project proposal.

In order to be able to meet the above challenges, the Arbitration Council will need to increase and expand its activities and services, while also enhancing the quality and effectiveness of its work. The increased level of activity and the expansion of services require greater funding to increase outreach (e.g., media tools, additional training programmes), to effectively and competently handle the increased caseload that is expected to result (e.g., greater volume of arbitrator honoraria, increased staffing) and to provide a more robust infrastructure in order to operate at a high level of effectiveness in the Council's expanded work (e.g., expanded facilities, additional hardware). In short, the ACF will provide a range of increased management and support services to the Arbitration Council that include: planning; financial management; public relations; fund-raising; legal research; organisation of training programmes for arbitrators in Cambodia as well as visits to overseas arbitration bodies and international conferences for training, observation and professional networking purposes; stakeholder outreach and training; and promotion of the Arbitration Council process. World Bank requirements also imply increased costs in specific areas (e.g., additional staff for procurement, increased expenditure on monitoring and evaluation).

The Arbitration Council anticipates that the overall budget will rise from just over \$475,000 in 2008 to an average of \$755,066 per year during project implementation. Over the course of the

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between the parties that has resolved the dispute (6% of total number of cases). Implementation rate of awards is:  $(25+6)/63 \times 100\%=49\%$ .

project, staff levels at ACF and SAC will increase, and a number of consultants will be engaged to assist with activities such as sustainability and fundraising, media relations, stakeholder awareness and training activities. Over the four years of project implementation, the total budget is planned at \$3,020,265, of which stakeholder contributions are expected to cover around \$229,233. Therefore a total of \$2,791,032 is requested under the DFGG Project; this amount also includes certain activities to be carried out before project effectiveness. The above is described in greater detail in Section 4, *Detailed Project Description*, and Section 5, *Detailed Cost Estimates and Financing Plan*.

## 2. PROJECT DEVELOPMENT OBJECTIVE, KEY BENEFITS AND INDICATORS

The overall objective of the project is to contribute to an effective governance environment for private sector development by enhancing the extent to which a well-functioning labour arbitration system builds workers' and employers' confidence that labour disputes will be resolved effectively and fairly.

Quick and effective resolution of labour disputes brings significant advantages to both workers and employers, and eventually to the economy as a whole: minor disagreements and misunderstandings can be prevented from escalating into major disruptive disputes; enterprises can thus become more efficient, allowing them to compete more readily in national and international product markets; labour productivity can increase as a result, thereby contributing to enterprise competitiveness and providing a foundation for increased benefits for workers; and, finally, trust and confidence is developed from which more mature forms of interaction can emerge. The benefits of effective labour dispute resolution for the national economy is illustrated by a study<sup>26</sup> that found that between 1999 and 2004, mediation by the US Federal Mediation and Conciliation Service (FMCS) saved American workers and businesses on average \$1.5 billion per year. For 2006, FMCS is estimated to have prevented the loss of at least \$1.7 billion in employees' wages and company profits (which is around forty times the agency's budget of \$42.8 million for the same year).<sup>27</sup>

The Arbitration Council contributes to the governance goals of the Royal Government of Cambodia. It serves as a model of good governance and of how demand for good governance is promoted, mediated, and answered. It embodies several desirable characteristics of a quasi-judicial body. Prior to the establishment of the Arbitration Council, labour disputes were usually resolved arbitrarily, without citizen involvement, without a clear explanation of how a decision had been reached or what the facts were, and with allegations of influence. The Arbitration Council has changed that situation: it is independent from government and from its users and stakeholders. It is fast – decisions are issued to the parties within 15 days, and published a few days thereafter. It is transparent – users select arbitrators from a list which they have previously approved and that has been compiled with the assistance of an independent party (the ILO). Cases are decided on their merits and according to the law; the reasoning and legal basis for the decisions are clearly indicated and made known to the public. These and other qualities have been widely acknowledged nationally and internationally and have led to strong support from the tripartite stakeholders – government, employers and employees. Having effective counterparts in government (particularly the Ministry of Labour) and in civil society (employer associations and unions) is crucial to the Arbitration Council's ability to respond to and mediate demand for good governance. The Arbitration Council's success also serves as a model for judicial reform and for other areas of arbitration, including commercial, land or family disputes.

The Arbitration Council addresses concretely the government's key reform issue of private sector development. As noted earlier, in just over five years since its establishment, it has received 575 labour disputes, involving enterprises employing a total of more than 290,000 workers.<sup>28</sup> The Arbitration Council is mandated to issue interim orders that oblige the parties to the dispute to cease industrial action (such as strike or lock-out) while the dispute is under

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<sup>26</sup> Employment Policy Foundation, *Impact Measures of Federal Mediation and Conciliation Service Activities 1999-2004* (Washington DC, 2005).

<sup>27</sup> Federal Mediation and Conciliation Service, *Fiscal Year 2008 Congressional Budget Submission* (2007).

<sup>28</sup> This comprises the period 1 May 2003 to 30 June 2008 inclusive.

arbitral review. These orders have averted hundreds of days of lost production. Parties have greater confidence in the arbitral process itself because they select their own arbitrators from a list they originally nominated. The process and outcomes provide a basis for the parties to establish or repair their relationship; and an improved relationship between employer and employees allows for a smoother introduction of productivity improvements. Though the parties generally choose non-binding arbitration, the Arbitration Council successfully resolves 68% of the cases it receives. Similar issues are resolved in a consistent manner, creating a coherent body of jurisprudence; this both increases parties' confidence in the Arbitration Council and provides stakeholders with guidance on how the Labour Law should be applied.

The work of the Arbitration Council supports the broader goals of Cambodia's National Strategic Development Plan (NSDP) 2006-2010 (which replaces Cambodia's National Poverty Reduction Strategy 2003-2005), and the Royal Government of Cambodia's Rectangular Strategy (November 2004), in particular in the areas of private sector development (including industrial relations development), governance reform and judicial reform. It forms important synergies with the activities of other institutions and organisations that work in these areas. In the sector of industrial relations development in Cambodia, these include training and capacity building programmes by the International Labour Organization (including its Labour Dispute Resolution Project, the Workers' Education Project and Better Factories Cambodia), ACILS Solidarity Center, the Community Legal Education Center, and by and for union federations and employer associations (including CAMFEBA and GMAC).

Increased funding under the DFGG Project term will allow the Arbitration Council not only to ensure the continuity of its operations, its institutional integrity and effectiveness as a forum for labour dispute resolution, but also to expand its reach to other geographic and economic sectors; facilitate access by potential users to its services; improve research and analytical capacity; and expand education and outreach programmes. This will increase DFGG, improve parties' ability to represent their interests at the Arbitration Council, and encourage more effective means of dispute prevention and resolution. Most importantly, as mentioned in the previous section, increased DFGG funding would be used to make the Arbitration Council (and the ACF) a sustainable institution, with increased capacity to deliver its services to Cambodia's citizens after the end of the project.

Specifically, the Arbitration Council will continue to stimulate DFGG in the following ways:

- **Promoting:** The Arbitration Council promotes DFGG by demonstrating to the parties to a dispute that conflicts can be resolved under the law through a transparent, fast, and impartial process. The Arbitration Council also shows people that they can access their rights, and that there is a forum where they can make claims that their rights have been violated – and that these claims will be considered seriously. Each of the 575 cases received by the Council since May 2003 is, in effect, an experiment in the democratic demand by Cambodian citizens on the state. The Arbitration Council's training and outreach activities further promote DFGG by ensuring that awareness is raised beyond the parties to a dispute.
- **Mediating:** Workers and employers, especially when organised to represent group or collective interests, place strong demands on the state to provide fair and equitable solutions to conflicting interests in the industrial relations arena. The Arbitration Council mediates between these conflicting interests in a speedy and transparent manner, by hearing disputes and issuing clear, well-argued decisions based on the law.

The following Results Framework summarises the project’s development objective and the intermediate outcomes for each project component. The framework also identifies key quantitative indicators for each of the expected outcomes. The detailed Results Monitoring Arrangements, which includes indicator target values, is in Section 8, *Monitoring and evaluation arrangements*.

**Table 2. Results Framework**

Development Objective	Summary Outcome Indicators	Use of results information
<p>To contribute to an effective governance environment for private sector development by enhancing the extent to which a well functioning labour arbitration system builds workers’ and employers’ confidence that labour disputes will be resolved effectively and fairly</p>	<ol style="list-style-type: none"> <li>1. Number of labor dispute cases handled by the AC</li> <li>2. % of labor dispute cases successfully resolved through AC process</li> <li>3. % of union and employer group representatives and other stakeholders that report a high confidence in the independence, credibility and effectiveness of the AC</li> </ol>	<p>To monitor progress and performance, and evaluate the effectiveness of project support (ongoing evaluation will help improve outcomes during implementation and may identify lessons for future support)</p> <p>To learn lessons on, but not limited to:</p> <ul style="list-style-type: none"> <li>- The most effective means to promote stakeholder confidence in the AC process</li> <li>- The most efficient means to extend the AC’s reach and influence</li> </ul>
<p><b>Component 1 – Institutional Integrity and Sustainability:</b>  <b>Objective:</b> To ensure the independence, credibility and sustainability of the AC</p>		
Intermediate Outcomes for each Component	Intermediate Outcome Indicators	Use of Intermediate Outcome Monitoring
<p>Independence, credibility and sustainability of AC assured</p>	<ol style="list-style-type: none"> <li>1. % of AC, SAC, and ACF staff that report an increased understanding and institutional capacity to perform their respective roles in the labor arbitration and dispute resolution processes</li> <li>2. % of union and employer group representatives that report high confidence in institutional capacity of the AC to undertake labor dispute resolution</li> <li>3. % of AC, SAC, and ACF staff that report an increased effectiveness of the AC process</li> <li>4. % of union and employer group representatives and other stakeholders that report a high confidence in the independence, credibility and effectiveness of the AC</li> <li>5. Expert rating (%) of quality of awards given by the AC</li> <li>6. Revenue generated through tri-partite contributions by AC as % of operating costs</li> </ol>	<p>Indicators will be reviewed by ACF and discussed with the Project Collaboration Committee and Stakeholder Advisory Group as appropriate and remedial strategies developed and actions taken to address emerging issues/problems and improve outcomes/performance</p> <p>Where available, outcome indicator information will be included in Quarterly and Annual reports to DFGG/RGC</p>

<p><u>Component 2 – Labour Dispute Resolution:</u>  <u>Objective:</u> To increase the AC’s capacity to resolve labour disputes across the country</p>		
<b>Intermediate Outcomes for each Component</b>	<b>Intermediate Outcome Indicators</b>	<b>Use of Intermediate Outcome Monitoring</b>
<p>Labour dispute cases are processed in a timely manner and resolved through the AC process</p> <p>Increase in cases from outside the greater Phnom Penh area</p> <p>Increase in cases from outside the garment sector</p>	<ol style="list-style-type: none"> <li>1. Number of labor dispute cases handled by the AC</li> <li>2. Percentage of labor dispute cases successfully resolved through AC process</li> <li>3. Percentage of cases where AC issues an award within the 15-day period mandated by law, or within the extended deadline, if an extension has been authorised by the parties</li> <li>4. Percentage of cases from outside the greater Phnom Penh area</li> <li>5. Percentage of cases from outside the garment sector</li> </ol>	<p>Indicators will be reviewed by ACF and discussed with the Project Collaboration Committee and Stakeholder Advisory Group as appropriate, and remedial strategies developed and actions taken to address emerging issues/problems and improve outcomes/performance</p> <p>Where available outcome indicator information will be included in Quarterly and Annual reports to DFGG/RGC</p>
<p><u>Component 3 – Partnerships and Stakeholder Outreach and Training:</u>  <u>Objectives:</u>  1. To establish and maintain partnerships to strengthen AC/F  2. To improve stakeholders’ awareness and understanding of the AC and of how to resolve labour disputes</p>		
<b>Intermediate Outcomes for each Component</b>	<b>Intermediate Outcome Indicators</b>	<b>Use of Intermediate Outcome Monitoring</b>
<p>Partnerships established with relevant institutions</p> <p>Increased level of awareness of the AC and the labour dispute resolution process</p> <p>Stakeholders have increased understanding of the AC process</p>	<ol style="list-style-type: none"> <li>1. Number of partnerships between AC and SIs and NSAs established or continued under the project – disaggregated by type 1 and 2<sup>29</sup></li> <li>2. % of relevant stakeholders (including AC, ACF, MOLVT, ILO, partner agencies involved, etc.) rating high effectiveness of the partnerships established under project</li> <li>3. Number of new or existing partnerships for which AC/ACF (i) expresses interest, (ii) makes a concrete plan, and (iii) takes the first steps to continue engagement beyond life of project</li> <li>4. % of union, employer organization leaders and representatives aware of AC and labor arbitration process via AC outreach</li> <li>5. Level of understanding (as % scoring high on rating scale) of labor arbitration process among union and employer organization groups leaders and representatives</li> </ol>	<p>Indicators will be reviewed by ACF and discussed with the Project Collaboration Committee and Stakeholder Advisory Group as appropriate, and remedial strategies developed and actions taken to address emerging issues/problems and improve outcomes/performance</p> <p>Where available outcome indicator information will be included in Quarterly and Annual reports to DFGG/RGC</p>

<sup>29</sup> The project will use the following definition for partnerships - "A partnership is a collaborative relationship between entities to work toward shared objectives through a mutually agreed division of labor". Strictly, by this definition commercial relationships should not be regarded as partnerships. Recognizing, however, that in the specific context of the project and given the lack of such relationships between SIs and NSAs in Cambodia, some direct commercial relationships that reflect elements of ‘partnership’ will be separately tracked as well. The total number of partnerships will be the sum of these two forms of relationships. The PCO will make a case-by-case determination of whether a particular relationship should be categorized as a partnership or not.

<p>Component 4 – General Operations and Project Management:  <u>Objective:</u> To provide managerial and technical support to AC</p>		
Intermediate Outcomes for each Component	Intermediate Outcome Indicators	Use of Intermediate Outcome Monitoring
<p>Resources managed effectively/efficiently to plans/budget, and adequate technical support provided to sustain the AC and successfully implement the project</p>	<ol style="list-style-type: none"> <li>1. ACF undertakes independent monitoring through NSAs</li> <li>2. ACF uses information from independent monitoring through NSAs to take management and/or corrective actions</li> <li>3. AC/ACF (i) expresses interest, (ii) makes a concrete plan, and (iii) takes the first steps to undertake new or continue existing DFGG activities beyond the life of the project.</li> <li>4. Inputs procured, and activities and outputs completed to schedule. Expenditure to budget. Agreed reports to schedule</li> </ol>	<p>Indicators or progress and performance will be regularly reviewed by ACF management, and discussed with the Project Collaboration Committee and Stakeholder Advisory Group as appropriate, and remedial actions taken as needed to address emerging issues/problems and improve project performance</p>

### 3. LESSONS LEARNED AND REFLECTED IN THE PROJECT DESIGN

This section is based on the note *Alternative Labour Dispute Resolution: Global Best Practices and Their Application at the Arbitration Council of Cambodia*, which was prepared as part of the DFGG Project preparation process (see **Annex 5**). It serves to list and explain the lessons learned from the international experience in Alternative Labour Dispute Resolution (ALDR) and from the Cambodian ALDR experience – particularly the experience of the Arbitration Council – and to highlight how these lessons will be applied in the structure, procedures and development of the Arbitration Council under the DFGG Project. Culled from years of ALDR experience across several nations, six primary lessons stand out as essential to any effective ALDR system. Learning from its peers and its own experiences, the Arbitration Council incorporates these lessons (designated in the annex as the six main “good practices”) into its own design and strategies, and thus in this project design.

The *first lesson* learned from the international experience is to utilise alternative dispute resolution for labour disputes. In the past ten years, conciliation, mediation and arbitration have risen in the ranks to become the present-day preferred methods of labour dispute resolution for many nations around the world due to the quick and fair rulings these processes produce. While court systems seek to resolve past wrongs, ALDR is, by nature, forward-looking and aims to preserve the working relationships of disputing parties by producing decisions designed to resolve present conflict in the context of greater cooperation in the future. This unique perspective of ALDR serves in part to explain its growing popularity. Moreover, specialised ALDR institutions are gaining recognition and respect for displaying experience, sensitivity, and creativity in their decisions.

As described in Section 1 of this project proposal, the escalation of labour disputes in Cambodia gave rise to a need for a credible and efficient dispute resolution system. With the establishment of the Arbitration Council in 2003, Cambodia added its name to the growing list of countries that have joined the global trend of ALDR. The Arbitration Council was designed to strategically incorporate elements of successful ALDR from around the world, in order to achieve a system that reflects the valuable lessons learned from older, more established ALDR institutions. The Arbitration Council’s early successes and continuing achievements are a testament to the strength of ALDR as the principle method for resolving labour disputes in Cambodia. Challenges, however, remain for the Arbitration Council and for ALDR more generally in Cambodia. The Arbitration Council is part of a larger dispute resolution system in which the Royal Government of Cambodia’s Ministry of Labour and Vocational Training plays a vital role – particularly its Department of Labour Inspection and Department of Labour Disputes, in dispute prevention and conciliation, respectively. The continued success of the Arbitration Council and progress of ALDR in Cambodia is therefore intimately tied to the functions and development of the Ministry as well. These, and other challenges, are described more fully in Sections 4 and 13 of this project proposal.

The *second lesson* learned is that ALDR systems benefit significantly from the active involvement of stakeholders. Many ALDR systems are designed to encourage stakeholders to navigate their own resolution at every step of the process. Stakeholder involvement is commonly built into the structure of ALDR institutions as well, through the creation of bi- and tripartite systems. The traditional judicial system denies parties the ability to govern the direction of their own relationships and instead imposes an outsiders’ solution that is seen as an intervention rather than a solution. In contrast, the “self help” attitude of ALDR encourages parties to actively participate in the search for sustainable solutions.

Having learned from the trials and tribulations of nations with established ALDR institutions, the architects of the Arbitration Council designed a system that incorporates stakeholder involvement at every step of the way. Through the creation of a tripartite system, employers, employees and Ministry select the arbitrators who make up the Arbitration Council, requiring them to contribute to the ALDR process from its inception. Stakeholder involvement is also ensured at the level of each particular dispute. Once a case is referred to the Council, an arbitration panel is formed comprising three arbitrators, two of whom are selected by the disputing parties themselves. During the procedure, parties are expected to make genuine efforts to cooperate and reach a settlement. The Arbitration Council's own experience has shown that, although cases are registered after the parties have already undergone attempted conciliation with the Ministry's conciliators, these same parties are often eager to engage in further negotiations and informal mediation at the Arbitration Council, resulting in the frequent settlement of disputes and closing of cases without a more formalised arbitral hearing. Finally, in response to requests from its stakeholder groups and to enable the Arbitration Council to institutionalise its consultations with these stakeholders, the Arbitration Council plans to establish a permanent tripartite advisory committee, which will convene regularly.

The *third lesson* learned is that ALDR systems are only employed to the extent stakeholders are trained to utilise them, and therefore, the road to successful conciliation, mediation, and arbitration must begin with proper training for both employers and employees.

The Arbitration Council recognises from the experience of established ALDR systems that stakeholder training is vital to achieving its goals. Stakeholder awareness and their knowledge and competence to utilise the Arbitration Council as a forum for resolving disputes and moving the parties employment relationship forward have been a challenge in Cambodia. Surveys of garments workers about their recognition of the Arbitration Council have indicated a need for more extensive outreach efforts; arbitrators' own experience in labour dispute cases reveal broad and varied but generally relatively low levels of competence among stakeholders' ability to make use of the arbitral system; and stakeholders themselves have indicated their desire for continued capacity building and training. Efforts by the Arbitration Council to educate stakeholders include regular and expanded outreach programmes in the community to educate workers, employers, lawyers, law students, and community members on the structure and proceedings of the Arbitration Council, as well as a website with, and frequent hand-distribution of, published decisions of the Arbitration Council in both Khmer and English.

The *fourth lesson* learned is that ALDR appeals to disputing parties not only because of its accessibility, but also because, unlike the courtroom, ALDR is designed to be an informal and quick process. And, in turn, the informal tone of proceedings presents ALDR as even more accessible to the spectrum of disputing parties. These factors combined make clear the necessity for any ALDR system to provide less formal, more accessible environments, and yet quicker results than the traditional courtroom.

The Arbitration Council is aware that the appeal of ALDR is closely associated with its informality and rapid results, and thus, runs accordingly. Closely tied to its goal of accessibility, the Arbitration Council's proceedings are designed to be less formal than those of the courtroom and the Council follows a strict timeframe for each case, resulting in a system that is remarkably quick, even on a global scale. The Arbitration Council has found that such relative informality has resulted in parties – especially parties who are introduced to the arbitral process for the first time – expressing satisfaction with the process and the extensive guidance provided through the proceedings; but this same phenomenon requires temperance with the need for parties to develop their capacities to more effectively use the arbitral process. (See *third lesson*, above.)

Similarly, while the relatively rapid (15-day) period for arbitral award issuance has roundly been applauded by stakeholders, such a statutorily-mandated timeframe obviously has placed pressures on the Arbitration Council that can only be expected to intensify to the extent labour dispute caseloads increase. Expansion of resources available to the Arbitration Council and their efficient allocation and use can be expected to alleviate some pressures, including, for example, multiple facilities available to mediate and arbitrate cases simultaneously; and possible mediation by one designated mediator instead of by a full arbitration panel.

The *fifth lesson* learned is that, in order for stakeholders to trust and rely upon ALDR, and for the resulting decisions to be abided by, these institutions must serve as pillars of fairness and equity under the law, as a common ground for employers and employees alike. In essence, the values embedded in procedural fairness that serve as the foundation of legal systems worldwide, must be the cornerstone of any ALDR institution as well. Among these values, the neutrality and independence of the decision makers and transparency of ALDR institutions are critical.

With the understanding that the success of a Cambodian ALDR system would hinge upon the integrity of its procedural fairness, the Arbitration Council was designed to be neutral, independent, and transparent. Notably, the Arbitration Council is the only judicial body in Cambodia to publish its decisions, solidifying its position at the forefront of legal reform in the country. Recognising that public perception and appreciation of the Arbitration Council as a fair and just institution has been integral to its effectiveness thus far, the Arbitration Council plans to widen its promotional work among stakeholders while also continuing to review and develop procedural mechanisms and other strategies to ensure its independence and integrity.

The *sixth and final lesson* learned from the collective global experience in ALDR is to provide disputing parties with many opportunities to mediate. While ALDR itself encompasses many different avenues to settlement, the line between mediation and arbitration is becoming blurred in many systems as countries learn of the interconnected nature of these two procedures, and are beginning to reap the benefits of flexible institutions.

The Arbitration Council enjoys the benefits of a flexible procedure that does not cut off conciliation or mediation from the arbitration stage by providing multiple opportunities for disputing parties to settle prior to arbitration, and even immediately prior to the more formalised arbitration hearing itself. The Arbitration Council's arbitrators are trained in mediation and offer to mediate before every hearing, with a view to helping parties reach a settlement and thereby end their dispute. However, if the parties elect to mediate and do not achieve a resolution, the panel can transition into arbitration. This system has reinforced the Arbitration Council's goals of voluntary participation and cooperative resolution. In response to calls from its stakeholder groups to further expand the mediation function at the Arbitration Council, the Council is reviewing a range of potential other mediation schemes, including mediations with single arbitrators or qualified non-arbitrators to build upon its successes in resolving labour disputes via mediated settlements.

The international experience is not unequivocal with respect to financial sustainability of ALDR institutions. Funding options for ALDR institutions range from full funding by the state to full private funding, with several modalities in between. In developing countries dispute resolution services are generally funded by the state and are offered free of charge. The institutions are often given the statutory authority to engage in income generation activities like fundraising for special projects, training users, running conferences, etc. These activities, however, generate only a limited amount of income. In some developed countries like the US, funding is mostly party pay. Most arbitration there occurs in accordance with the parties' CBA which spells out who

pays for the cost of the proceedings. Most of the time, the costs are divided equally between the employer and the union, although some CBAs provide that the loser pays for everything. Two primary providers of employment arbitration services in the non-union setting in the US, however, require the employer to pay the entire cost of the proceeding except for a nominal filing fee which the employee is required to pay. In other developed countries like Australia, the labour dispute settlement body is a fully public-funded entity, delivering its services essentially free of charge.

As explained in more detail in the next section, as part of the DFGG Project, the Arbitration Council plans to conduct a study and subsequently develop and implement a strategy to help ensure its future sustainability, including financial sustainability. In this context, several funding and cost models will be explored, based on international experience while taking into account the particularities of the Cambodian context. The latter include the statutory requirement that arbitration services be provided free of charge as well as the very reduced capacity of Cambodia's unions to make significant contributions. Different funding models might therefore be developed for the short, mid and long term respectively, including a possible model of funding by the tripartite partners, supplemented by funds from associated entities such as international buyers and international union movement.

As shown in Section 2 above, the Arbitration Council promotes and mediates the DFGG. The Arbitration Council promotes DFGG by demonstrating to the disputing parties that impartial institutions of law, like the Arbitration Council, are not only available, but also can be counted on to uphold the rights of the parties, resulting in fair decisions. The Arbitration Council successfully mediates between opposing parties, who each demand good governance but from polar directions, through its procedural fairness and decisions anchored in the law, and by its timely provision of hearings and rapid decision making, all with transparency and without compromising the integrity of the procedure. At every step, the Arbitration Council heeds the call for those demanding good governance in Cambodia today.

## 4. DETAILED PROJECT DESCRIPTION

This section presents a detailed project description of the Arbitration Council's proposal for the components and activities to be implemented during the lifetime of the DFGG Project.

### ***Component 1. Institutional Integrity and Sustainability: Independence, Credibility, Sustainability***

The Arbitration Council's effectiveness is based on its reputation as an institution with the highest levels of independence, credibility and sustainability. As a result, this first component is designed to maintain and strengthen the Arbitration Council's institutional integrity and to ensure its sustainability during the project implementation period and beyond.

#### **1.1 Selection/recruitment of arbitrators**

The Arbitration Council's reputation starts with and rests on the high quality of the individuals who are appointed as arbitrators. For this reason, it is vital that the process for selection and recruitment of new arbitrators be protected from any inappropriate influence.

One-third of the Arbitration Council's 30 arbitrators are nominated by the Ministry of Labour, one-third by employer associations, and one-third by the union federations. The Ministry of Labour appoints the arbitrators in accordance with these stakeholder nominations.<sup>30</sup> Following the nominations by the respective stakeholder groups, all arbitrators are appointed by the Ministry for a one-year term, which is automatically renewed, except in certain circumstances (incapacitation, conviction of a criminal offence, etc.) as provided by law.<sup>31</sup> The entire process is set out in the Prakas on the Arbitration Council.<sup>32</sup>

Since the establishment of the Arbitration Council in 2003, the ILO has acted as an independent party to facilitate the arbitrator recruitment and nomination process. This facilitation role was created at the joint request of the stakeholders, and was initially motivated by certain levels of distrust among the stakeholder groups. The role was formalised in the Prakas on the Arbitration Council for a period of three years.<sup>33</sup> As part of a 2005 mid-term review,<sup>34</sup> the stakeholders agreed that this role should be extended for a further period, which was done via an agreement between the Ministry of Labour and the ILO.<sup>35</sup> Under this arrangement, the ILO receives and solicits arbitrator candidate recommendations from the three stakeholder groups; reviews the recommendations; and presents the stakeholder groups with a suggested slate of nominees for their endorsement. The stakeholders have stated that the involvement of the ILO as an independent party is important to maintain the neutrality and credibility of the appointment process for the years to come.

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<sup>30</sup> Arts. 1 and 3, *Prakas on the Arbitration Council* (Prakas 99 MOSALVY - 2004).

<sup>31</sup> Art. 2, *Prakas on the Arbitration Council*.

<sup>32</sup> Chapter 1 (Arts. 1-11), *Prakas on the Arbitration Council*.

<sup>33</sup> Art. 51, *Prakas on the Arbitration Council*.

<sup>34</sup> Lejo Sibbel, *Arbitration Council Review* (ILO: Phnom Penh, 2005).

<sup>35</sup> The Ministry of Labour and Vocational Training and the ILO signed an agreement for the three-year period of 2006-2008, including a provision that "as has been recommended by the stakeholders, [the ILO will] continue to nominate arbitrators in consultation with the respective stakeholders for appointment by the Minister". *Agreement between the Royal Government of Cambodia and the International Labour Organization* (February 2006).

The Arbitration Council proposes that, consistent with stakeholder recommendations and current practice, the ILO’s facilitation role be extended for the life of the DFGG Project, by which time it is proposed that it be transitioned to the ACF. Guidelines (including details on the timing and process to be followed) for the transfer of this role are proposed to be drafted by the ACF and ILO after consultation with the Stakeholder Advisory Group (an advisory body representing employers, unions and government; see paragraph 1.2 below) and submitted to the Ministry of Labour for review. It is expected that the ACF’s facilitation of this process would be similar to the role played by ILO, with the stakeholders submitting preliminary candidate recommendations for review and interviews by the facilitating body, which then reports back to the stakeholders with a view to getting their formal endorsement, prior to sending the endorsed list of nominees to the Minister of Labour and Vocational Training for the formal appointment of arbitrators.

ILO has indicated that it will not charge for its assistance in the selection and recruitment of arbitrators. The only costs involved with this activity concern ACF staff time in support of the selection process.

**Table 3. Module 1.1 – Selection/Recruitment of Arbitrators**

<b>What will be financed</b>	Assistance to selection/recruitment process.
<b>Who will be in charge/carry out</b>	ILO and ACF Executive Director.
<b>When/for how long will activity be carried out</b>	Occasionally (in case of resignation, etc. of an arbitrator), throughout project implementation.
<b>Budgetary implications</b>	None (except for ACF staff time).

## 1.2 Arbitration Council governance

As an independent institution, it is important that the Arbitration Council has a robust structure for governing itself. As a practical, logistical matter, outside of labour dispute cases, arbitrators still need to meet, discuss, and make strategic and administrative decisions about the Council as an institution. Moreover, the Arbitration Council must – in perceptions and reality – maintain its integrity at all times, and not only when the arbitrators sit to hear a labour dispute. The manner in which the arbitrators regulate themselves and interact with each other and with the ACF will reflect on the institution as a whole. Thus, the Arbitration Council governance process must be seen to be isolated from improper outside influences.

The arbitrators have established a number of structures and activities for these purposes, which will be supported by the ACF under the DFGG Project:

- **ACF Board of Directors.** The Arbitration Council Foundation was established by the arbitrators themselves. From the beginning, the arbitrators have had a strong role in overseeing the ACF’s operations. The arbitrators elected three arbitrators (one of each of the lists: employer, union and ministry) who comprise the majority of the five-person Board of Directors of the ACF. The same three arbitrators were also selected by their peers in the Arbitration Council to make up the Representatives of the Arbitration Council (RAC, see below). The other two external directors, who were appointed by majority vote of all the arbitrators, are foreign lawyers residing in

Cambodia, who have extensive experience in the human rights/rule of law and private commercial sectors respectively.<sup>36</sup>

According to the ACF Statute, the Board oversees the overall functioning of the ACF. (For a full description of the ACF itself, its organisational structure and staffing, see Section 1, *Sector and Institutional Background*, and Section 7, *Institutional and Implementation Arrangements*). Board members are paid a nominal allowance and each has the obligation to keep himself/herself informed of all activities relating to the ACF and the Arbitration Council, matters relating to labour and industrial relations, and the activities of industries and commerce that may have an impact on the ACF or the Arbitration Council. This project proposal includes financial support for further strengthening the ACF Board of Directors, including support for an increased number of Board meetings and for the possible establishment by the Board of sub-committees comprising Board members and non-Board members.

- **Representatives of the Arbitration Council.** As noted above, the arbitrators have selected three of their peers (one from each list) as Representatives of the Arbitration Council (RAC). In addition to overseeing the ACF in their capacity as Board members of the ACF, the RAC play a key role in a number of activities, including coordinating the arbitrators' governance activities, establishing relations with relevant arbitration bodies in other countries, acting as spokespersons for the Arbitration Council and disseminating information to the arbitrators. Although a recent creation, the RAC has already begun coordinating Regular Arbitration Meetings (see below) and serving as a point of contact for conferences and seminars to which the Arbitration Council has been invited. DFGG funding will help further operationalise the RAC.
- **Regular Arbitrators Meetings (RAM).** The RAM are regularly-scheduled assemblies of the arbitrators and the primary means that the arbitrators use to regulate themselves. Up and running since the establishment of the Arbitration Council, the RAM allows the arbitrators to discuss and decide relevant issues on a monthly basis. For example, the arbitrators use the RAM to develop and decide on guidelines that facilitate the arbitration process, as provided for in Art. 31 of the *Prakas on the Arbitration Council*.<sup>37</sup> The RAM will be continued under the DFGG Project.
- **Arbitrators' Retreat.** In addition to the RAM, the arbitrators meet in an annual retreat in order to dedicate a block of time to discussing and deciding relevant issues.

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<sup>36</sup> Under the Statute of the ACF, the Board members are regularly elected for a term lasting three years (Art. 10); a special provision mandates the first term of the Board to last for five years (Art. 13). The Board's first term covers the period 2004-2009. Arts 10, 13, *Statute of the Arbitration Council Foundation* (registered with Ministry of Interior September 2004) (hereinafter, "ACF Statute"). The Board plans to submit an amendment for approval by the arbitrators, under which the ILO would be granted a non-voting seat on the Board.

<sup>37</sup> Art 31 of the *Prakas on the Arbitration Council* stipulates that these guidelines must be approved by all the arbitrators, or alternatively, if all members do not agree, may be approved by an absolute majority of the arbitrators on each of the three lists: employer, union and Ministry. The arbitrators have used the RAM as a forum to draft and approve an aspirational, non-binding code of ethical conduct, the *Professional Guidelines for Arbitrators*, which may in the future be approved as a guideline under Article 31 of the *Prakas on the Arbitration Council*. (For more details on the implementation and use of the code of ethical conduct, see the Good Governance Framework in Annex 14).

DFGG funds will allow for continuation of the retreats and also for participation by ACF and SAC staff during part of the retreats, which will further the collaboration and coordination between the arbitrators and the ACF and SAC.

- **Arbitrator Working Groups.** The arbitrators may establish Working Groups (WGs) to deal with pressing issues of labour law and Arbitration Council procedure. Past WGs have examined issues such as a code of professional ethics for the Arbitration Council; individual dispute resolution; and the use of jurisprudence in arbitral decisions. WGs have also been used as a mechanism to facilitate comments or inputs from the Arbitration Council into relevant processes. For example, in response to a request, an Arbitration Council WG drafted an input paper in July 2005 contributing to the Labour Law review process which was underway at that time.<sup>38</sup> WGs will continue to be convened under the DFGG Project.

In addition to the above governance structure, several collaborative and advisory bodies will be established under the DFGG Project: the Project Collaboration Committee (PCC), which will replace the present Technical Working Group; the Stakeholder Advisory Group (SAG), which will replace the present Technical Advisory Group; and the Institution-Building Training Seminar, a formal body of select international advisors. (For greater detail, see Section 7, *Institutional and Implementation Arrangements*, and Section 9, *Participation and Partnerships Plan*.)

**Table 4. Module 1.2 – Arbitration Council Governance**

<b>What will be financed</b>	Meeting costs, including venue, transportation, accommodation and food as appropriate. Honoraria for ACF Board of Directors.
<b>Who will be in charge/carry out</b>	ACF organises and/or facilitates all meetings: ED/DED (RAC and ACF Board). CTT (other meetings).
<b>When/for how long will activity be carried out</b>	Throughout project implementation.
<b>Budgetary implications</b>	\$69,410

### 1.3 Sustainability

As has been noted elsewhere, sustainability is a key issue for the Arbitration Council. The Council is not a temporary project, but rather a statutory body that is provided for by law. However, the Council is a young institution, and therefore is one that is vulnerable to political attacks or attempts at co-optation by vested interests. Also, as an independent entity that has to date been funded almost entirely by international donors, the Council’s future financial stability is not assured.

To meet this challenge, the Council proposes to use part of the DFGG funding in order to conduct activities and create a number of outputs which are expected to have an impact lasting

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<sup>38</sup> It should be noted that, as a neutral body, the Arbitration Council does not generally comment on proposed changes to the Labour Law or supporting regulations. Any such comments that the Council might make are in response to requests for the Council’s comment. Furthermore, in such a situation the Council refrains from making any substantive comments; the Council limits itself to pointing out provisions of the law which may be vague or otherwise interpreted differently by different parties, and where conflicting interpretations have given rise to labour disputes.

far beyond the life of the project. Key among these will be the creation of strong partnerships and a solid brand image, which will reduce the Council's vulnerability to attempts at influence or interference; increased stakeholder capacity, which will help resolve disputes faster and more easily and thus make for a more sustainable and less costly labour dispute resolution process; capacity building of arbitrators, SAC and ACF staff, which will help the Arbitration Council to operate more cost-effectively; the development of legal tools such as benchbooks and a legal database, which will help to reduce the Council's reliance on foreign advisors; and the purchase of hardware and office equipment, which is expected to have a useful life lasting beyond the project implementation period. A number of activities and outputs undertaken during the DFGG Project will obviate the need for similar expenditures in the years after its conclusion, moving the Council further towards financial sustainability. These points are further detailed in the relevant sections of this project proposal.

In addition, through Module 1.3, the Council plans to develop and implement strategies that will help to ensure its institutional and financial sustainability in the long term, and to facilitate fundraising in the short term..

**Institutional sustainability.** As noted earlier in this project proposal, functionally and institutionally the Arbitration Council works closely with the Ministry, employer associations and union federations. For example, the Ministry officials are the first to respond to labour disputes through its conciliation function; if unsuccessful, the Ministry passes the case to the Arbitration Council through the SAC, which is composed of Ministry officials co-located at the Arbitration Council. Institutional cooperation between the Arbitration Council and the Ministry (and employer associations and union federations) exists also at the level of nominating and appointing arbitrators to the Arbitration Council: arbitrators are nominated by Ministry, employer associations and union federations respectively, while the Ministry is ultimately responsible for appointing the arbitrators following these nominations. Finally, institutional cooperation takes place in and through the ACF, which provides management support to the Arbitration Council: Ministry, employer and union nominated arbitrators form the majority in the Board of Directors which oversees the ACF. The above gives rise to a complex institutional arrangement, but one which has to date served well in ensuring that the Arbitration Council is generally seen as both an organ of the state and a credible and independent forum for the resolution of disputes.

Under the DFGG Project, the Arbitration Council plans to assess how its institutional arrangements can be further strengthened in order to ensure the Council's future institutional sustainability, which is closely linked to, and a prerequisite to its financial sustainability. Key issues to examine will include the question of continued support for an independent Arbitration Council, linkages and cooperation with the Ministry, and how to maintain an appropriate arbitrator selection process (when this role is transferred from the ILO to the ACF).

**Financial sustainability.** To date, the Council has been funded almost entirely by international donors. This would largely continue to be the case under the DFGG Project. The Council has, however, already held preliminary discussions with the tripartite stakeholders, with a view to garnering their support for moving to a financial model based on tripartite contributions.<sup>39</sup> The Council has already received some limited support from stakeholders,<sup>40</sup> and plans to continue

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<sup>39</sup> At the Technical Advisory Group meeting held on August 3, 2007, stakeholder representatives committed to raising this issue with their constituent bodies. Follow-up meetings were held in September 2007 with Government representatives, with employer representatives (GMAC and CAMFEBA) and with union representatives.

<sup>40</sup> For example, the Ministry of Labour assigns personnel to staff the Secretariat of the Arbitration Council, and pays their standard salaries (although to date they have also received supplements; see note 30 below). To the extent that

pursuing increased support prior to and during the DFGG Project period, as detailed below. It is expected that such support might rise to cover 15% of the Council’s operating costs by the fourth year of DFGG, as indicated Table 5 and discussed below.

**Table 5. Tripartite Contributions**

	2008	Year 1	Year 2	Year 3	Year 4
Total %	0	2.5	5	10	15

- **Tripartite contributions: Government.** Discussions have been initiated with a view to seeking increased future support from the government, such as a national budget allocation. The government representatives have noted that this would be a lengthy procedure, likely taking considerable time for discussion and decision making. The Council will continue to pursue this issue at an appropriate time in the future, possibly within the context of a future World Bank Poverty Reduction and Growth operation.
- **Tripartite contributions: Employers.** In preliminary discussions, representatives from employer associations have stated their willingness to raise with their members the idea that employers contribute an annual lump-sum payment to defray the Arbitration Council’s operating costs. Although the Arbitration Council has jurisdiction to hear labour disputes from any industrial sector, it is expected that employer associations in some sectors (e.g., the export garment manufacturing sector) will have greater willingness and capacity to pay than those in other sectors.<sup>41</sup>
- **Tripartite contributions: Unions.** Union representatives have also stated their willingness to consider contributing to the Arbitration Council’s operating costs. However, it is not expected that they would be able to make a significant contribution.<sup>42</sup> To avoid any perception of bias, it is an important principle that financial contributions be sought on an equitable basis from the different stakeholder groups. As the local union federations are not able to provide significant funding, the Arbitration Council plans to seek funds from relevant international union groups and other organisations that are concerned with workers’ interests.

As an important step in pursuing institutional and financial sustainability, this proposal anticipates using DFGG funds to carry out the following activities:

- **Short- and medium-term fundraising**  
The Arbitration Council expects that the local stakeholders’ limited capacity to pay means that, for the foreseeable future, the Council’s operations will continue to be

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an international brand can be said to side with employer interests, in 2005-2006 Levi Strauss and Co. donated US\$12,000 to contribute to the start-up costs of the Arbitration Council Foundation, and the Levi Strauss Foundation has donated an additional US\$44,000 for the 2008-2009 period.

<sup>41</sup> The Arbitration Council Foundation also plans to seek funds from international brands that are committed to corporate social responsibility, but it is not clear to what extent such brands will be willing to contribute.

<sup>42</sup> For example, union federations contribute only a token amount of \$500 per year to the costs of the compliance monitoring activities run by ILO Better Factories Cambodia.

funded in large part by international donors. In view of this likelihood, and of the ACF's role in fundraising for the Arbitration Council,<sup>43</sup> the ACF Board of Directors, including the Representatives of the Arbitration Council (RAC), approved a fundraising policy in 2007. Consistent with the ACF Statute,<sup>44</sup> the policy affirms that fundraising will only be pursued where such support and the donors offering it "do not affect the independence, neutrality and integrity of the Arbitration Council's operations, goals and objectives." The fundraising policy is attached to this proposal in **Annex 6**.<sup>45</sup>

During project preparation, the late notification by the WB of the requirement for the ACF to obtain its own operating capital revealed the precariousness of the Arbitration Council's total reliance on donor funding. While the WB has facilitated the provision of operating capital by the East Asia and Pacific Australian Trust Fund for Social Accountability, there is a clear need for a lasting endowment or other financial vehicle which would hold funds in trust for the Arbitration Council and ACF. Such funds would be used to maintain operations during a period of financial uncertainty, or for other appropriate purposes.

To this end, it is proposed that a consultant will be engaged to assist in planning and pursuing activities for fundraising in support of such an endowment. Fundraising targets would be selected among the tripartite partners and affiliated organisations, including, for example, international buyers and/or relevant international union groups and other organisations that are concerned with workers' interests. As a preliminary step, the ACF has initiated the creation of a charitable (tax-deductible) window<sup>46</sup> for soliciting North American donations to the Arbitration Council. The fundraising consultant would therefore also focus on likely targets for giving in North America, including wealthy individuals and foundations. The work of the fundraising consultant would also be coordinated with the planned study on the long-term institutional and financial sustainability of the Arbitration Council, described below.

- **Study on the economic value of Arbitration Council services.** Following models used to analyse the economic value of other dispute resolution bodies,<sup>47</sup> this study will analyse the cost and benefit to the Cambodian economy of operating the Arbitration Council; in short, asking the question: how much money (for example, in lost wages and lost production during strikes) is saved by the Arbitration Council's mediation and arbitration services? It is expected that the findings will show that the benefits to donors and/or stakeholders far outweigh the cost of operating the Arbitration Council;<sup>48</sup> and that such study would help convince stakeholders and

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<sup>43</sup> According to its Statute, one of the ACF's main objectives is "To support and facilitate the work and activities of the Arbitration Council". Art. 3, ACF Statute. The Statute further states that the ACF "will be managed by an Executive Director" who "is responsible for ... fundraising for the Arbitration Council from all relevant and possible domestic and international sources". Arts. 5-6, *ACF Statute*.

<sup>44</sup> Art. 20, *ACF Statute*.

<sup>45</sup> *ACF Fundraising Policy* (approved by ACF Board of Directors on July 30, 2007).

<sup>46</sup> The donations would be channelled via a specialized fund created at Give2Asia.com, a US-based 501(c)(3) corporation which provides Asian NGOs and other appropriate institutions with the opportunity to receive tax-deductible contributions from donors in the US and Canada.

<sup>47</sup> See, e.g., Employment Policy Foundation, *Impact Measures of Federal Mediation and Conciliation Service Activities 1999-2004* (Washington DC, 2005).

<sup>48</sup> *Id.* As noted in Section 2, *Project Development Objective, Key Benefits and Indicators*, above, the study found that between 1999 and 2004, mediation by the US Federal Mediation and Conciliation Service (FMCS) saved

donors to provide financial support to the Council. This proposal anticipates that the study would be sub-contracted to an appropriate consultant or research institute. The study may be started during pre-implementation, but in such case would likely not be finished during that time.

- **Study on long-term sustainability.** After completion of the above study, the Arbitration Council plans to undertake a follow-up study during the initial phase of project implementation on institutional and financial sustainability. This study will examine a number of issues, including the Council’s cost structure and cost-effectiveness (e.g., direct and indirect costs per case, including different models for setting arbitrator honoraria); stakeholders’ willingness to pay for the Arbitration Council’s services; potential sources of funding to cover the Arbitration Council’s expenses; intermediate and long-term goals for the gradual achievement of financial self-reliance; and alternative models for sustainability.<sup>49</sup>

As a basis for the above study, as well as to facilitate a better understanding of the effectiveness of the Arbitration Council, a periodic assessment will be undertaken of operating costs and results/effectiveness, based on a disaggregated structure which is function-based. This will be pursued through the Council’s M&E activities and will be incorporated into the design of a baseline study (see Section 8, *Monitoring and Evaluation Arrangements*). It is expected that a draft strategy and proposed financing mechanisms will be available for discussion by the time of the DFGG Project’s mid-term review.

The study will also address the question of long-term institutional sustainability, including an examination of the current institutional structure, a survey of institutional models in other settings, and an analysis of any alternative institutional models that are feasible to deliver the same services without compromising the Council’s independence, efficiency and effectiveness.

**Table 6. Module 1.3– Sustainability**

<b>What will be financed</b>	Consultancy for planning and carrying out subsequent fundraising activities. Study on economic value of AC services. Study on long-term sustainability.
<b>Who will be in charge/carry out</b>	Research institutes and/or consultants.
<b>When/for how long will activity be carried out</b>	Studies: pre-implementation/ Y1 Consultancies: Y1-Y4 (100 total days in Y-1, 20 days per year thereafter).
<b>Budgetary implications</b>	\$150,000

## ***Component 2. Labour Dispute Resolution***

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American workers and businesses on average \$1.5 billion per year. For 2006, FMCS is estimated to have prevented the loss of at least \$1.7 billion in employees’ wages and company profits; this is around forty times the agency’s budget of \$42.8 million for the same year. Federal Mediation and Conciliation Service, *Fiscal Year 2008 Congressional Budget Submission* (2007).

<sup>49</sup> This may include the possible introduction of user fees, to the extent permitted by law, in pursuit of cost-recovery. However, pursuant to the fundraising policy mentioned above, any such fees will be charged on an equitable basis, so that no party is disadvantaged or prevented from having its dispute heard for lack of funds.

This component supports the core function of the Arbitration Council: its work in resolving labour disputes. There are a number of activities that contribute to the Arbitration Council's success in this area, including, first and foremost, the Council's direct labour dispute resolution work. In addition, this project proposal also includes DFGG financial support for the further development of arbitrators' and SAC staff capacity, as well as efforts to expand the scale and scope of the Council's services.

## 2.1 Resolution of labour dispute cases

This module includes the direct costs associated with the Council's mediation and arbitration work.

- Hearing labour disputes.** Arbitrators are paid an honorarium for each case that they are selected to hear. This amount is not intended to fully compensate the arbitrators for their time, but is in recognition of the service that they are performing in assisting to resolve labour disputes. Each case is heard by a panel of three arbitrators, and thus requires the payment of three honoraria (one for each arbitrator). The proposed budget line for arbitrator honoraria increases over time in order to reflect both the rising caseload expected as a result of the DFGG Project, as shown in Table 7 below.

**Table 7. Arbitrator Honoraria – Year 1 to Year 4 of DFGG**

	Current (projected 2008)	Year 1	Year 2	Year 3	Year 4	Four- Year Total
Number of cases	156 <sup>50</sup>	156	180	204	228	768
Arbitrator honorarium (per person per case)	\$120	\$120	\$120	\$120	\$120	
Arbitrator honoraria paid per case (panel of three arbitrators)	\$360	\$360	\$360	\$360	\$360	
<b>Annual honorarium costs</b>	<b>\$56,160</b>	<b>\$56,160</b>	<b>\$64,800</b>	<b>\$73,440</b>	<b>\$82,080</b>	<b>\$276,480</b>

The honorarium amount is reviewed and adjusted periodically. When the Arbitration Council started operations in May 2003, the honorarium was set at a symbolic amount of \$30 per person per case; by the start of 2004, this was increased to \$100. In 2006, the Board of Directors of the Arbitration Council Foundation (ACF) approved an increase in the honorarium to \$120 per case; this increase took effect as of 1 January 2008.<sup>51</sup>

<sup>50</sup> This is an estimated projection for 2008, based on 2007 levels. As of 31 December 2007, the Arbitration Council had received 148 cases. In 2008, 81 cases were received between 1<sup>st</sup> January and 30 June, but with a marked decline between the first quarter (49 cases received) and the second quarter (32 cases).

<sup>51</sup> It is expected that the honorarium amount may be reviewed and adjusted during the DFGG Project period, to reflect inflation and rising costs. As the last increase in the honorarium took effect in January 2008, it is expected

It should be noted that at the \$120 rate, the honorarium is still considered low in light of the extremely high professional level required of arbitrators and their required time input. Payment of the honorarium is governed by the Arbitrator Payment Policy,<sup>52</sup> attached in **Annex 7**; the practice to date has been to pay a flat amount honorarium for all cases, regardless of the amount of work required on the part of the arbitrators selected for that case.<sup>53</sup> However, since the workload can vary considerably (depending on the number and complexity of the issues involved in the case), the Arbitration Council has begun consideration of formulas replacing the flat-amount honorarium by a sliding scale that would correspond to the level of effort required in each case. It is proposed that several different models be examined (during or prior to the planned study on institutional and financial sustainability), including the budgetary implications for each model, in order to determine an optimal honorarium structure. Depending on the results of this analysis, the honorarium structure set out here may change.

- **Designated Mediators.** This forms a new activity to be launched under the DFGG Project. Currently, around 35% of all cases are resolved through settlement agreements reached prior to formal arbitration, with many more cases being partially resolved in the same fashion. The vast majority of these agreements are reached through the mediation efforts of the arbitration panels selected to hear each case. However, arbitrators and support staff have noted that successful mediation might not require the time and resources of a full arbitration panel. To address these issues, this proposal includes a designated mediator pilot project, whereby the arbitration panel would, with the parties' consent, assign a designated mediator (who could be, for example, one of the arbitrators already on the panel, or another arbitrator). The designated mediator would attempt to help the parties find a voluntary resolution to their dispute; if the mediation is unsuccessful, the case will be immediately handed back to the arbitration panel for formal arbitral hearing and resolution via award. Ideally, this system should speed up resolution of the cases and thus lower the Council's costs.
- **SAC administrative support to Arbitration Panels.** In addition to the legal support provided by the ACF, the arbitration panels receive a wide range of administrative support services from the SAC staff. This includes case file management (including proper recording of evidence or other documents); communications with the parties, including requests for further documents or evidence (outside of the hearing, it is the SAC that communicates with the parties on behalf of the arbitration panel); and administrative assistance, including note-taking in the hearing. With the expected rise in caseload at the Arbitration Council during the DFGG Project, the support work by the SAC will also increase. This will be reflected in higher staff levels at the SAC from the second year of project

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that after three or more years, the honorarium might be increased again (for example, to \$150) around Year 3 of the Project.

<sup>52</sup> The policy sets out the conditions for payment but does not specify the honorarium amount, which is reviewed and adjusted periodically. See Annex 7 for more details.

<sup>53</sup> There is no precise data on how much time arbitrators spend on each case, although it is clear that the amount increases in direct proportion to the complexity of the case. At the low end of the spectrum, for example a simple case that can be easily conciliated, the time input per arbitrator may be only around four to six hours; but where conciliation is not successful – that is, if hearings must be held and an award must be issued – the arbitrators may spend from around 16 hours for a relatively simple case to between 40-100 hours (or more) for a very complex case.

implementation. For more details on the proposed staff levels, see Section 7, *Institutional and Implementation Arrangements*.

- ACF legal support to Arbitration Panels.** The ACF Legal Support Team (LST) provides arbitrators with a range of legal support services, including especially legal research and assistance with drafting, formatting and proofreading of arbitral awards. As there are no full-time arbitrators on the Council, the LST also tracks and analyses the Council’s jurisprudence as a service provided to the arbitrators so that they are aware of the legal issues that their peers are dealing with in other disputes. As part of its support services, the LST is also the team responsible for the development of legal systems and tools for legal and industrial relations research (including legal briefing booklets, benchbooks, and legal database; see below). Arbitrators consistently and uniformly praise the work of the LST, and are actively involved in directing and refining the legal support services provided to them. Similar to the SAC work, the LST support services will increase during the DFGG Project as a result of the rise in caseload at the Arbitration Council. Consequently, the size of the LST team will be increased too, as is described in greater detail in Section 7, *Institutional and Implementation Arrangements*.

Under this module, DFGG funding will cover the direct costs associated with the Council’s mediation and arbitration work, as shown in Table 8 below.

**Table 8. Module 2.1- Resolution of Labour Dispute Cases**

<b>What will be financed</b>	Arbitrator honoraria and allowances. SAC staff costs (to be funded by other sources than WB). LST staff costs.
<b>Who will be in charge/carry out</b>	Arbitrators (hearing cases). SAC (clerical/registry functions). ACF LST (legal support to arbitrators).
<b>When/for how long will activity be carried out</b>	Throughout project implantation.
<b>Budgetary implications</b>	\$751,614

## 2.2 Capacity building of AC/F & SAC

The Arbitration Council has been very successful to date. Nonetheless, there is a need for strengthening its administrative and legal capacity. As with all legal professionals, but particularly for the arbitrators of the Arbitration Council which is the first arbitration body in Cambodia and only in its fifth year of existence, arbitrators (and SAC and ACF staff) need continuing development of legal capacity. In 2008, the Arbitration Council initiated a needs assessment exercise carried out by an international consultant, focusing on the arbitrators and on the staff of the ACF and SAC. The needs assessment is expected to be finalized in the second half of 2008, and the results will help determine the exact nature of the capacity building activities that will then be carried out over the coming years.<sup>54</sup>

<sup>54</sup> The needs assessment is being carried out by a senior private sector lawyer from Australia, with support provided by AusAID via Australian Business Volunteers.

In addition to the legal support provided to the arbitrators (described in 2.1 above), this module proposes to respond to the anticipated capacity-building needs through the following activities:

- **Development of legal tools and systems for legal & IR research.** The ACF develops and updates a range of tools that assist the arbitrators in carrying out their own legal and industrial relations research. This ‘legal toolkit’ has the objective of increasing arbitrators’ capacity to handle labour dispute cases by creating systems that the arbitrators can use, so that the Arbitration Council will become more self-sufficient over time. Some of these tools are already developed or under development and will be finalised and/or updated during the DFGG Project period. It is also expected that during the DFGG period, new tools will be conceptualised and developed in line with evolving needs. These include:
  - **Benchbooks.** The ACF has already started to develop a set of benchbooks which track Arbitration Council jurisprudence in specific areas of substantive law. Six benchbook topics (termination of employment, overtime, medical check fees, maternity entitlements, suspension of labour contracts and determination of individual versus collective disputes) have been identified as being of highest priority, corresponding to the issues that most frequently have come before the Council and which are generally more complex. To date, two editions of these benchbooks have been produced and distributed to the arbitrators in hardcopy. Under the DFGG Project, the Arbitration Council will update the benchbook editions for the latest jurisprudence and law, as well as produce other titles. All books will be distributed to the arbitrators both in hardcopy and on CD-ROM and will be updated regularly. Additional benchbook topics will be selected and developed during the DFGG Project period.
  - **Legal research database.** The ACF has similarly begun work on the design and development of a legal and case management database that will permit arbitrators to conduct on-line research into Arbitration Council cases. Currently, the Arbitration Council uses case data charts, indices and tables for Labour Law regulations and Arbitration Council legal jurisprudence, and other materials (all primarily in MS Word format) designed and developed by the ACF to facilitate legal research of laws and cases. In 2007, the ACF contracted a software development company to conduct a survey, in order to determine what the characteristics and features of the legal research database should be; the survey results were used to create a technical specifications document for the database, which was then used to solicit bids for the database development itself. Following a competitive bidding process, a software development firm was engaged in the first half of 2008, and the database (including beta-testing and launch) is expected to be finished by the middle of 2009; this will give arbitrators on-line access (via the Council website) to assist them in researching prior Arbitration Council jurisprudence. During the DFGG Project, the database will be regularly updated and maintained, and may be adjusted as needed and/or appropriate.
  - **Arbitration Council Bulletin.** The ACF also compiles and distributes to all arbitrators, SAC and ACF staff a monthly bulletin on internal issues of note. This activity will be continued during the DFGG Project.
- **Continued professional development programmes for arbitrators.** In order to maintain and improve the arbitrators’ skills, the DFGG project will support three types of activities:

- **Training sessions.** The Arbitration Council organises a series of training sessions on relevant topics. Trainings may be delivered by an arbitrator, on topics where he or she has particular expertise (peer training); by foreign expert trainers who are brought to Cambodia for this purpose; and, where appropriate, by other local trainers. This training programme will be continued during the DFGG Project.
  - **Training and exchange sessions overseas.** Because there is no other arbitration institution in Cambodia, it is very difficult to find appropriate training providers in-country. Experience to date has shown that the arbitrators' learning is greatly increased by direct observation of hearings and other proceedings at overseas labour dispute resolution bodies. Study tours to Australia and the United States which have included hearing observation and discussions with the arbitrators and mediators conducting the proceedings, have been very effective in boosting skill levels and teaching new techniques. This proposal anticipates continued activity along these lines, ideally with study tours to new jurisdictions.
  - **Conference attendance overseas.** Likewise, attendance at international conferences has provided delegates with opportunities to network with their peers in other countries, and to gain broader perspectives and keep current with new developments in dispute resolution. Therefore, the Arbitration Council plans to continue this activity under the DFGG Project.
- **SAC capacity building.** The SAC provides a vital function in supporting the Arbitration Council process. SAC staff are civil servants from the Ministry, who are assigned to work at the SAC during a period of time. Due to staff turnover and resource constraints at the Ministry, skill levels of the SAC staff can be quite low, thus requiring extensive continued capacity building efforts. In addition to having SAC staff participate in the above capacity-building activities as appropriate (training sessions, study tours, etc.), this proposal anticipates a targeted capacity building plan with input from the aforementioned needs assessment carried out in 2008, using local and foreign (visiting foreign experts) training resources as appropriate.
  - **ACF capacity building.** ACF staff likewise requires enhanced capacity building efforts in order to maintain and increase the skills levels needed to assist the Arbitration Council and implement the DFGG Project, including its stakeholder outreach and training programmes (see Component 3 below). ACF staff will therefore continue to participate as appropriate in the training programmes organised for arbitrators and SAC staff, but will also receive targeted capacity building as appropriate. Training in management, administration, and strategic planning, and legal and ADR skills for ACF staff will enable the core functions to be carried out more effectively. Such training will be provided locally to the extent possible. This proposal also anticipates the need for limited overseas training, through courses and/or short-term (e.g., 1-2 weeks) intensive internships with relevant foreign dispute resolution bodies. The ACF will also continue to carry out an annual retreat for capacity-building, team-building and planning purposes. The needs assessment carried out in 2008 is expected to assist the ACF in the further development of its capacity building plan.

**Table 9. Module 2.2- Capacity building of AC/F & SAC**

<b>What will be financed</b>	Development of 'legal toolkit' for arbitrators. Capacity building of arbitrators (including foreign expert trainers, training/exchange visits overseas, attendance at conferences overseas). Capacity building of SAC (including foreign expert trainer). Capacity building of ACF (including retreats, short term training courses/visits overseas).
<b>Who will be in charge/carry out</b>	ACF LST (legal toolkit). ACF CTT (organising/facilitating training programmes). Expert trainers (conducting trainings).
<b>When/for how long will activity be carried out</b>	Legal toolkit: Y1-4 Capacity building of arbitrators: Y1-4 (6 trainings in each year) Foreign expert trainers for arbitrators: Y1-4 (2 trainers, total of 14 person days in each year). Training/exchange visits overseas & international conferences: Y1, 3-4 (1 delegation (6 participants each), total of 42 person days per year); Y2 (2 delegations (6 participants each), total of 84 person days per year). Capacity building of SAC: Y1-4 (including 1 foreign expert trainer in each year). Training courses for ACF staff: Y1-4 (as needed). ACF retreats: Annually.
<b>Budgetary implications</b>	\$208,627

### 2.3. Expansion of Arbitration Council services

A primary goal of DFGG funding for the Arbitration Council is to enable the Arbitration Council to increase its service provision in scale and scope. Currently, over 90% of the cases brought to the Arbitration Council come from the garment manufacturing sector; the vast majority of cases originate from the greater Phnom Penh area. This component seeks to expand the Arbitration Council's capacity to provide services to new regions and new industrial sectors.

It is expected that the stakeholder outreach and training activities listed in Component 3 will raise awareness and stimulate greater demand for the Arbitration Council's services, and the Arbitration Council must be adequately resourced to meet this demand. In addition, this proposal anticipates a number of new activities, described below, that will target specific regions and/or sectors for expansion of services. Such targeting will be based on past experience as well as the results of studies to be carried out at the start of the DFGG Project implementation period.

It should be noted here that the potential for expansion in specific regions and/or sectors will largely depend on external factors, including the extent of the economic growth in these regions and/or sectors; the expected increase in workforce in these regions and/or sectors; and the extent to which the workers organize themselves in unions or otherwise (nearly all the cases that come before the Arbitration Council are brought by unions). Therefore, the extent to which the Arbitration Council can influence the level of demand in specific regions and/or sectors is limited. In particular, it would not be appropriate for the Arbitration Council to be involved in

the required mobilisation of unions and employers, as this would affect the real and perceived independence and neutrality of the Council. Against this background, the Arbitration Council has laid out the following stepwise plan.

- **Studies relating to the expansion of Arbitration Council services.** As a *first step* in expanding the Council's services, this proposal anticipates using DFGG funds to carry out several studies which can help identify promising dimensions for expansion. These studies, which would be sub-contracted to appropriate consultants or research institutes, may examine a number of issues, including an assessment of demand for Arbitration Council services in different areas.
- **Selection of target regions and sectors.** A *second step* in expanding the Council's services concerns the selection of target regions and sectors, based on the answers to these (and other) questions provided by the above studies. Though these regions and sectors are expected to be identified through the assessment of demand mentioned above, past cases and anecdotal information suggest that certain regions and sectors (e.g., the tourism and construction sectors in Siem Reap) are likely to be included in the list.<sup>55</sup>
- **Outreach and training activities in targeted regions and sectors.** As a *third step*, once selected, the target areas will be the focus of outreach and training activities. Training will be conducted for relevant stakeholders including any existing unions or worker representatives, employers, and government officials (Ministry of Labour and Vocational Training; provincial Labour Officials; district ombudsmen and/or One-Window Service officials; and other provincial officials as appropriate). This activity (included in the stakeholder training described in Component 3 below) will be carried out in conjunction with a broader awareness raising campaign targeting employees and employers. Where unions and/or employer associations are inactive or non-existent, the Arbitration Council recommends that DFGG funding be provided via the Non-State Actor window to relevant NGOs, unions or associations in order to facilitate better organisation and increased stakeholder capacity. (As noted above, it would not be appropriate for the Arbitration Council to undertake this activity itself.)
- **Establishment of partnerships in targeted regions and sectors.** As a *fourth step*, the Arbitration Council plans to establish partnerships with stakeholder organisations and institutions that operate in the respective target regions and/or sectors. The strategy on establishment of partnerships is described more in detail in Component 3 below and in Section 9, *Participation and Partnerships Plan*.

In addition to the above stepwise plan, the Arbitration Council plans to undertake two other initiatives:

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<sup>55</sup> At the Technical Advisory Group meeting on August 3, 2007, the AC/Ministry TWG members asked invited stakeholders for their feedback on which sectors and regions were most likely to benefit from an expansion in the Arbitration Council's services. Stakeholders responded that Siem Reap (tourism and construction sectors), Kompong Som and Svay Rieng provinces were good candidates for expansion; likewise, there was likely to be increased activity in sectors such as tourism, construction, agriculture (including plantations and processing/refining) and mining.

- **Mobile teams to serve demand in the provinces.** To serve the expected increased demand from outside the (garment sector in the) Phnom Penh area, the Arbitration Council will increase its infrastructure for receiving cases from new areas. Generally cases from the provinces are heard at the Arbitration Council’s chambers in Phnom Penh. However, past arbitration panels have, in exceptional cases, held hearings in the provinces – for example, because the arbitration panel needs to visit the site of the dispute, or consider evidence or testimony that is difficult to transport to Phnom Penh.<sup>56</sup> This proposal provides funds for mobile teams of arbitrators and support staff, who would be able to carry out any necessary proceedings in the provinces. Such proceedings are expected to be relatively few in number, as parties will still generally be expected to bring their case at the Council’s chambers in Phnom Penh.
- **Pilot initiative on direct access to the Arbitration Council.** The Labour Law allows parties to establish their own dispute resolution mechanisms, and thereby avoid the conciliation (by the Ministry) and arbitration (by the Arbitration Council) that is otherwise required by law. At the same time, stakeholders have expressed an interest in turning to the Arbitration Council for direct assistance in resolving disputes, without having to wait for the Ministry to review and forward their case. In connection with the study mentioned above, this proposal includes a pilot project that would allow parties to access the Arbitration Council directly as part of their own private dispute resolution mechanisms. Where such an agreed mechanism exists, this direct access should allow disputes to be resolved even faster, so that workers and enterprises can return to work as soon as possible.

In parallel, from project start-up on, the Arbitration Council will ready itself for the expected expansion through the hire of additional support staff, the move to a larger facility (to accommodate multiple hearing/mediation rooms and office space for new staff) and the purchase of additional equipment (including a vehicle for transportation to the provinces). More details are provided in Section 5, *Detailed Project Cost Estimates and Financing Plan*.

**Table 10. Module 2.3 – Expansion of Arbitration Council services**

<b>What will be financed</b>	Study on demand for AC services; pilot initiative on direct access to AC. Mobile hearing teams (including transportation, venue, accommodation, per diems).
<b>Who will be in charge/carry out</b>	Research institutes and/or consultants (studies). ACF LST (mobile teams).
<b>When/for how long will activity be carried out</b>	Studies: Y1 Mobile teams: 3 in Y1, 5 in Y2, 6 in Y3, 7 in Y4.
<b>Budgetary implications</b>	\$35,935

<sup>56</sup> For example, in June 2004, the arbitration panel held a day of hearings in Siem Reap in connection with Case 28/04 – Raffles Grand Hotel d’Angkor. The purpose was to hear testimony from a number of Siem Reap-based witnesses for whom it was difficult to travel to Phnom Penh, as well as for the arbitrators to examine the physical site of the dispute (which was an important element in that case). This is similar to what is done in some other countries, where arbitrators travel to hear cases where the parties are located either regularly (e.g., the United States, Canada) or intermittently (Australia).

### ***Component 3. Partnerships and Stakeholder Outreach and Training***

As noted earlier, the Arbitration Council's success to date can be attributed to a high level of cooperation between key stakeholders that include the Ministry, employer associations and unions. The Arbitration Council itself is a product of this cooperation. The tripartite partners worked closely together towards the creation of the Council and they jointly endorsed the tripartite structure and legal framework which resulted in the issuance of the *Prakas on the Arbitration Council*. Also all three tripartite stakeholders jointly endorsed the appointment of the first group of 21 arbitrators, whose recruitment and nomination had been facilitated by the ILO. Since the Council's inception, the Ministry and social partners have continued their cooperation in the development of the Arbitration Council. For example, in 2005 they supported the establishment of the independent Arbitration Council Foundation to provide the management and technical support functions of the Council which had previously been carried out by the ILO.

The Arbitration Council's unique tripartite structure requires continuing engagement of these three key partners. They are involved at a number of levels and in a number of ways: from the nomination of candidates for arbitrators, to consultations regarding Arbitration Council and industrial relations developments, to the micro-level interaction as a party in a particular labour dispute. Therefore, the Arbitration Council's key partners, as is the case with industrial relations generally, are unions, employer associations and Ministry, rather than conventional NGOs.

Under the DFGG Project, the Arbitration Council will strengthen its cooperation with these tripartite partners, but also plans to expand its collaboration with other relevant organisations and institutions inside and outside Cambodia through increased outreach and capacity building activities, and establishing and maintaining partnerships.

In this respect, it is noted again however, that, as a general principle, the Arbitration Council should abstain from associating itself too closely with specific stakeholders, as this could affect the real and perceived independence and neutrality of the Council. It is for this reason, for example, that, where appropriate, alternative ways of conducting outreach will need to be pursued (e.g., through ILO programmes, the ACILS Solidarity Center, CAMFEBA/GMAC, etc.) and that in this project proposal it is recommended that certain activities be carried out by Non-State Actors, rather than by the Arbitration Council itself (see also Annex 7, which contains a list of suggested complementary activities to be undertaken by Non-State Actors). It is also noted that regardless of who is the actor carrying out the outreach and training activities, the Arbitration Council and the ACF will remain involved in the delivery of such activities to answer technical questions and provide strategic direction and advice.

These activities will primarily be carried out by the ACF Communications and Training Team. Staff costs for this team are detailed in Table 11, while specific activities and their associated budgets are described further below.

**Table 11. Component 3 (ACF staff costs) – Partnerships and Stakeholder Outreach and Training**

<b>What will be financed</b>	ACF staff support for activities under this component.
<b>Who will be in charge/carry out</b>	ACF CTT
<b>When/for how long will activity be carried out</b>	Throughout project implementation.
<b>Budgetary implications</b>	\$112,320

### 3.1 Establishing and maintaining partnerships

The Arbitration Council’s activities under this module are aimed at establishing and maintaining partnerships with its three key partners, as well as with other relevant organisations and institutions, in order to strengthen the Arbitration Council and the ACF. To this end, the Council plans to use several strategies, recognising that there are different categories of stakeholders, each of which have different needs and thus require different forms of engagement. For full details on the activities to be carried out under each strategy, see Section 9 on partnerships.

**Strategy 1:** Institutionalisation of partnerships with the **key Cambodian industrial relations institutions and stakeholders**. This strategy will involve the Arbitration Council and the ACF, the Ministry (including the SAC), employer associations and union federations. Activities to be carried out under this strategy include:

- Transformation of the DFGG Technical Working Group (TWG) into a DFGG Project Collaboration Committee (PCC). (More details on role and workings of the PCC can be found in Section 7, *Institutional and Implementation Arrangements*.)
- Transformation of DFGG Technical Advisory Group (TAG) into a permanent tripartite Stakeholder Advisory Group (SAG). (More details on role and workings of the SAG can be found in Section 7, *Institutional and Implementation Arrangements*.)
- Regular meetings between arbitrators and Ministry conciliators, in Phnom Penh and elsewhere.
- Regular meetings with employers and unions, including Meet & Greet activities.
- Provide technical support to trainings conducted by employer associations and labour unions, on appropriate topics such as the arbitration process, the advantages of binding arbitration, arbitration and CBAs, etc.
- Conduct stakeholder surveys and consultations on particular issues.

**Strategy 2.** This strategy includes the continuation and expansion of collaborative and consultative projects with **other stakeholders in Cambodia** (including other Ministries, the judicial system, NGOs, universities, media, etc.), project implementing agencies and donors. Activities to be carried out under this strategy include:

- Provide technical support to trainings conducted by NGOs.
- Establish ties with local universities and higher education institutions and arrange for student-visits to the Arbitration Council.

- Continue and expand internship program at ACF for Cambodian and foreign law students.
- Continue organisation of annual National Industrial Relations Conference (NIRC).
- Encourage formation of an independent Industrial Relations Society.

**Strategy 3.** This strategy covers the institutionalisation of partnerships with relevant **international and overseas organisations**. Activities to be carried out under this strategy include:

- Revise ACF statute and provide for non-voting members on ACF Board of Directors, including, for example, a representative from the ILO.
- Cooperate with the ILO on selection and recruitment of arbitrators (see paragraph 1.1 above); on the provision of training and capacity building programmes; and on possible support by the ILO for the development of high quality proposals under the Non-State Actor window.
- Seek membership in relevant professional bodies (e.g., the International Industrial Relations Association, regional mediation or arbitration associations, etc.).
- Consolidate the current ties with the Australian Industrial Relations Commission and establish relationships with other dispute resolution bodies in Asia, Europe, Africa and the US.

**Strategy 4.** This strategy aims to establish and maintain collaborative and consultative projects with **other DFGG partners**. Activities to be carried out under this strategy include:

- Discuss and negotiate agreement and framework for participation in RNK's talkback programmes.
- Explore possibility to cooperate with MONASRI on dissemination of regulations and information on the Arbitration Council.
- Discuss with MOI One-Window Service Office and/or District Ombudsmen regarding possible cooperation on issues of outreach.
- Explore possibility to cooperate with Non-State Actor on establishment of a one-stop shop for information about labour dispute resolution.

**Strategy 5.** Under this strategy, the ACF will adjust its partnership plan in line with the planned **expansion of the Arbitration Council's services**. Activities to be included under this strategy include:

- Evaluate partnership plan regularly in light of the Arbitration Council's expansion into new regions and sectors and adjust as appropriate.
- Conduct Meet & Greet activities in new regions and sectors.
- Invite representatives of tripartite partners from outside regions and sectors to sit on the tripartite Stakeholder Advisory Group.
- Collaborate with relevant regional and sectoral employer associations and union federations on awareness-raising and training activities.
- Partner with government officials in new regions to train relevant officials on the Arbitration Council process.

**Table 12. Module 3.1 – Establishing and Maintaining Partnerships**

<b>What will be financed</b>	Meetings of PCC and SAG (venue, snacks, etc.) Meet & Greet (venue, snacks, translator, etc.). NIRC (venue, snacks, translator, backdrop, etc.) Membership in professional bodies. Support to institutional relations with other ADR bodies.
<b>Who will be in charge/carry out</b>	ACF CTT (organises and/or facilitates all meetings). Consultant (organises NIRC)
<b>When/for how long will activity be carried out</b>	PCC: Y1-4 (6 x per year) SAG: Y1-4 (2 x per year) Meet & Greet: Y1-4 (2 x per year) NIRC: Annually. Institution-Building Training Seminar: Biennially. Membership in professional bodies and support to institutional relations with other ADR bodies: throughout project implementation.
<b>Budgetary implications</b>	\$39,940

### 3.2 Dissemination of publications and other information

The Arbitration Council’s objective for this component is to produce, publish and disseminate arbitral awards and other relevant information in order to raise stakeholder awareness and ensure transparency. By providing information to stakeholders in a reliable, transparent way, the Arbitration Council also promotes stakeholder capacity building.

- **Maintenance of the Arbitration Council website.** The Arbitration Council website [www.arbitrationcouncil.org](http://www.arbitrationcouncil.org) (currently being re-designed) provides information on the Council and the labour dispute resolution process. The website also makes available copies of all decisions handed down by the Council. The new website, when launched, will provide parties with related forms and additional information on the hearing process and industrial relations issues. This will raise awareness and also allow actual and potential parties to access necessary information without having to travel to the Arbitration Council. DFGG Project funds will be used for maintenance of the website.
- **Publication of arbitral decisions (awards and orders).** Among the reasons that the Arbitration Council has become a model institution of justice in Cambodia is the transparency with which the Council decides cases brought before it.. Not only do parties receive copies of the arbitral award issued in their case; all arbitral awards are also posted on the Arbitration Council website within days of being issued with English language translations of the awards being posted shortly thereafter. In addition, a multi-volume hardback series *Compilation of Arbitral Awards and Orders* is published by the ACF twice a year.

These various publishing and dissemination outlets permit access by current and potential parties and other stakeholders to the jurisprudence of the Arbitration Council. By reading the jurisprudence, stakeholders can both appreciate the Council’s *consistency* in interpreting the law, and can better understand *how* the Council interprets the law; this understanding in turn can prevent disputes that might

otherwise occur if no interpretation were available. Publication of awards also allows third parties to monitor compliance by the parties to the dispute. This project proposal therefore includes financial support for the continuing publication and dissemination of arbitral awards, through the website, published volumes and new formats such as CD-ROM.

- **Development and production of publications and other tools** designed to build the capacity of actual and potential parties to present cases before the Arbitration Council, as well as updating and re-printing existing publications. The existing publications to be updated and re-printed include: basic question-and-answer brochures on the Arbitration Council; the more advanced legal guide to the Arbitration Council and Labour Dispute Resolution in Cambodia; and biographies of the arbitrators, to facilitate the parties' selection of arbitrators for their cases. New publications and tools include: simple user guides to the Arbitration Council (guide to case preparation, guide to hearings, etc.); the Arbitration Council annual report, to promote transparency (including financial transparency), information-sharing and partnership; and promotional tools (stickers, postcards, etc.) to advertise and promote the Arbitration Council's brand. All publications will be developed and updated in-house, except for the promotional tools, which likely will be outsourced, though under careful supervision of the Arbitration Council to ensure technical accuracy and the consistency of messages.
- **Information line to provide advice on procedure and resources available to parties.** A dedicated telephone line will be set up to receive public telephone inquiries, so that potential parties and other interested stakeholders can call for information on the labour dispute resolution process. Calls will be answered by regular ACF legal staff who will receive special training (via the ACF capacity building budget line) for this purpose. The information line will be advertised as part of the outreach and awareness raising activities described in Module 3.3 below.<sup>57</sup> This approach is based on telephone-based services available at some overseas dispute resolution bodies.<sup>58</sup>
- **Establishment and promotion of an Arbitration Council library and information centre for parties and other interested stakeholders.** Currently, the Arbitration Council has a small but extensive (over 800 volumes) library with a collection of international and Cambodian materials about labour law, industrial relations, labour and alternative dispute resolution (conciliation/mediation and arbitration) and general law. The Council believes that its library is the most extensive collection in these fields available in Cambodia.

Currently, the library is used by arbitrators and staff of SAC and ACF only. The Arbitration Council proposes to make the library accessible to stakeholders as an information centre, promote its use, and staff it so that potential parties or their representatives can be shown how to use the holdings in order to prepare their case prior to a hearing at the Arbitration Council. The library would also assist

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<sup>57</sup> Because the operating costs (telephone, staffing, advertising) are already included in other budget lines, there is no separate budget allocation for the information line.

<sup>58</sup> For example, South Africa's Commission for Conciliation, Mediation and Arbitration (CCMA) established a call centre in June 2002, which the CCMA reports as having had a huge impact, with call numbers increasing on a month to month basis. Commission for Conciliation, Mediation and Arbitration, *Annual Report 2005/2006* (2006).

Cambodian jurists and legal scholars who wish to conduct research in the fields mentioned above.

In addition, as indicated in Strategy 4 in Module 3.1 above and in Section 9, *Participation and Partnerships Plan*, the Arbitration Council will be cooperating with DFGG State Institutions and Non-State Actors to disseminate information and raise awareness of its services. This includes possible collaboration with MONASRI (on dissemination of relevant laws and regulations), RNK (talkback radio and radio spots), MOI (dissemination via the One-Window Service Offices) and appropriate Non-State Actors (dissemination via a one-stop shop on labour dispute resolution, or via a simple printed guide to labour dispute resolution).

**Table 13. Module 3.2 – Dissemination of Publications and Other Information to Raise Stakeholder Awareness**

<b>What will be financed</b>	Website maintenance. Publication of hardbound volumes of Compilation of Arbitral Awards and Orders. Development and production of other existing and new publications and tools. Information line. Library/information centre.
<b>Who will be in charge/carry out</b>	Private company (website maintenance) ACF LST (legal publications). ACF CTT (other publications, information line and library/information centre).
<b>When/for how long will activity be carried out</b>	Website maintenance: throughout project implementation. Publication of hardbound volumes of Compilation of Arbitral Awards and Orders: twice a year. Development and production of other existing and new publications and tools: throughout project implementation. Information line: Y1-4. Library/information centre: Y1 (open for stakeholders), Y1-4 (additional book purchases).
<b>Budgetary implications</b>	\$111,696

### 3.3 Media relations and promotion

Media relations will be a key part of the Arbitration Council’s communications strategy and therefore of its activities for outreach and awareness raising. Through careful and strategic use of the media, the Arbitration Council will be able to promote itself to a wider audience than if it were to rely on direct outreach activities. This proposal envisions that several activities (e.g., production of video tools) will be outsourced, though under careful supervision of the Arbitration Council to ensure technical accuracy and the consistency of messages. To increase the effectiveness of its communications activities, this proposal also plans hiring an international media and communications expert to act as an occasional consultant during the project. In the initial phase of the DFGG Project, the consultant will assist the ACF primarily with the development, production and strategic use of the video tools (see below); as a result, during the first and second years, the consultant will be hired via the production firm that is contracted to produce the video tools.

- **Development of video tools for mass outreach and training purposes.** Given the large size of the target group (the garment sector alone employs around 340,000 people), outreach via direct training is not feasible. Under this proposal, several different video tools would be developed and tested, all of which have a high potential for reaching large numbers of workers.<sup>59</sup> For background information on the underlying communications strategy, see Section 12 below.

First tool: Arbitration Council Soap Opera

In 2005-2006, ILO-Better Factories Cambodia (BFC) produced two episodes of a soap opera “At the Factory Gates”; an additional four episodes were produced in 2007. The soap opera was designed to educate workers in the garment sector about important issues, such as occupational health and safety, the right to strike, workplace harassment and maternity leave / breastfeeding rights. The series was cast with well-known Cambodian karaoke and television stars, and has proved to be very popular drawing praise from workers, employers and even Prime Minister Hun Sen. It is difficult to determine viewer numbers for broadcast television in Cambodia, but information received from BFC concluded that over 50,000 workers saw the first two episodes which were broadcast on national television (TVK and CTN) in 2006; an additional 20,000 workers have seen one or more episodes during BFC-organised viewings at factories.

The Arbitration Council Soap Opera (the title is still to be determined) is intended to be a pilot for a new spin-off from “At the Factory Gates”. This proposal anticipates producing a number of episodes, using the same established characters as “At the Factory Gates” and adding new characters only as necessary. This requires contracting the same production company used for “At the Factory Gates”. The ACF has already had preliminary discussions with this production company and with BFC, to ensure that there are no copyright or production barriers to proceeding in this fashion.

In addition to broadcasting the Arbitration Council Soap Opera on television, this proposal plans to screen episodes of the opera at Outdoor shows (see further below).

Second tool: Public Service Announcement (PSA)

The Public Service Announcement (PSA) is a televised and/or radio advertisement of 30-60 seconds in length. The ACF proposes to create a PSA that advertises the existence of the Arbitration Council, giving interested viewers contact details where they can get more information about the Arbitration Council and its role in hearing complaints of labour rights violations. The ACF plans to work with the same production company as above, which would offer economies of scale and would also allow use of some of the same characters as in the soap opera. The PSA will then be aired on television and/or radio. It is hoped that the cooperation with RNK, another DFGG State Institution, will facilitate this.

Third tool: Training Video

The Training Video is designed to orient new parties who have brought or wish to bring claims before the Arbitration Council. The video is expected to run around 10-15 minutes in length and is designed to put parties at ease and familiarise them with

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<sup>59</sup> Budgeting for the production of video tools is extremely complex. This proposal is based on preliminary quotes from the video firm that produced the “At the Factory Gates” soap opera, mentioned in the following paragraph.

the workings of the Arbitration Council, so that they are better prepared to appear in a hearing before the arbitration panel. It is intended to be an informational video which would explain to potential parties what the Arbitration Council is; how it works; how claims may be brought; and what parties should expect or prepare themselves for when their claim is heard (selection of arbitrators, hearing process, etc.). The video would also have a promotional aspect, and thus would assist to build confidence in the Arbitration Council. To this end, the video might incorporate testimonials from former disputants who were satisfied after having their dispute heard at the Arbitration Council.

For reasons of economies of scale, the ACF proposes to sub-contract the same production company referred to above to create this training video, which would also allow use of some of the same characters as in the soap opera. The video would be shown to workers at Arbitration Council training sessions, at the SAC and at the Arbitration Council library. Copies of the training video would also be provided to various stakeholder groups (unions, factory managers, and other relevant stakeholders) for them to screen.

- **RNK Talkback radio.** In addition to using TV as a medium, the Arbitration Council proposes to work together with RNK, to use the talkback radio program to promote the Arbitration Council and raise awareness among workers and the general population. Impact will be tracked to determine the effectiveness of this medium.
- An **Annual campaign** including a range of tools (such as posters, TV and radio spots), timed around Labour Day or another appropriate date/event, will include an outdoor show in order to boost exposure. The show could include representatives from unions that have won a case at the Arbitration Council. In addition, the entertainment component might include personal appearances by one of the more popular actors that have appeared in the soap opera, episodes of which would be screened at the show. It may also include a contracted popular singer. The entertainment component will help attract the audiences.
- **Media briefings, enhanced media relations and press monitoring.** Media briefings will be held regularly during the project, in order to build the capacity of reporters and other media representatives to report accurately on the Arbitration Council and the labour dispute resolution process in Cambodia. This will include reaching out to the media by summarising and re-packaging notable arbitral awards, in order to make them more accessible for journalists and to facilitate reporting to the general public.

The media briefings will be followed up by enhanced media relations and outreach, including the possibility of pitching stories to the media and bringing case winners and losers in greater contact with the media so they can write their own stories. Media relations will also help the Arbitration Council to generate publicity around key events. For example, a small campaign targeting the media is carried out around the National Industrial Relations Conference that is held annually. This conference is aimed at expert participants and is not open to the general public, but in 2005 and 2006 the Arbitration Council was successful at generating some media coverage of this event and the issues raised.

At the same time, the ACF will continue and expand its current practice of monitoring prominent press coverage of the Arbitration Council and labour disputes in general, in order both to stay informed of current events in industrial relations as well as to develop more targeted communications approaches in the future. To keep the arbitrators and staff up to date on general labour and industrial relations issues, the ACF prepares a weekly press update which is distributed to the entire Arbitration Council family, and which summarises recent developments reported in the media.

**Table 14. Module 3.3 – Media Relations and Promotion**

<b>What will be financed</b>	Development of soap opera. Development and broadcast of Public Service Announcement. Development of training video. RNK talkback radio. Annual media campaign (including outdoor show). Media briefing.
<b>Who will be in charge/carry out</b>	Production company (soap opera, Public Service Announcement, training video). ACF CTT, with advice from occasional media and communications consultant (other activities).
<b>When/for how long will activity be carried out</b>	Soap opera: Y1 (development), Y2 (production and launch), Y2-4 (broadcast and screening). Public Service Announcement: Y1-2 (production), Y2-4 (broadcast). Training video: Y1 (production), Y1-4 (screening). RNK talkback radio: Throughout project implementation, depending on RNK programming schedule. Media campaign: Annually. Media briefing: Regularly throughout project implementation. Media and communications consultant: Y1-4 (20 days in Y1, 15 days in Y2, 10 days in Y3, 10 days in Y4).
<b>Budgetary implications</b>	\$124,380

### 3.4 Stakeholder training

Stakeholder trainings are currently organised by the ACF, while the training itself is generally conducted by arbitrators, the legal staff of the ACF and staff of the SAC.<sup>60</sup> Since the Arbitration Council and its supporting bodies have been conducting stakeholder trainings since 2003, there is already a range of training materials which have been prepared and tested. Likewise, there is an existing evaluation system in place to assess the stakeholders' satisfaction with the training program; based on the feedback received from participants and trainers' observations, training materials are adjusted or new training materials and formats are prepared by the ACF legal and training teams. It is expected that the ACF would continue to utilise this system. Trainings will be scheduled during the Annual Planning Workshop (see Section 7, *Institutional and Implementation Arrangements*).

<sup>60</sup> Training is carried out by the Arbitration Council, ACF and SAC representatives rather than being sub-contracted to an outside entity. This is because no other training body has the detailed knowledge of the Arbitration Council which is necessary to answer questions posed by participants.

The main project activities in this module are the following:

- **Direct, targeted training of relevant stakeholders** (primarily workers and employers, conciliators and provincial labour officers, court officials, lawyers and advocates, government officials, media, NGOs and other relevant groups). The training will be tailored to each group, although the overall theme is similar. Basic/introductory training will focus on the Arbitration Council (what is it; how it works; what is the Arbitration Council's jurisdiction; what kind of claims may be brought before the Arbitration Council, and how to bring them; rights vs. interests disputes; the advantages of binding vs. non-binding arbitration; the rights and responsibilities of parties to a dispute before the Arbitration Council). Advanced training will build the capacity of parties and advocates to prepare and present their cases before the Arbitration Council. Based on feedback from the trainings, new topics may be incorporated as needed.

In some cases, workers will be trained in joint sessions with employers (e.g., by inviting the management and union representatives for a particular factory), to promote a shared understanding of labour rights and labour dispute resolution. In other cases, workers and employers would be trained separately.

Ministry conciliators will receive intensive and maintenance training. Because of the important role that the conciliators play in resolving disputes prior to arbitration, it is vital that they understand clearly how the Arbitration Council works and what the Arbitration Council jurisprudence is; the same is true for provincial labour officers. The project proposal therefore anticipates annual training events for conciliators, selected Ministry officials and provincial labour officers.

Training for current and future court officials (sitting judges, court clerks and student judges) will also include information on the relationship between the Arbitration Council (and, more generally, arbitration) and the courts.

Training for current and future lawyers and advocates (including local NGOs) will focus on how to prepare and present cases before the Arbitration Council, with a view to assisting the trainees to understand the nuances of arbitral proceedings and to be the best advocates they can be for their clients. Activities focusing on future lawyers and advocates include training sessions for law students at local universities as well as for student lawyers at the Lawyer Training Center.

Relevant government officials will be targeted as appropriate. For example, provincial and local officials, including District Ombudsmen and other officials of One-Window Service Office based in an area chosen as a target for Arbitration Council expansion would be invited to training sessions held in that province. The expectation is that government officials will gain knowledge of the Arbitration Council and will thus be better able to direct labour disputes to the Arbitration Council, if and when they arise. Representatives from relevant NGOs will similarly be included in training sessions, held at provincial and local level, as appropriate.

Prospected numbers of participants in each of the above training programmes compared to current levels can be found in Table 18 further below.

**Table 15. Module 3.4 – Stakeholder Training**

<b>What will be financed</b>	Training programmes, including venue, snacks, transportation and accommodation as appropriate: Training employees/employers in Phnom Penh. Training employees/employers in provinces. Training Ministry conciliators. Training Ministry provincial labour officers. Training sitting judges. Training court clerks. Training student judges. Training advocates. Training lawyer trainees. Training law students at universities.
<b>Who will be in charge/carry out</b>	ACF CTT (organising trainings). Arbitrators, ACF LST and SAC (conducting trainings).
<b>When/for how long will activity be carried out</b>	Training employees/employers in Phnom Penh: Y1-4 (320 participants in each year). Training employees/employers in provinces: Y1-4 (160 participants in each year). Training Ministry conciliators: Y1-4 (50 participants in each year). Training Ministry provincial labour officers: Y1-4 (30 participants in each year). Training sitting judges: Y1-4 (50 participants in each year). Training court clerks: Y1-4 (100 participants in each year). Training student judges: Y1-4 (65 participants in each year). Training advocates: Y1-4 (50 participants in each year). Training lawyer trainees: Y1-4 (50 participants in each year). Training law students at universities: Y1-4 (320 participants in each year).
<b>Budgetary implications</b>	\$72,910

***Component 4. General Operations and Project Management***

The ACF is tasked with providing managerial, technical and financial support to the Arbitration Council, while maintaining its independence and integrity (by separating the arbitral and management/technical/financial functions). The ACF will continue supporting the operations of the Arbitration Council under the DFGG Project.

Under the Board of Directors, the Executive Director currently manages the ACF with a full staff and a 2008 budget of just over US\$475,000 per year. This DFGG Project proposal, however, carries a significantly higher budget because of the Arbitration Council’s increased level of activity and the expansion of services, as described in Modules 2.1, 2.3 and the supporting activities described in Components 1 and 3. This increased activity level will require greater funding to effectively and competently handle the increased caseload that is expected to result (e.g., greater number of arbitrator honoraria, increased facilities to provide a second hearing room); to produce the new and/or increased outputs (e.g., soap operas, additional training

programmes; and to provide a more robust infrastructure in order to operate at a high level of effectiveness in the Council's expanded work (e.g., increased staffing, expanded facilities, additional hardware). The comparison of current and increased/new outputs is presented in Table 18 below. World Bank requirements also imply increased costs in specific areas (e.g., additional staff for procurement, increased expenditure on monitoring and evaluation), while there are likewise to be expected to be increased administrative and core costs.

The implications of the Arbitration Council's increased level of activities and expanded services under the DFGG Project for staffing levels and salaries; housing and rental fees; equipment needs; and monitoring and evaluation are described in greater detail below.

### **Staffing levels and salaries**

ACF staffing levels are discussed in detail in Section 7 of this proposal. ACF staffing costs (including salaries and benefits) under this component cover the executive management, finance and administration and in-house monitoring and evaluation functions. These costs comprise \$481,783 over the four years of the DFGG Project, or roughly 15.9% of the total budget for that period.

Additional ACF staffing costs<sup>61</sup> are included under the relevant components described above: the Legal Support Team costs (\$402,924 over four years) are included under Component 2 and the Communication and Training Team staff costs (\$115,200) are included under Component 3. All these staff costs together comprise \$999,907 or around 33% of the overall four-year budget proposed for the AC component under DFGG.<sup>62</sup>

Although this is a significant percentage of overall costs, it appears consistent with the levels found at labour dispute resolution bodies in other countries. For example, South Africa's Commission for Conciliation, Mediation and Arbitration (CCMA) reports that full-time staff costs are around 40% of the overall budget. In other countries, the percentage may be even higher: a similar body in an industrialised country reports that employee expenses are slightly over 45% of total expenses.

ACF staff costs are broken down into salary and benefits, discussed below.

*Salaries* are comprised of twelve monthly salary payments (from which employee tax is deducted by the ACF and remitted to the RGC, in accordance with law) and an additional (thirteenth month) salary which is distributed to each staff member at the end of the calendar year, provided that the staff member has received a satisfactory performance evaluation.<sup>63</sup>

*Benefits* are set out in ACF's human resources policies, and include the following:

- *Provident fund.* Five percent of the employee's monthly salary is deposited into an interest-bearing fund, which employees receive upon separation (resignation or termination) from the ACF. This modality also provides against the ACF's employer

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<sup>61</sup> Due to World Bank / IDA funding restrictions on expenditures, all ACF staff costs are listed under the category of consultants. See Section 11, *Procurement Plan*, for more details.

<sup>62</sup> It is expected that a new tax, the employer contribution for occupational risk insurance, paid to the National Social Security Fund, will come into effect in 2008 or 2009. This contribution, although small (currently scheduled at 0.8% of salary), would increase the projected salary costs slightly.

<sup>63</sup> ACF has an established procedure for performance evaluations. All supervisors evaluate the performance of their staff by the end of the year: managers evaluate their teams, the Executive Director evaluates the managers, and the Board of Directors evaluates the Executive Director. The results of these evaluations are the basis for distributing the thirteenth-month payment and for any performance-based salary increases that may be given.

liability under the Labour Law to pay an indemnity for dismissal or severance payment to staff who are terminated.

- *Hospitalisation insurance.* ACF staff are insured under a group policy for major medical (in-patient only) costs.
- *Outpatient medical benefit.* Each ACF staff may seek reimbursement for up to \$200 per year against authorised receipts for outpatient medical expenses.

ACF salaries have been set at the levels deemed necessary to recruit and retain qualified staff. Salaries in Cambodia have risen dramatically in recent years, and recruitment and retention are particularly difficult for senior and management positions.<sup>64</sup> Research and benchmarking carried out in December 2007 has confirmed that ACF salaries are set at appropriate levels.<sup>65</sup> Most ACF staff are professionals in the fields of law, finance and administration, or communications, marketing and training. At the same time, it should be noted that the work performed by ACF staff is unique (and uniquely challenging) insofar as there are no other organisations in Cambodia similarly tasked with the responsibility of providing full-time support to sustain a quasi-judicial state institution. Therefore, the ACF seeks to recruit and retain top quality staff – and so the appropriate comparators for salaries are what staff of that same level could earn at leading law firms, NGOs or private sector enterprises. ACF salaries are at or below these levels.

It should also be noted that the salary level for ACF executive management positions (Executive Director, Deputy Executive Director) is greater than the typical NGO rates. This is due to the fact that the executive management is expected to operate at a higher level than that generally found at NGOs in Cambodia. However given the enormous variety in NGOs (including differences in substantive work, budgets, and target areas), the range in NGO salaries for top-level managers is understandably very broad<sup>66</sup> – suggesting that median NGO salaries are not an appropriate benchmark for ACF. ACF executive management is generally drawn from international or multilateral organisations (e.g., the EU, USAID, etc.) or the private sector, and the compensation is therefore set at a correspondingly higher level.

In order to ensure that staff salaries maintain their value in the face of rising inflation, and as a measure to retain staff, the ACF has, since its establishment, made an annual cost-of-living adjustment to its salaries. This adjustment is based on the official Consumer Price Index statistics for Phnom Penh, as published by the RGC's National Institute of Statistics. Adjustments are usually made in February (retroactive to January) of each year.<sup>67</sup>

In order to retain staff, ACF management seeks to reward exceptional performance through salary increases as well as other strategies such as opportunities for internal staffing promotion

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<sup>64</sup> In October 2007, local human resources consultant Sandra D'Amico, whose company HR Inc. has been tracking salary levels in Cambodia for three years, said wages for managers and technical staff are “jumping” because of talent shortages in almost every industry, and that finding good management skills is the biggest problem. “At the management level...[s]alaries start at \$1000 and go all the way up... It's a myth that salaries are low in Cambodia.” Susan Postlewaite, “Skilled worker shortage inflates salary paycales”, *Phnom Penh Post*, Oct. 5-18 2007, p. 5.

<sup>65</sup> During the period December 7-12, 2007, ACF surveyed salary data of comparable legal organisations in Phnom Penh via discussions with managing partners at two leading law firms, senior staff at a leading legal NGO, and a private sector human resources consultant, in addition to reviewing the recent literature on the topic.

<sup>66</sup> In a recent survey of NGOs in Cambodia, the monthly salary range for organizational leaders varied from \$520 to \$3087. Cooperation Committee for Cambodia, *CCC Survey of Salary and Benefits for National Staff of International and Cambodian NGOs* (Phnom Penh: October 2007).

<sup>67</sup> The ACF understands that under the World Bank's guidelines, inflationary cost adjustments are not permitted in the DFGG budget. However, the ACF intends to seek additional funds on an annual basis from the centralised DFGG Project contingency fund, in order to increase salaries by the official rate of inflation.

and other non-monetary benefits. When staff have received a superior performance evaluation at the end of the year, they will be eligible for a salary increase for the following year.

The organisational chart and different staff positions are also designed to aid retention. For example, the Senior Legal Officer position was created both to fill a need for senior legal talent and also to serve as a position to which Legal Officers may aspire – and thus as a potential means to retain qualified legal staff who may otherwise depart the ACF. At the same time, having a Senior Legal Officer in place mitigates any consequences that might result from the departure of the Chief Legal Officer. At the management level, the Deputy Executive Director position serves a similar function (in addition to that position’s substantive job description).

### **Housing and rental fees**

In the past few years, Phnom Penh has experienced a booming real estate market, which has led to steep increases in office rental fees. The Arbitration Council is not exempt from this phenomenon: when the office rental contract expired and was renewed in March 2008, the Arbitration Council’s monthly rent roughly doubled. As a consequence, the Arbitration Council plans to re-locate its chambers and offices (including the ACF and SAC offices) to a different locale and building in Phnom Penh during the term of the DFGG Project. The decision regarding the particular area and building to house the Arbitration Council will be informed by both the economic rationale to find less costly real estate, as well as the projected physical need for greater space to accommodate multiple hearing and mediation rooms and also larger office space for the increased staff and support services.

### **Equipment needs**

Expanded activities, increased staffing levels at the ACF and SAC, and the re-location to a larger facility will require the purchase of additional office furniture and additional office equipment, such as computers and printers. Other purchases are budgeted during the four years of the DFGG Project as lifecycle replacements for current equipment, most of which was purchased in 2005. A vehicle (for mobile teams and trainings in the province) is also included in the budget.

### **Monitoring and evaluation**

The Arbitration Council’s current M&E activities are limited in number and scope. They are almost entirely undertaken in-house by ACF staff. In line with World Bank requirements, the Arbitration Council plans to put in place a more robust M&E system under the DFGG Project. Important parts of this M&E system will be outsourced to independent entities, including the baseline study; assessments through focus group discussions; expert audits; and the end of project evaluation. Other parts of the M&E system will be carried out in-house, but will require increased ACF staff time. A description of the new M&E system and the accompanying budget for activities that will be outsourced can be found in Section 8, *Monitoring and Evaluation Arrangements*.

**Table 16. Component 4 – General Operations and Project Management**

<b>What will be financed</b>	Management and FAT staff salaries. Rental fees. Office supplies. Equipment. Communication costs. Transportation costs (including purchase of vehicle). Contractual services (including TA consultancy during pre-implementation, financial audit, equipment maintenance, security guards, etc.). Monitoring and evaluation activities.
<b>Who will be in charge/carry out</b>	ACF Management and FAT. Contractors/consultants (contractual services, M&E activities).
<b>When/for how long will activity be carried out</b>	TA consultancy: pre-implementation M&E: pre-implementation and throughout project implementation. Other activities: throughout project implementation (for equipment and vehicle purchase: see Procurement Plan).
<b>Budgetary implications</b>	\$1,191,861

Table 17 below shows how the objectives of the project will contribute to strengthening of DFGG and what impact the project is expected to have. It also shows the key components and proposed activities of the project. A comparison of current outputs with those that are expected to be produced under the DFGG Project is shown in Table 18.

**Table 17. Project Objectives and Activities**

Hierarchy of Objectives	Link with DFGG Framework	Expected Results	Reach	Assumptions and Risk
<b>DFGG Objective</b>				
To promote good governance by building the capacities of institutions, and supporting programmes and coalitions that promote, mediate, respond to or monitor demand for good governance				
<b>Project Objective</b>				
To contribute to an effective governance environment for private sector development by enhancing the extent to which a well functioning labour arbitration system builds workers' and employers' confidence that labour disputes will be resolved effectively and fairly	Promotion Mediation	Enhanced effectiveness of AC in dispute resolution  Increased workers' and employers' confidence in AC  Economic benefits of AC are greater than AC costs	Workers Employers RGC MOLVT Other relevant stakeholders AC/F General public	RGC and other stakeholders remain committed to an independent, credible and effective AC  MOLVT is able to secure necessary technical and financial support to increase capacity for conciliation and inspection functions
<b>Component 1 - Institutional Integrity and Sustainability</b>				
To ensure the independence, credibility and sustainability of the AC	Promotion Mediation	Independence, credibility and sustainability of AC assured	AC/F RGC Workers Employers	RGC and other stakeholders remain committed to an independent, credible and sustainable AC  In the event of creation of a Labour Court, this court will recognise the AC and the enforceability of its awards
<b>Activity 1.1: Selection and nomination of arbitrators</b>				
ACF to monitor arbitrator vacancies and to contact ILO to facilitate selection and nomination of arbitrators  ACF to ensure timely submission to MOLVT of name(s) of endorsed candidates			ILO continues its facilitating role in selecting and nominating arbitrators  RGC and other stakeholders remain committed to a neutral and credible	

Hierarchy of Objectives	Link with DFGG Framework	Expected Results	Reach	Assumptions and Risk
				<p>selection process</p> <p>MOLVT continues to appoint the arbitrators nominated through the process facilitated by ILO</p>
<b>Activity 1.2: AC governance</b>				
To provide the arbitrators with support and a governance structure that allows them to regulate themselves as a group in an independent fashion			N/A	
<b>Activity 1.3: Sustainability</b>				
To develop and implement strategies to help the AC become a sustainable institution				<p>Partners and stakeholders are willing to engage with AC/F</p> <p>RGC and relevant stakeholders are committed in assisting AC/F in dissemination of information to raise awareness</p> <p>Relevant stakeholders are committed in participating in training activities and in using training materials</p> <p>Stakeholders are willing to contribute financially to the costs of AC process</p> <p>In the event of creation of a Labour Court, this court will recognise the AC and the enforceability of its awards</p>
<b>Component 2 – Labour Dispute Resolution</b>				
To increase the AC's capacity to resolve labour disputes across the country	Promotion Mediation	<p>Labour dispute cases are processed in a timely manner and resolved through the AC process</p> <p>Increase in cases from outside the greater Phnom Penh area</p> <p>Increase in cases from outside the garment sector</p>	<p>Workers</p> <p>Employers</p> <p>AC</p> <p>SAC</p>	<p>Parties engage in AC process in good faith</p> <p>MOLVT, including conciliators and SAC, carry out their responsibilities appropriately</p> <p>MOLVT increases its capacity to conciliate labour disputes prior to arbitration</p>

Hierarchy of Objectives	Link with DFGG Framework	Expected Results	Reach	Assumptions and Risk
				Workers outside the greater Phnom Penh area and/or the garment sector are sufficiently organised
<b>Activity 2.1: Resolution of labour dispute cases</b>				
To provide arbitrators with support and resources to resolve labour disputes				SAC continues to carry out its responsibilities
<b>Activity 2.2: Capacity building of AC/F and SAC</b>				
To provide arbitrators, ACF and SAC with continuous training, information and skills development				N/A
<b>Activity 2.3: Expansion of AC services</b>				
To expand AC's services to new regions and new industrial sectors				MOLVT provincial labour officials carry out their responsibilities appropriately  Workers outside the greater Phnom Penh area and/or the garment sector are sufficiently organised  Parties engage in AC process in good faith
<b>Component 3 - Partnerships and Stakeholder Outreach and Training</b>				
1. To establish and maintain partnerships to strengthen AC/F  2. To improve stakeholders' awareness and understanding of the AC and of how to resolve labour disputes	Promotion	Partnerships established with relevant institutions  Increased level of awareness of the AC and the labour dispute resolution process  Stakeholders have increased understanding of the AC process	AC/F  Workers  Employers  RGC	Partners and stakeholders are willing to engage with AC/F  RGC and relevant stakeholders are committed in assisting AC/F in dissemination of information to raise awareness

Hierarchy of Objectives	Link with DFGG Framework	Expected Results	Reach	Assumptions and Risk
			Legal and judicial community  Other relevant stakeholders and institutions  General public	Relevant stakeholders are committed to participating in training activities and in using training materials
<b>Activity 3.1: Establish and maintain partnerships</b>				
To establish and maintain partnerships to strengthen AC/F				Partners and stakeholders are willing to engage with AC/F
<b>Activity 3.2: Dissemination of publications and other information to raise stakeholder awareness</b>				
To produce, publish and disseminate arbitral awards and other relevant information in order to raise stakeholder awareness and ensure transparency				RGC and relevant stakeholders are committed in assisting AC/F in dissemination of information to raise awareness
<b>Activity 3.3: Media relations and promotion</b>				
To use media channels in order to raise visibility and build the public image of the AC, and to raise understanding of the arbitration process				Media assist AC/F to disseminate information
<b>Activity 3.4: Stakeholder training</b>				
To improve stakeholders' understanding of the AC and to build the capacity of potential parties and their representatives to engage in the AC process				Relevant stakeholders are committed in participating in training activities and in

Hierarchy of Objectives	Link with DFGG Framework	Expected Results	Reach	Assumptions and Risk
				using training materials
<b>Component 4 - General Operations and Project Management</b>				
To provide managerial and technical support to AC		Resources managed effectively/efficiently in accordance with plans/budget, and adequate technical support provided to sustain the AC and successfully implement the project	AC/F	RGC and other stakeholders recognise ACF's mandate and cooperate with ACF

**Table 18. Comparison of Outputs in 2008 and as Proposed under the DFGG Project (Years 1-4)**

Account Code	Description	Year 2008 <sup>a</sup>	Outputs			
			Total Y1	Total Y2	Total Y3	Total Y4
<b>Component 1: Institutional Integrity</b>						
1.1	<b>Selection/recruitment of arbitrators</b>	No new arbitrators nominated	Selected as needed	Selected as needed	Selected as needed	Selected as needed
1.2	<b>Arbitration Council/Foundation Governance</b>					
	Representatives of the Arbitration Council (RAC)	Ad hoc meetings; no budget for support costs	4 meetings + admin support	4 meetings + admin support	4 meetings + admin support	4 meetings + admin support
	ACF governance - meeting of the Board of Directors	5 meetings	6 meetings	6 meetings	6 meetings	6 meetings
	Regular Arbitrators Meeting (RAM)	12 meetings	12 meetings	12 meetings	12 meetings	12 meetings
	Arbitrators' retreat	36 people	46 people	50 people	50 people	50 people
	Arbitrator Working Groups	Inactive	Groups formed as needed; admin support provided	Groups formed as needed; admin support provided	Groups formed as needed; admin support provided	Groups formed as needed; admin support provided
1.3	<b>Sustainability for study on economic value of AC</b>					
	Study on economic value of AC	n/a	1 study			
	Sustainability and fundraising consultant	n/a	Assistance provided	Assistance provided	Assistance provided	Assistance provided
	Tripartite stakeholder funding	Discussions with stakeholders (No commitments)	2.5% of the total costs contributed by stakeholders	5% of the total costs contributed by stakeholders	10% of the total costs contributed by stakeholders	15% of the total costs contributed by stakeholders
<b>Component 2: Labour Dispute Resolution</b>						
2.1	<b>Resolution of labour dispute cases</b>					
	Hearing labour disputes	156 cases	156 cases	180 cases	204 cases	228 cases
	SAC administrative support to Arbitration Panels	3 officials	3 officials	3 officials	4 officials	4 officials
	ACF legal support to Arbitration Panels	6 staff members + 1 at no cost	8 staff members	8 staff members	8 staff members	7 staff members
2.2	<b>Capacity building of ACF and SAC</b>					
	Developing tools/materials (benchbook, database)	Benchbooks under development; needs assessment for new database	6 benchbooks revised and updated; database updated and in use; new benchbooks and other tools TBD in development	All benchbooks revised and updated; database updated and in use; new benchbooks and other tools TBD in development	All benchbooks revised and updated; database updated and in use; new benchbooks and other tools TBD in development	All benchbooks revised and updated; database updated and in use; new benchbooks and other tools TBD in development
	Continued professional dev't program of arbitrators					
	AC capacity building	1 training for new arbitrators only (other trainings by foreign trainers)	6 trainings	6 trainings	6 trainings	6 trainings
	Foreign trainer visits	6 visitors, total of 44 person days	3 visitors, total of 21 person days	3 visitors, total of 21 person days	3 visitors, total of 21 person days	3 visitors, total of 21 person days
	Training & exchange visits & international conferences	3 delegations, total of 126 person days	2 delegations, total of 84 person days	2 delegations, total of 84 person days	2 delegations, total of 84 person days	2 delegations, total of 84 person days
	SAC Capacity building	Local training for 3 officials	Local training for 3 officials + one foreign trainer	Local training for 3 officials + one foreign trainer	Local training for 4 officials + one foreign trainer	Local training for 4 officials + one foreign trainer
	ACF Capacity building					
	Training courses	8 staff for in-country trainings and 2 person training overseas	20 staff members in country and 1 training overseas	20 staff members in country and 1 training overseas	20 staff members in country and 1 training overseas	20 staff members in country and 1 training overseas
	ACF retreat	14 people	24 people	25 people	26 people	26 people
2.3	<b>Expansion of AC services</b>					
	Study on demand for AC services in different areas	n/a	1 study	n/a	n/a	n/a
	Study on link between ind. and collective disputes	n/a	1 study	n/a	n/a	n/a
	Mobile hearing teams at regional, provincial levels	n/a	3 times	5 times	6 times	7 times
	Cases from outside the garment sector	Approximately 7-8 cases per year	Increased number of cases	Increased number of cases; target of 20 cases	Increased number of cases	Increased number of cases; target of 39 cases
<b>Component 3: Partnership and Stakeholder Outreach and Training</b>						
3.1	<b>Establishing and maintaining partnership</b>					
	DFGG Project Collaboration Committee (PCC)	n/a	10 members (5 under MBPI)	10 members (5 under MBPI)	10 members (5 under MBPI)	10 members (5 under MBPI)
	Stakeholder Advisory Group	n/a	40 attendees, 2 times per year	40 attendees, 2 times per year	40 attendees, 2 times per year	40 attendees, 2 times per year
	Meet and greet with employees/employers	80 attendees	80 attendees	80 attendees	80 attendees	80 attendees
	National Industrial Relations Conference	145 attendees	150 attendees	150 attendees	150 attendees	150 attendees
	Institution Building Training Seminar	n/a	1 meeting		1 meeting	
	Membership in professional bodies	1 membership	TBD	TBD	TBD	TBD
	Establishing and maintaining institutional relations with other dispute resolution bodies	Australia, USA and the Philippines	TBD	TBD	TBD	TBD
	Local partnerships established	n/a	New partnerships established	New partnerships established	New partnerships established	New partnerships established

<b>3.2 Dissemination of publications and other information to raise stakeholder awareness</b>						
	Website maintenance and improvement	Basic website; needs assessment for new website under way	Improved website developed and on-line	Improved website developed and on-line	Improved website developed and on-line	Improved website developed and on-line
	Publication of arbitral decisions	800 copies	1,000 copies	1,000 copies	1,000 copies	1,000 copies
	Development and production of publications and other tools	7 publications, total of 4,140 copies	At least 7 publications, total of at least 8,755 copies	At least 8 publications, total of at least 8,815 copies	At least 8 publications, total of at least 8,845 copies	At least 8 publications, total of at least 9,085 copies
	Promotional materials	No promotional materials	5,350 copies (posters, postcards, stickers)	5,350 copies (posters, postcards, stickers)	5,350 copies (posters, postcards, stickers)	5,350 copies (posters, postcards, stickers)
	AC library/information centre	Not open to public	Publicly accessible	Publicly accessible	Publicly accessible	Publicly accessible
<b>3.3 Media relations and promotion</b>						
	Media and communications consultant	n/a	Assistance provided	Assistance provided	Assistance provided	Assistance provided
	Soap operas	n/a	1 episode	3 episodes, 100 participant high-profile launch, national broadcast and 1 outdoor show	National broadcast and 1 outdoor show	National broadcast and 1 outdoor show
	Public service announcement (PSA)	n/a	1 video development	1 video development and broadcast	Broadcast	Broadcast
	Estimated number of viewers exposed to Soap Opera or PSA	n/a	n/a	50,000 or more	50,000 or more	50,000 or more
	Training video	n/a	1 video development; video shown to stakeholders; vcd copies produced and disseminated	Video shown to stakeholders; vcd copies disseminated	Video shown to stakeholders; vcd copies disseminated	Video shown to stakeholders; vcd copies disseminated
	Radio National Kampuchea (RNK) /Talkback	n/a	Radio appearances TBD	Radio appearances TBD	Radio appearances TBD	Radio appearances TBD
	Annual media campaign	n/a	1 time	1 time	1 time	1 time
	Media briefing	28 participants	70 participants	70 participants	70 participants	70 participants
	Media monitoring	n/a	Year-round	Year-round	Year-round	Year-round
	AC mentions in the press	n/a	Increased mentions	Increased mentions	Increased mentions	Increased mentions
	Public awareness of AC brand	Low awareness	Increased awareness	Increased awareness	Increased awareness	Increased awareness
<b>3.4 Stakeholder training</b>						
	Training employees/employers in Phnom Penh	240 participants	320 participants	320 participants	320 participants	320 participants
	Training employees/employers in provinces	160 participants	160 participants	160 participants	160 participants	160 participants
	Training conciliators	n/a	40 participants	60 participants	70 participants	110 participants
	Training provincial labour officers	n/a	30 participants	30 participants	30 participants	30 participants
	Training sitting judges	50 participants	50 participants	50 participants	50 participants	50 participants
	Training court clerks	300 participants	300 participants	300 participants	300 participants	300 participants
	Training student judges	53 participants	65 participants	65 participants	65 participants	65 participants
	Training advocates	50 participants	50 participants	50 participants	50 participants	50 participants
	Training lawyer students	53 participants	50 participants	50 participants	50 participants	50 participants
	Training students at universities/law students	200 participants	320 participants	320 participants	320 participants	320 participants
<b>Component 4: Project Management and Support (Core Costs)</b>						
	Occupancy	18 staff (ACF+SAC), one hearing room, small private library	24 staff (ACF+SAC), two hearing rooms, one public library, work space for arbitrators	24 staff (ACF+SAC), two hearing rooms, one public library, work space for arbitrators	25 staff (ACF+SAC), two hearing rooms, one public library, work space for arbitrators	24 staff (ACF+SAC), two hearing rooms, one public library, work space for arbitrators
	Equipment	See procurement plan	See procurement plan	See procurement plan	See procurement plan	See procurement plan
	Vehicle and Transportation		One car/van and one motorbike			
	Project monitoring and evaluation	n/a	M&E system established	M&E system established	M&E system established	M&E system established
<b>Total Costs<sup>b</sup></b>		<b>\$ 373,805</b>	<b>\$ 843,135</b>	<b>\$ 836,224</b>	<b>\$ 752,520</b>	<b>\$ 738,635</b>

a. The outputs indicated under year 2008 are based on the ACF annual budget projection 2008. The actual outputs could be more or less.

b. Total costs reflect the amounts budgeted for 2008 and the amounts requested from the World Bank for years 1-4

## 5. DETAILED PROJECT COST ESTIMATES AND FINANCING PLAN

The Ministry and the Arbitration Council propose to use US\$2,791,032 of DFGG Project funding over four years to support and expand the Arbitration Council's activities. This would cover the core activities as well as proposed expanded and new activities as described in Section 4. The budget in Table 19 below provides detailed information and cost estimates by component; it also shows what funds are covering existing activities and what allocations are for expanded or new activities. Table 20 shows the overall cost breakdowns by component and by WB funding category; Table 21 shows the cost-sharing breakdown between DFGG Project funding and the expected stakeholder contributions.

As noted above, annual costs are estimated to be considerably higher than the Arbitration Council's current budget. In the first year, this is largely due to project start-up costs, including new staff hires which are needed for implementation or are required by World Bank guidelines (e.g., procurement officer). Equipment costs also increase in the first year, in order to fill the needs of new staff and new activities (e.g., expansion beyond Phnom Penh will necessitate a vehicle purchase). Due to the expected increase in demand for the Arbitration Council's services, the Council will need to move to a larger facility (to accommodate multiple hearing/mediation rooms, office space for new staff and a publicly accessible library/information centre). A number of other activities will also start in the first year, incurring direct costs.

In the years that follow, activities will be fully implemented and will bring increased direct costs. Promotional activities will intensify in the second year and are expected to stimulate demand for the Arbitration Council's services in years 2-4, resulting in an increasingly higher case load of labour disputes across the country and thus in higher costs.

**Table 19. Budget (Year 1-4)**

Account Code	Description	Year 1 (US\$)	Year 2 (US\$)	Year 3 (US\$)	Year 4 (US\$)	Total Budget Year 1-4 (US\$)
<b>Component 1: Institutional Integrity and Sustainability</b>		<b>137,030</b>	<b>27,460</b>	<b>27,460</b>	<b>27,460</b>	<b>219,410</b>
<i>1.1 Selection/recruitment of arbitrators</i>		-	-	-	-	-
<i>1.2 Arbitration Council governance</i>		<b>17,030</b>	<b>17,460</b>	<b>17,460</b>	<b>17,460</b>	<b>69,410</b>
1.2.1	ACF Board of Directors	4,230	4,230	4,230	4,230	16,920
1.2.2	Representatives of the Arbitration Council (RAC)	2,400	2,400	2,400	2,400	9,600
1.2.3	Regular Arbitrators Meeting (RAM)	5,040	5,040	5,040	5,040	20,160
1.2.4	Arbitrators retreat	4,560	4,990	4,990	4,990	19,530
1.2.5	Arbitrator Working Groups	800	800	800	800	3,200
<i>1.3 Sustainability</i>		<b>120,000</b>	<b>10,000</b>	<b>10,000</b>	<b>10,000</b>	<b>150,000</b>
1.3.1	Study on economic value of AC	40,000	-	-	-	40,000
1.3.2	Sustainability study phase 1 (scoping/TOR)	10,000	-	-	-	10,000
1.3.3	Sustainability study phase 2 (scoping/TOR)	30,000	-	-	-	30,000
1.3.2	Sustainability and fundraising consultant	40,000	10,000	10,000	10,000	70,000
<b>Component 2: Labour Dispute Resolution</b>		<b>244,946</b>	<b>260,623</b>	<b>261,845</b>	<b>228,762</b>	<b>996,176</b>
<i>2.1 Resolution of labour dispute cases</i>		<b>182,326</b>	<b>191,506</b>	<b>205,150</b>	<b>172,632</b>	<b>751,614</b>
2.1.1	Hearing labour disputes	56,970	66,150	75,330	84,240	282,690
2.1.2	SAC administrative support to Arbitration Panels	14,748	14,748	19,212	19,212	67,920
2.1.3	ACF legal support to Arbitration Panels	110,608	110,608	110,608	69,180	401,004
<i>2.2 Capacity building of AC/F and SAC</i>		<b>48,915</b>	<b>62,942</b>	<b>49,285</b>	<b>47,485</b>	<b>208,627</b>
2.2.1	Developing tools/materials (benchbook, database)	2,200	2,200	2,200	2,200	8,800
2.2.2	Continued professional dev't program for arbitrators					
2.2.2.1	AC capacity building	2,940	2,940	2,940	2,940	11,760
2.2.2.2	Foreign trainer visits	12,068	12,068	12,068	12,068	48,272
2.2.3	Training & exchange visits & international conferences	18,707	34,414	18,707	18,707	90,535
2.2.4	SAC Capacity building	2,400	600	2,600	800	6,400
2.2.5	ACF Capacity building					
2.2.5.1	Training courses	8,000	8,000	8,000	8,000	32,000
2.2.5.2	ACF retreat	2,600	2,720	2,770	2,770	10,860

2.3	<i>Expansion of AC services</i>	13,705	6,175	7,410	8,645	35,935
2.3.1	Study on demand for AC services in different areas	10,000	-	-	-	10,000
2.3.2	Study on link between ind. and collective disputes	-	-	-	-	-
2.3.3	Mobile teams at regional, provincial levels	3,705	6,175	7,410	8,645	25,935
<b>Component 3: Partnerships and Stakeholder Outreach and Training</b>		<b>130,687</b>	<b>136,387</b>	<b>99,087</b>	<b>95,087</b>	<b>461,246</b>
<i>ACF support to AC outreach and training</i>		28,080	28,080	28,080	28,080	112,320
3.1	<i>Establishing and maintaining partnerships</i>	9,985	9,985	9,985	9,985	39,940
3.1.1	DFGG Project Collaboration Committee	900	900	900	900	3,600
3.1.2	Stakeholder Advisory Group	840	840	840	840	3,360
3.1.3	Meet and greet with employees/employers	900	900	900	900	3,600
3.1.4	National Industrial Relations Conference	5,945	5,945	5,945	5,945	23,780
3.1.5	Institution Building Training Seminar	-	-	-	-	-
3.1.6	Memberships in professional bodies	400	400	400	400	1,600
3.1.7	Establishing and maintaining institutional relations with other dispute resolution bodies	1,000	1,000	1,000	1,000	4,000
3.2	<i>Dissemination of publications and other information to raise stakeholder awareness</i>	29,424	26,424	27,424	28,424	111,696
3.2.1	Website maintenance and improvement	1,000	1,000	1,000	1,000	4,000
3.2.2	Publication of arbitral decisions	6,000	7,000	8,000	9,000	30,000
3.2.3	Dev't and production of publications and other tools	19,424	17,424	17,424	17,424	71,696
3.2.4	AC library/information centre	3,000	1,000	1,000	1,000	6,000
3.3	<i>Media relations and promotion</i>	44,970	53,670	15,370	10,370	124,380
3.3.1	Media and communications consultant	10,000	7,500	5,000	-	22,500
3.3.2	Soap opera	15,000	31,800	-	-	46,800
3.3.3	Public service announcement (PSA)	4,000	9,000	5,000	5,000	23,000
3.3.4	Training video	13,000	-	-	-	13,000
3.3.5	Radio National Kampuchea (RNK) /Talkback	-	-	-	-	-
3.3.6	Annual media campaign	1,500	3,900	3,900	3,900	13,200
3.3.7	Media briefing	1,470	1,470	1,470	1,470	5,880
3.4	<i>Stakeholder training</i>	18,228	18,228	18,228	18,228	72,910
3.4.1	Training employees/employers in Phnom Penh	3,960	3,960	3,960	3,960	15,840
3.4.2	Training employees/employers in provinces	2,340	2,340	2,340	2,340	9,360
3.4.3	Training conciliators	6,200	6,200	6,200	6,200	24,800
3.4.4	Training provincial labour officers	3,720	3,720	3,720	3,720	14,880
3.4.5	Training sitting judges	175	175	175	175	700
3.4.6	Training court clerks	300	300	300	300	1,200
3.4.7	Training student judges	213	213	213	213	850
3.4.8	Training advocates	625	625	625	625	2,500
3.4.9	Training lawyer students	175	175	175	175	700
3.4.10	Training students at universities/law students	520	520	520	520	2,080
<b>Component 4: General Operations and Project Management</b>		<b>354,551</b>	<b>301,972</b>	<b>246,187</b>	<b>289,151</b>	<b>1,191,861</b>
4.1	Salaries	114,156	113,316	113,316	113,316	454,104
4.2	Benefits	8,280	8,242	8,242	8,242	33,006
4.3	Occupancy	56,250	63,050	63,050	63,050	245,400
4.4	Supplies	7,880	8,280	8,300	8,300	32,760
4.5	Equipment	26,875	36,385	8,290	3,200	74,750
4.6	Communications and postage	16,280	16,680	16,800	16,800	66,560
4.7	Vehicle and Transportation	46,860	7,660	7,780	7,780	70,080
4.8	Contractual services					
4.8.1	Translation fees	3,000	3,000	3,000	3,000	12,000
4.8.2	Technical Assistance consultants	40,000	-	-	-	40,000
4.8.3	Annual fees for accounting software	970	1,019	1,069	1,123	4,181
4.8.4	Financial audit	4,000	4,000	4,000	4,000	16,000
4.8.5	Equipment maintenance and repairing	4,800	4,800	4,800	4,800	19,200
4.8.6	Security guards	2,340	4,680	4,680	4,680	16,380
4.8.7	Bank charges	360	360	360	360	1,440
4.9	Project monitoring and evaluation					
4.9.1	Baseline survey	20,000	-	-	-	20,000
4.9.2	Assess confidence/credibility	-	8,000	-	8,000	16,000
4.9.3	Assess awareness/Understanding	-	15,000	-	15,000	30,000
4.9.4	Media monitoring	2,500	2,500	2,500	2,500	10,000
4.9.5	Bi-Annual Expert audit	-	5,000	-	5,000	10,000
4.9.6	End of project monitoring and evaluation	-	-	-	20,000	20,000
<b>Total Costs</b>		<b>867,214</b>	<b>726,441</b>	<b>634,579</b>	<b>640,459</b>	<b>2,868,693</b>
Costs to be contributed by stakeholders 2.5%@Y1, 5%@Y2, 10%@Y3, 15%@Y4		21,680	36,322	63,458	96,609	217,529
<b>Total Costs to be Requested from the World Bank</b>		<b>845,533</b>	<b>690,119</b>	<b>571,121</b>	<b>544,390</b>	<b>2,651,164</b>

**Notes:**

- SAC administrative support to Arbitration Panels (budget line 2.1.2.) will be funded out of external stakeholder contributions.
- A number of activities may be initiated or carried out prior to project implementation:
  - Baseline study (budget line 4.9.1.): \$20,000

- Study on economic value (budget line 1.3.1): \$40,000
- Sustainability study Phase 1 (budget line 1.3.3): \$10,000
- Appointment of additional procurement staff for three months (included in budget line 4.1): \$2,460
- Additional technical assistance from international consultant(s) for support to finalising the project proposal and assisting the ACF through project effectiveness (budget line 4.8.2): \$40,000.

**Table 20. Project Costs by Component and Category**

Project Costs by Component		Year 1 (US\$)	Year 2 (US\$)	Year 3 (US\$)	Year 4 (US\$)	Total Budget Year 1-4 (US\$)
<b>Component 1</b>	Institutional Integrity	137,030	27,460	27,460	27,460	219,410
<b>Component 2</b>	Labour Dispute Resolution	244,946	260,623	261,845	228,762	996,176
<b>Component 3</b>	Partnerships and Stakeholder Outreach and Training	130,687	136,387	99,087	95,087	461,246
<b>Component 4</b>	General Operations and Project Management	354,551	301,972	246,187	289,151	1,191,861
<b>Total Component 1-4</b>		<b>867,214</b>	<b>726,441</b>	<b>634,579</b>	<b>640,459</b>	<b>2,868,693</b>
Costs to be contributed by stakeholders 2.5%@Y1, 5%@Y2, 10%@Y3		21,680	36,322	63,458	96,069	217,529
<b>Total Costs to be Requested from the World Bank</b>		<b>845,533</b>	<b>690,119</b>	<b>571,121</b>	<b>544,390</b>	<b>2,651,164</b>
Project Costs by Category		Year 1 (US\$)	Year 2 (US\$)	Year 3 (US\$)	Year 4 (US\$)	Total Budget Year 1-4 (US\$)
<b>1. Goods, equipment (including publications)</b>		<b>69,075</b>	<b>37,385</b>	<b>9,290</b>	<b>4,200</b>	<b>119,950</b>
<b>2. Consultancy services</b>		<b>262,346</b>	<b>107,272</b>	<b>42,772</b>	<b>85,772</b>	<b>498,163</b>
<b>3. Training, workshops, seminars</b>		<b>108,852</b>	<b>130,509</b>	<b>115,052</b>	<b>113,252</b>	<b>467,663</b>
<b>4. Incremental Operating costs</b>		<b>191,700</b>	<b>216,033</b>	<b>232,223</b>	<b>243,421</b>	<b>883,377</b>
4.1 ACF Board of Directors honoraria		3,600	3,600	3,600	3,600	14,400
4.2 Arbitrator honoraria		56,160	64,800	73,440	82,080	276,480
4.3 Mobile hearing costs		4,515	7,525	9,300	10,805	32,145
4.4 Information dissemination & publication services		9,700	10,700	11,700	12,700	44,800
4.5 Membership in professional bodies		400	400	400	400	1,600
4.6 Salaries & Benefits (non-professional staff)		2,037	3,732	3,732	3,732	13,231
4.7 Occupancy		56,250	63,050	63,050	63,050	245,400
4.8 Office supplies		7,880	8,280	8,300	8,300	32,760
4.9 Communications and postage		16,280	16,680	16,800	16,800	66,560
4.10 Vehicle and transportation		7,660	7,660	7,780	7,780	30,880
4.11 Contractual services		27,218	29,607	34,121	34,175	125,121
<b>5. ACF Operating costs</b>		<b>235,241</b>	<b>235,242</b>	<b>235,242</b>	<b>193,814</b>	<b>899,540</b>
5.1 Labour Dispute Resolution		99,972	99,972	99,972	58,544	358,459
5.2 Partnership and Stakeholder Training		28,080	28,080	28,080	28,080	112,320
5.3 Salary		100,236	100,236	100,236	100,236	400,944
5.4 Benefits		6,954	6,954	6,954	6,954	27,816
<b>Total Costs</b>		<b>867,214</b>	<b>726,441</b>	<b>634,579</b>	<b>640,459</b>	<b>2,868,693</b>
Costs to be contributed by AusAID					200,000	200,000
Costs to be contributed by stakeholders 2.5%@Y1, 5%@Y2, 10%@Y3		21,680	36,322	63,458	96,069	217,529
<b>Total Costs to be Requested from the World Bank</b>		<b>845,533</b>	<b>690,119</b>	<b>571,121</b>	<b>344,390</b>	<b>2,451,164</b>

**Notes:**

- All ACF staff salaries are aggregated into Category 2 (Consultancy Services).

**Table 21. Four-year Total Costs by Category and Cost-Sharing Contributions**

Four year cost by category	WB Total 4Y	AusAID Total 4Y	Stakeholder Total 4Y	Total 4Y (WB+S/H+A usAID)
<b>1. Goods, equipment</b>	109,950	-	10,000	119,950
<b>2. Consultancy services</b>	473,163	-	25,000	498,163
<b>3. Training, workshops, seminars</b>	380,663	-	87,000	467,663
<b>4. Incremental Operating costs</b>	707,848	100,000	75,529	883,377
<b>5. ACF Operating Costs</b>	779,540	100,000	20,000	899,540
<b>Total Costs</b>	<b>2,451,164</b>	<b>200,000</b>	<b>217,529</b>	<b>2,868,693</b>







## 7. INSTITUTIONAL AND IMPLEMENTATION ARRANGEMENTS

### *Institutional Arrangement*

As noted in Section 1 of this project proposal, the Arbitration Council is an independent, quasi-judicial, statutory decision-making body whose mandate and functions are described in Articles 310-317 of the Labour Law and in *Prakas* 99 (2004) of the Ministry of Social Affairs, Labour, Vocational Training and Youth Rehabilitation, the predecessor of the Ministry of Labour and Vocational Training. The Ministry of Labour appoints the arbitrators based on nominations from the three stakeholder groups and also staffs the Secretariat of the Arbitration Council.

As also noted in Section 1, the Arbitration Council Foundation was established and registered in 2004 by the arbitrators of the Arbitration Council, with the support and endorsement of the Ministry of Labour, union federations and employer associations, and with the assistance of the ILO. The Arbitration Council has oversight of the ACF through the election of one arbitrator from each list (union-nominated, employer-nominated and neutral list) to be Representatives of the Arbitration Council (“RAC”). The three members of the RAC sit on and form a majority of the five-person Board of Directors that governs the ACF.

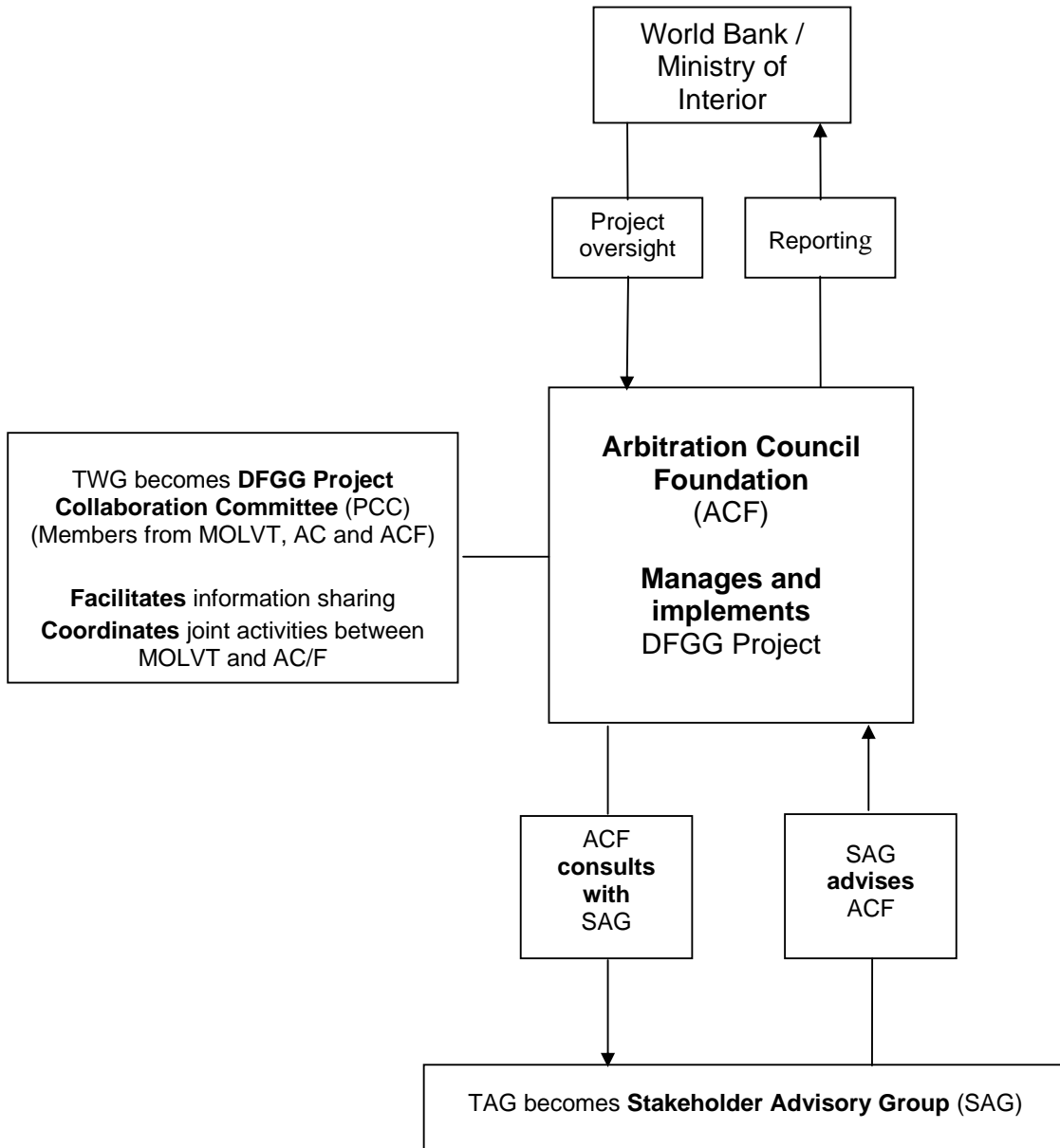
Functionally and institutionally, the Arbitration Council works closely with the Ministry of Labour and Vocational Training. Ministry officials are the first to respond to labour disputes through its conciliation function. If unsuccessful, the Ministry passes the case to the Arbitration Council, through the Secretariat of the Arbitration Council. The SAC is composed of Ministry officials co-located at the Arbitration Council who carry out specific clerical and registry functions in accordance with law and *prakas*.

The above institutional arrangement will continue under the DFGG Project. Given its statutory mandate to provide managerial and technical support to the Arbitration Council, the ACF shall be responsible for project implementation. A description of the management system of the ACF and the proposed planning/implementation cycle are provided further below in this section.

In addition, the Arbitration Council plans to transfer the consultation and coordination mechanisms (TWG and TAG) that were created and used during the DFGG Project planning process, over into the implementation phase, building these into the institutional arrangement for implementation of the DFGG Project. As noted in the *Introduction*, the very process of preparing this project proposal has galvanised discussion and action among the arbitrators, the ACF and the Ministry (including SAC) in the TWG and has enhanced the relationship between the Arbitration Council and its stakeholders in the TAG. (For more details on roles and activities of TWG and TAG in the participatory planning process, see Annex 1). Therefore, based on this experience during the project preparation, it is planned that the TWG evolve into a ‘Project Collaboration Committee’ (PCC), which will be a platform for information sharing between the Arbitration Council / ACF and the Ministry and for coordination of joint or complementary activities, while the TAG will be transformed into a permanent tripartite ‘Stakeholder Advisory Group’ (SAG), which will serve as an important platform for key stakeholder consultation. These arrangements will help the Arbitration Council/ACF to include a diversity of views in the design and implementation of its programs, and build overall support for the project – thereby facilitating the achievement of project objectives. The Terms of Reference of the PCC (adopted on May 27, 2008) and the draft Terms of Reference for the SAG are attached as **Annex 8** and **Annex 9** respectively.

The proposed institutional arrangement for implementation of the DFGG Project is shown in the chart below.

**Figure 8. Institutional Arrangement**



***ACF management system***

As noted above, the ACF shall be responsible for the DFGG Project implementation. The day-to-day management is under an Executive Director, who reports to the Board of Directors, and a Deputy Executive Director<sup>68</sup>, who is responsible for managing one of the functional units as

<sup>68</sup> This position was created in 2007 because of the increased workload over the previous few years. Currently the Deputy Executive Director is also the Legal Support Team Manager, who manages the Legal Support Team.

well as assisting the Executive Director in the overall management of ACF. In addition to its Executive Management, in 2008 the ACF budgeted for 15 staff who work in three different units: the Legal Support Team (LST); the Communications and Training Team (CTT); and the Finance and Administration Team (FAT). Each unit is headed by a manager who reports to the Executive Director and the Deputy Executive Director. Together with the Executive and Deputy Executive Director, these managers form the Management Team, which meets on a monthly basis to review progress and address emerging issues or problems. The ACF structure is described in greater detail in Section 1, *Sector and Institutional Background*.

Though the ACF has been effective in providing management and technical support to the Arbitration Council, the hire of additional staff will be required before and during DFGG Project effectiveness, in response to the expected increase in demand for Arbitration Council services as a result of the DFGG Project, as well as the planned reduction of international legal advisory staff (from two in 2008, to one in DFGG Year 1, to zero in DFGG Year 4), and to comply with World Bank requirements. Projected hires include an additional Legal Officer (to cope with increased case loads); a Procurement Officer (to comply with World Bank requirements); a Monitoring and Evaluation Coordinator (to oversee the monitoring and evaluation activities and to assist with reporting); and a Receptionist (to deal with the expected increase in inquiries, visits by parties, etc.). Also the staffing levels at the SAC, which comprises Ministry officials providing clerical/registrar support to the Arbitration Council, are projected to rise. Current and projected ACF and SAC staffing levels are indicated in the table below.

**Table 22. Number of ACF and SAC Staff by Year**

	2008	Year 1	Year 2	Year 3	Year 4
<b>ACF</b>	17 <sup>69</sup>	20	20	20	19
<b>SAC</b>	3	3	3	4	4
<b>Total</b>	<b>20</b>	<b>23</b>	<b>23</b>	<b>24</b>	<b>23</b>

In order to ensure that recruitment is transparent and competitive, staff recruitment is carried out according to the following procedure<sup>70</sup>:

1. Management approves a new position and/or approves a replacement hire for a vacated position.
2. A job description (terms of reference) is drafted and approved.
3. A recruitment committee is formed for each position. The committee generally includes the team manager, the Finance and Administration Manager (in his capacity as human resources manager), a member of executive management and possibly an international advisor.
4. The position is advertised based on the job description, soliciting CVs and cover letters from interested persons<sup>71</sup>
5. Applicants are short-listed. The short-list is then provided with a test that has been previously drafted and approved by the recruitment committee.

<sup>69</sup> Currently these 17 ACF staff positions are filled by 16 employees: the Deputy Executive Director is also undertaking the duties of the Legal Support Team Manager for the time being.

<sup>70</sup> This description of staff recruitment procedures is summarized from policies and procedures contained in the ACF Workplace and Administration manuals.

<sup>71</sup> Where there are strong internal candidates, the position is advertised internally and interested staff are invited to apply. If no suitable internal candidates are found, the position is then advertised externally.

6. Finalists are selected, based on the test results.
7. Finalists are interviewed in one or more rounds by the recruitment committee, which makes a ranked recommendation to the Executive Director.
8. The Executive Director makes an offer and negotiates a contract (including salary) with the successful applicant.

### ***Project planning and implementation cycle***

Implementation of the project will be based on Annual Action Plans, which will include an activity schedule, a resources schedule and a cost schedule, and which will form the framework against which project progress and performance will be measured. The Annual Action Plans will be produced by the ACF Management Team during Annual Planning Workshops and will be discussed in the Project Collaboration Committee (PCC) before being forwarded for information to the DFGG Project Coordinator at MOI.

Mid-year project progress and performance will be reviewed during a Mid-Year Review Workshop, which will be attended by representatives from the Arbitration Council, ACF, SAC, the Ministry of Labour and Vocational Training, the Stakeholder Advisory Group (SAG), and the DFGG Project Coordination Office at MOI. The workshop will provide recommendations for revisions to plans and strategies as appropriate.

Project progress and performance will be reviewed against the Annual Action Plan during the Annual Review Workshop, which will also be attended by representatives from the Arbitration Council, ACF, SAC, the Ministry and the SAG. This workshop will review risks and assumptions; identify lessons emerging from the implementation of project strategies and evaluation studies; and recommend changes to implementation strategies for the subsequent Annual Planning Workshop as appropriate.

In addition, a Mid-Term Review of the project will be conducted to assess the overall accomplishments, experience and policy environment. This will allow for adjustments in the course of specific components based on early experience, and eventual restructuring, to respond to emerging needs and changing circumstances. No budget implications are foreseen for this Mid-Term Review.

For full details on the project planning and implementation cycle, including monitoring and evaluation mechanisms, project reporting and learning plan, see the next section, *Monitoring and Evaluation Arrangements*.

### ***Project management***

For the purposes of implementing the DFGG Project, the Executive Director of the ACF will be appointed as the Project Director for the AC component of the DFGG Project.

As Project Director, the Executive Director will be responsible for the day-to-day implementation and management of the DFGG Project. The necessary authority from all Government agencies, including MEF, shall be delegated to the Project Director to carry out his duties and responsibilities. These include authority to spend money, to procure goods and services, and to manage and administer the overall project component implementation.

In addition, as Project Director, the Executive Director will be expected to:

- Participate in the DFGG Project Management Team; and
- Participate in the DFGG Project Coordination Group.



## 8. MONITORING AND EVALUATION ARRANGEMENTS

Monitoring and evaluation (M&E) are a vital aspect of the DFGG Project, as the information provided and analyzed via the M&E function will permit a determination of whether or not the DFGG Project is achieving its stated development objective.

### 8.1 *Monitoring Project Progress and Performance*

In order to implement the DFGG Project activities effectively, the ACF managers will rely on receiving accurate information relating to progress and performance of project implementation and success as measured against expected outcomes. However, the M&E system will also be used to provide relevant information to other stakeholders (including government, employers and employees), and thus is expected to strengthen the Arbitration Council's partnerships with these stakeholders.

- **The development of the M&E system.** The planned results monitoring arrangements are shown in Table 23 below. In addition, internal progress and performance indicators for ACF management have been defined in Table 24 below. Further indicators may also be identified prior to and during project implementation to meet emerging information needs of project managers and key stakeholders.
- **The collection and management of information.** For the purpose of implementing the DFGG Project and as a reference for longer term sustainability studies, a baseline study will be prepared prior to project effectiveness; once the baseline data is available, proposed target values will be re-evaluated and adjusted as needed. Information collected on indicators will enable the tracking of progress and performance of activities, outputs, and the achievement of outcomes and impacts. Information will also be collected to identify project lessons and best practices. Currently, the Arbitration Council is undertaking a comprehensive review and re-design of its existing data collection systems (including a database, Excel spreadsheets, tables, evaluation reports, etc.). This process will culminate in the development of a new database which – although used primarily for case management and legal research – will also be a powerful tool for information gathering and reporting for DFGG Project purposes.

**Table 23. Results Monitoring Arrangements**

No.	Indicators	Baseline	Target Values				Data Collection and Reporting		
			YR1	YR2	YR3	YR4	Frequency and Reports	Data Collection Instruments	Responsibility for Data Collection
<b>Project Outcome Indicators</b>									
<i>Core Indicators (to be aggregated at the overall DFGG level)</i>									
1	Number of labor dispute cases handled by the AC	148	5% increase	10% increase	10% increase	10% increase	Quarterly collection and reporting	ACF case log and database	ACF
2	% of labor dispute cases successfully resolved through AC process	(TBC – approx. 68% for Garments + PNP)	Actual value	Actual Value	Actual Value	Actual Value	As above	ACF case log and database	ACF
3	% of union and employer group representatives and other stakeholders that report a high confidence in the independence, credibility and effectiveness of the AC	Baseline for other sectors / areas TBC To be calculated in YR 1	-	40%		60%	Annual; recorded in Annual Report	FGDs and KIIs of union and employer group representatives and some other stakeholders	ACF through contracted research agency

Outcome Indicators for Each Component									
Component 1 – Institutional Integrity and Sustainability: Objective: To ensure the independence, credibility and sustainability of the AC									
Core Indicators (to be aggregated at the overall DFGG level)									
4	% of AC, SAC, and ACF staff that report an increased understanding and institutional capacity to perform their respective roles in the labor arbitration and dispute resolution processes	To be calculated in YR 1	-	70%		80%	Annual; recorded in Annual Report	Survey of SI staff and ratings from KIIs and FGDs	PCO in MOI through contracted research agency in consultation with ACF <sup>72</sup>
5	% of union and employer group representatives that report high confidence in institutional capacity of the AC to undertake labor dispute resolution	To be calculated in YR 1	-	40%		60%	Annual; recorded in Annual Report	FGDs and KIIs of union and employer group representatives	ACF through contracted research agency
6	% of AC, SAC, and ACF staff that report an increased effectiveness of the AC process	To be calculated in YR 1	-	70%		80%	Annual; recorded in Annual Report	Survey of SI staff and ratings from KIIs and FGDs, and comparison with objective data (case load, success rate, etc.)	PCO in MOI through contracted research agency in consultation with ACF <sup>73</sup>
7	% of union and employer group representatives and other stakeholders that report a high confidence in the independence, credibility and effectiveness of the AC	To be calculated in YR 1	-	40%		60%	Annual; recorded in Annual Report	FGDs and KIIs of union and employer group representatives and some other stakeholders	ACF through contracted research agency
8	Expert rating (%) of quality of awards given by the AC	To be calculated in YR 2	-	60%	-	75%	Bi-annual; recorded in applicable Annual report	Bi-annual audit by expert(s) for a sample of AC awards	Independent expert(s) contracted via ACF

<sup>72</sup> ACF to review the ToRs for the contracted research agency, and to advise on and agree to that agency’s evaluation tools, wording of questionnaires, etc.

<sup>73</sup> ACF to review the ToRs for the contracted research agency, and to advise on and agree to that agency’s evaluation tools, wording of questionnaires, etc.

9	Revenue generated through tri-partite contributions by AC as % of operating costs	0	2.5%	5%	10%	15%	Annual; recorded in Annual Report	ACF financial records	ACF	
<b>AC Specific Indicators for ACF Management Use</b>										
10	Value of donor commitments that will permit the AC to operate past the end of DFGG Project period	0					Full funding committed for ongoing donor support	Reports of initial consultations with donors and progress of proposal development etc.  Annual summary included in ACF Annual Report to DFGG Project Coordinator.	Donor funding agreements and commitments	ACF
<b>Component 2 – Labour Dispute Resolution:</b>										
<b>Objective:</b> To increase the AC's capacity to resolve labour disputes across the country										
<b>Core Indicators (to be aggregated at the overall DFGG level)</b>										
11	Number of labor dispute cases handled by the AC	148	5% increase	10% increase	10% increase	10% increase	Quarterly collection and reporting	ACF case log and database	ACF	
12	% of labor dispute cases successfully resolved through AC process	(TBC – approx. 68% for Garments + PNP)  Baseline for other sectors / areas TBC	Actual value	Actual Value	Actual Value	Actual Value	As above	ACF case log and database	ACF	

<i>AC Specific Indicators for ACF Management Use</i>									
13	Percentage of cases where AC issues an award within the 15-day period mandated by law, or within the extended deadline, if an extension has been authorised by the parties	94%		95%		96%	Quarterly collection and reporting	ACF/SAC files/database	ACF/SAC
14	Percentage of cases from outside the greater Phnom Penh area	4%	7%	10%	13%	16%	Quarterly collection and reporting	ACF/SAC files/database	ACF/SAC
15	Percentage of cases from outside the garment sector	6%	9%	12%	15%	18%	Quarterly collection and reporting	SAC files/database	ACF/SAC
<b>Component 3 – Partnerships and Stakeholder Outreach and Training:</b>									
<b>Objectives:</b>									
1. To establish and maintain partnerships to strengthen AC/F									
2. To improve stakeholders’ awareness and understanding of the AC and of how to resolve labour disputes									
<i>Core Indicators (to be aggregated at the overall DFGG level)</i>									
16	Number of partnerships between AC and SIs and NSAs established or continued under the project – disaggregated by type 1 and 2 <sup>74</sup>	TBC	Actual Value	Actual Value	Actual Value	Actual Value	Annual; recorded in Annual Report	Compiled from progress reports	ACF
17	% of relevant stakeholders (including AC, ACF, MOLVT, ILO, partner agencies involved, etc.) rating high effectiveness of the partnerships established under project	To be calculated in YR 2	-	50%	-	70%	Bi-annual; recorded in applicable Annual report	Mid-term and end-term targeted survey, KIIs, and FGDs of staff of involved institutions, experts, and other stakeholders relevant to SI-NSA partnerships	PCO in MOI through contracted research agency in consultation with ACF <sup>75</sup>

<sup>74</sup> The project will use the following definition for partnerships - "A partnership is a collaborative relationship between entities to work toward shared objectives through a mutually agreed division of labor". Strictly, by this definition commercial relationships should not be regarded as partnerships. Recognizing, however, that in the specific context of the project and given the lack of such relationships between SIs and NSAs in Cambodia, some direct commercial relationships that reflect elements of 'partnership' will be separately tracked as well. The total number of partnerships will be the sum of these two forms of relationships. The PCO will make a case-by-case determination of whether a particular relationship should be categorized as a partnership or not.

<sup>75</sup> ACF to review the ToRs for the contracted research agency, and to advise on and agree to that agency’s evaluation tools, wording of questionnaires, etc.

18	Number of new or existing partnerships for which AC/ACF (i) expresses interest, (ii) makes a concrete plan, and (iii) takes the first steps to continue engagement beyond life of project.	To be calculated in YR 4	-	-	-	Actual Value	One-off; recorded in Final Completion Report for project	End term survey using KIIs with SI and NSA management and IA progress reports	PCO in MOI through contracted research agency in consultation with ACF <sup>76</sup>
19	% of union, employer organization representatives aware of AC and labor arbitration process  (Baseline and periodic evaluations will capture sectors beyond Garments, and areas beyond Phnom Penh)	To be calculated in pre-impl. Period	-	10% increase	-	10% increase	Bi-Annual; recorded in relevant Annual Report	Baseline, Mid-term and end term Focus Group Discussions (FGDs) and/or key informant interviews (KIIs) with groups of union and employer representatives. The composition of these groups will be representative of their distribution in targeted sectors <sup>77</sup> in the formal economy.  Alternative: Survey <sup>78</sup> of workers and employers in different workplaces, which will be chosen to represent the distribution of targeted sectors <sup>79</sup>	ACF through contracted research agency
	Level of understanding (as % scoring high on rating scale) of labor arbitration process among union and employer organization groups	To be calculated pre-impl. period	-	5% increase	-	5% increase	Bi-Annual; recorded in relevant Annual Report	Baseline, Mid-term and end term Focus Group Discussions (FGDs) and/or key informant interviews (KIIs) with groups of union and employer representatives. The composition of these groups will be representative of their distribution in targeted sectors <sup>80</sup> in the formal economy.	ACF through contracted research agency
20									

<sup>76</sup> ACF to review the ToRs for the contracted research agency, and to advise on and agree to that agency's evaluation tools, wording of questionnaires, etc.

<sup>77</sup> Sector size can be measured through different indices like number of firms, size of revenue, number of employees, etc...

<sup>78</sup> The choice of methodology will be made later, and may be informed by technical and budgetary constraints.

<sup>79</sup> Sector size can be measured through different indices like number of firms, size of revenue, number of employees, etc...

<sup>80</sup> Sector size can be measured through different indices like number of firms, size of revenue, number of employees, etc...

Component 4 – General Operations and Project Management: Objective: To provide managerial and technical support to AC									
Core Indicators (to be aggregated at the overall DFGG level)									
21	ACF undertakes independent monitoring through NSAs	Yes	Yes	Yes	Yes	Yes	Annual Working Plans	tracked in progress reports	ACF
22	ACF uses information from independent monitoring through NSAs to take management and/or corrective actions	Yes	Yes	Yes	Yes	Yes	Annual; recorded in Annual Report	tracked/explained in progress reports	ACF
23	AC/ACF_(i) expresses interest, (ii) makes a concrete plan, and (iii) takes the first steps to undertake new or continue existing DFGG activities beyond the life of the project.	To be calculated in YR 4	-	-	-	Yes	One-off; recorded in Final Completion Report for project	End term survey, FGDs, and KIIs, of SI and NSA management and leadership; IA progress reports showing objective data.	PCO in MOI through contracted research agency in consultation with ACF <sup>81</sup>
AC Specific Indicators for ACF Management Use									
24	Inputs procured, and activities and outputs completed to schedule. Expenditure to budget. Agreed reports to schedule	N/A					Quarterly Reports. Annual Reports. Project Completion Report	Tables of progress against plans and expenditure against budget	ACF

<sup>81</sup> ACF to review the ToRs for the contracted research agency, and to advise on and agree to that agency's evaluation tools, wording of questionnaires, etc.

**Table 24. Internal Progress and Performance Indicators for ACF Management, Reporting Frequency and Responsibility**

Indicators	Reporting frequency	Responsibility
<b>Institutional Integrity and Sustainability:</b>		
No. arbitrators in place (by sex) and no. vacancies	Annual	ACF
No. meetings conducted by each type of AC/F governance body (RAC, ACF Board, RAM, WGs etc.)	Quarterly	ACF
<b>Labour Dispute Resolution:</b>		
Total number of cases handled by AC per year (total and disaggregated by industry and location, to capture % of cases from outside Phnom Penh and outside the garment sector)	Quarterly	ACF/SAC
No. of cases (and %) broken down by case outcomes (successful/not successful)	Quarterly	ACF
No. and total amount of honoraria paid	Annual	ACF
No. training courses and training topics for arbitrators, SAC and ACF (local/international)	Quarterly	ACF CTT
No. arbitrators and SAC & ACF staff trained by topic (local/international)	Quarterly	ACF CTT
No. issues of Arbitration Council Bulletin	Annual	ACF
No. benchbooks produced and/or updated by topic	Annual	ACF
No. studies conducted on AC services by topic	Annual	ACF
<b>Partnerships and Stakeholder Outreach and Training:</b>		
List of workshops and conferences held (including number, type and sex of participants)	Quarterly	ACF CTT
No. training courses and training topics for stakeholders	Quarterly	ACF CTT
No. stakeholders trained by topic and by stakeholder group (both disaggregated by sex)	Quarterly	ACF CTT
No. website hits	Annual	ACF CTT
No. different types of publications produced (by topic and no. distributed)	Annual	ACF CTT
No. media tools developed and used (by type of tool, times used, estimated audience etc.)	Annual	ACF CTT
<b>Project Management:</b>		
Meetings of project management & coordination bodies (PCC and SAG)	Quarterly	ACF
ACF/SAC staffing complement by position, location etc	Quarterly/Annual	ACF/SAC
Project expenditure against budget	Quarterly/Annual	ACF
Fund balance	Quarterly/Annual	ACF
Financial audits conducted	Annual	ACF
Procurement status against Procurement Plan	Quarterly/Annual	ACF
Assets held by location (for project-procured assets)	Annual	ACF
No. evaluation activities conducted by type (focus group discussions, key informant interviews and expert case reviews/audits etc.)	Annual	ACF

## Milestones

In addition to the above progress and performance information that will be reported regularly, there are a number of important project milestones that must be carefully monitored and their completion reported (with dates) in the routine quarterly and annual reports. These milestones and their target dates are set out in Table 25 below.

**Table 25. Milestones**

<b>Milestone</b>	<b>Target date</b>
Baseline study	31 March 2009
Project equipment procured <sup>82</sup>	30 June 2009
Re-design of the legal and case management database	31 March 2009
Implementation of the new legal and case management database	30 June 2009
Study on the economic value of Arbitration Council services	15 June 2009
Study on long-term sustainability	15 December 2009
Draft strategy on long-term sustainability	30 June 2010
Study on demand for Arbitration Council services in different areas	1 November 2009
Study on the link between individual and collective disputes	1 December 2009
Establishment of the Stakeholder Advisory Group	30 May 2009
Re-design of the Arbitration Council website	30 June 2009
Development of the Arbitration Council Soap Opera	31 December 2010
Production of Public Service Announcements	31 December 2010

## 8.2 Roles and Responsibilities

The monitoring and evaluation activities included in this proposal will be carried out both by the ACF and SAC staff and by independent entities. The ACF M&E Coordinator, under the guidance of the Executive Director (who is also the DFGG Project Director) and Deputy Executive Director, will have overall responsibility for coordinating and overseeing the data collection, analysis and reporting. Other AC/F and SAC individuals and groups will be involved as set out in Table 26 below.

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<sup>82</sup> Initial equipment procurement is expected to take place by the middle of the first year of project implementation. However, the ACF will continue to procure equipment as needed and as set out in the procurement plan over the four-year project period.

**Table 26. AC/F and SAC Participants in M&E**

<b>Participant</b>	<b>Role</b>
ACF executive management: Executive Director (DFGG Project Director) and Deputy Executive Director	<ul style="list-style-type: none"> <li>• ED reports on interim progress and outcomes to the DFGG Project Management Team (PMT)</li> <li>• ED participates in PMT discussions on overall DFGG Project results</li> <li>• ED and DED provide supervision and overall guidance to the M&amp;E Coordinator</li> </ul>
ACF M&E Coordinator	<ul style="list-style-type: none"> <li>• Oversees and coordinates M&amp;E: data collection, analysis and reporting</li> </ul>
ACF staff (Legal Support Team, Communications and Training Team, Finance and Admin Team, Executive Assistant)	<ul style="list-style-type: none"> <li>• Assists in collecting, entering and interpreting data</li> </ul>
Secretariat of the Arbitration Council	<ul style="list-style-type: none"> <li>• Assists in collecting, entering and interpreting data</li> </ul>
Representatives of the Arbitration Council	<ul style="list-style-type: none"> <li>• Communicate results to Arbitration Council</li> </ul>
Project Collaboration Committee (PCC)	<ul style="list-style-type: none"> <li>• Assists in interpreting results</li> <li>• Active partner in learning and sharing</li> <li>• Communicates results to the Ministry</li> </ul>
Stakeholder Advisory Group (SAG)	<ul style="list-style-type: none"> <li>• Communicates results to stakeholders (employers &amp; unions)</li> <li>• Provides feedback on results</li> <li>• Active partner in learning and sharing</li> </ul>

ACF has already started the process of recruiting a M&E Coordinator, who will have lead responsibility for the M&E and reporting functions. This post is expected to be filled by the end of 2008. Depending on the background and experience of the person eventually recruited, it may be necessary to invest in further training and capacity-building, both for the M&E Coordinator and other key staff who will be involved in M&E. Such training would cover basic principles of M&E, and specific training in the requirements of the DFGG Project, including collection of the required data and completion of the reports and forms.<sup>83</sup>

On-the-job and specific skills-oriented training may also be required following project effectiveness. This may be provided by the DFGG M&E and Learning Adviser or by the Research and Training Organization, and/or other short-term trainers as necessary. This

<sup>83</sup> It is expected that Project Preparation Funds will be utilised for in-country training by a local training provider for all DFGG Projects. A 5-day training course is proposed – 3 days on the general principles of M&E and generic M&E skills, and 2 days on the specific requirements of the DFGG Project. This activity is to be organized by the MOI PCO.

training will be particularly important for the design, testing and implementation of new M&E tools and procedures.

### 8.3 *Project oversight, management and assessment meetings*

In order to successfully implement the monitoring and evaluation activities at the Arbitration Council, extensive planning and cooperation is required from internal and external stakeholders: the arbitrators, the ACF management team, the support staff from the ACF and SAC, representatives from the Ministry of Labour and Vocational Training, MOI and the ACF Board of Directors. The collaborative effort will be carried out primarily through a series of consultative meetings, as set out in Table 27 below.

**Table 27. Schedule of Project Oversight, Management and Assessment Meetings**

Type of meeting	Function of meeting	Frequency
AC/F Management Team	To provide regular oversight, monitoring and management meetings by the key managers of project. Reviewing progress and emerging issues/problems. Agreeing actions to address problems.	Monthly
Project Collaboration Committee (PCC)	To provide a forum for representatives of AC, ACF and MoLVT - a platform for information sharing and for coordination of joint or complementary activities.	Quarterly
Stakeholder Advisory Group (SAG)	To provide a platform for key stakeholder consultation. It will help the Arbitration Council/ACF to develop program content, providing diversity of views, and building overall support for the project.	6-monthly
Mid-year review workshop (combined with SAG meeting)	To review mid-year project progress and performance against plans and budgets (activities, inputs, expenditure, outputs). To assess performance indicators against targets and milestones. To evaluate progress towards intermediate outcomes. To recommend revisions to plans and strategies. (Representatives from AC, ACF, SAC, MoLVT, SAG and MOI).	Annual
Annual review workshop (combined with SAG meeting)	To review project progress and performance against annual plans and budgets (activities, inputs, expenditure, outputs). To assess performance indicators against targets and milestones. To evaluate progress towards intermediate outcomes. To review risks and assumptions. To identify lessons emerging from the implementation of project strategies and evaluation studies. To recommend changes to implementation strategies for the subsequent annual planning workshop. (Representatives from AC, ACF, SAC, MoLVT, SAG and MOI).	Annual
Annual planning workshop <sup>84</sup>	To plan and schedule activities, inputs/resources, costs and review targets and milestones for the coming year - based on progress and performance to date, and any agreed changes to implementation strategies. (Project management and implementation staff from ACF and	Annual

<sup>84</sup> Annual planning workshops may have to cover an 18 months period to account for both the Project Year (July-June) and the RGC fiscal year (January-December).

	SAC; results to be reported to relevant bodies – RAC / PCC / SAG / BoD / MOI/ etc.).	
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## 8.4 *Project reporting*

The following regular reports<sup>85</sup> will be required to communicate progress and performance information:

**Annual Work Plan.** Those responsible for project implementation will work together to produce a detailed Annual Work Plan (AWP). These plans form the framework against which to monitor progress and performance. ACF will have primary responsibility for coordinating planning meetings and drafting the AWP. The AWP will include an implementation or activity schedule, a resources schedule and cost schedule, and will be discussed in the PCC before being forwarded for information to the DFGG Project Coordinator at MOI.

**Quarterly Report.** Quarterly reports will provide concise and factual information on progress and performance against plans and budgets, and present provisional results of key outcome indicators. Divergences from plan and budgets will be highlighted and briefly explained, and actions will be recommended to address any associated problems in implementation. The progress of all key activities in the plan will be described in narrative (progress against plan), any issues and problems arising will be identified, and the recommended corrective actions will be described or proposed. The performance indicators and milestones referred to above will be compiled and summarised by the relevant offices/units. Quarterly reports will also provide a summary of project expenditure in the quarter and cumulative expenditure to date (against budget). Project quarterly reports will be circulated to PCC members for comment before forwarding for information to the DFGG Project Coordinator.

**Annual Report.** Following the end of each project year, an annual report will be prepared. It will collate and summarise the information from quarterly reports and will cover all performance indicators and milestones listed above. The annual report will also provide information on the outcome indicators described in the results framework and findings from evaluation studies described below. Progress of key activities against plan will be presented, including associated issues and problems, and actions and recommendations. A summary of annual expenditure against budget and the progress of procurement against the procurement plan will be included. The risk assessment matrix will be reviewed and changes to the training programme and the communications and partnerships strategies described. The action plan for the coming year will be attached to the annual report. The annual report will be compiled by the ACF with contributions from SAC. Annual reports will be discussed in the PCC before forwarding for information to the DFGG Project Coordinator.

## *Evaluation*

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<sup>85</sup> These reports are further described in the DFGG Project Implementation Manual.

The Results Framework (Table 2 in Section 2) provides a description of key quantitative outcome indicators and the associated means for data collection. Other qualitative methods will also be used to assess outcomes in the project M&E system. These will provide additional explanatory information for evaluation and learning.<sup>86</sup>

Several of these evaluative and learning-oriented methods will be carried out by independent evaluators (such as civil society or non-government organisations (CSOs or NGOs), research institutes or firms, or independent consultants) working in collaboration with ACF staff. The methods and tools will be developed and tested in conjunction with the ACF M&E focal persons. Support will also be provided by the DFGG M&E and Learning Adviser or by the Research and Training Organization. Evaluation methods may include focus group discussions, key informant interviews, stakeholder scorecards and rating scales, surveys, expert audits of selected cases, and an economic analysis of the value of the Arbitration Council services.

The main evaluation tools for project learning are described in further detail below:

- *Baseline study.*  
This study will be conducted to collect data against which future progress and performance will be measured as well as to determine the Arbitration Council's cost structure.
- *Level of workers', employers' and other stakeholders' confidence in the independence, credibility and effectiveness of the Arbitration Council.*  
The stakeholders' confidence in the Council is vital for its continued success. This indicator will be assessed by means of focus group or panel group discussions, key informant interviews and stakeholder rating and scoring exercises.<sup>87</sup>
- *Level of workers' and employers' understanding of the Arbitration Council process.*  
Training and outreach activities are designed to ensure that the stakeholders involved have a good grasp of the Arbitration Council, its activities and structure, and the overall process for labour dispute resolution in Cambodia. This indicator will be assessed by means of focus group or panel group discussions and/or key informant interviews with groups of worker and employer representatives. The composition of these groups will be representative of their distribution in targeted sectors of the formal economy.
- *Level of awareness of the Arbitration Council.*  
Outreach activities are designed to ensure that the stakeholders (and to a lesser extent, the general public via the media) are aware of the Arbitration Council's existence and thus have an appreciation of the Council's brand. This indicator will be

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<sup>86</sup> For example, increases in stakeholder awareness of the AC and understanding of AC processes by x % may provide a quantitative measure of an expected outcome. However the nature of their awareness and understanding (What exactly are they aware about? Is their awareness correct? Is this information relevant or of value to them? What else do they need to know? etc) may be more important for project learning.

<sup>87</sup> Large, representative sample surveys are not considered appropriate due to the cost of conducting such surveys and the limited benefits over less formal survey techniques.

assessed by means of focus group or panel group discussions and/or key informant interviews with groups of worker and employer representatives; alternatively, a survey may be carried out among workers and employers in a range of different workplaces. Under either methodology, the sampling will be representative of their distribution in targeted sectors of the formal economy.

- *Study on economic value of the Arbitration Council services.*  
This study, to be conducted in the first year of DFGG funding, will help determine the economic benefits of the Arbitration Council's services; this information can then be measured against the cost of running the Council. It is expected that the economic benefits will far outweigh the costs. (For more detail, see Section 4.)
- *Expert evaluations of the Arbitration Council's credibility and independence.*  
In addition to quantitative data and stakeholder input, the Arbitration Council proposes to engage an expert evaluator to assess the Council's credibility and independence. This may be done via a review of the awards issued, to check for their quality and/or the consistency of their application of jurisprudence. These reviews are anticipated to be carried out at the mid-term and end-of-project timeframes. The expert selected for this purpose should be a very senior, highly experienced labour arbitrator or labour tribunal member, who is capable of offering his or her professional opinion on the standards and quality of work performed by the Arbitration Council.
- *Periodic assessment of AC/F's operating costs.*  
As a basis for the study on institutional and financial sustainability, as well as to facilitate a better understanding of the effectiveness of the Arbitration Council, a periodic assessment will be undertaken of operating costs, based on a disaggregated structure which is function-based.

Several of the evaluation and learning activities are planned to take place throughout the project and the resulting recommendations and lessons will be the basis for improving implementation of the project and strengthening expected benefits. They will also be of value in evaluating the outcomes and impacts of the project, and its contribution to good governance in general. A summary of the evaluation and learning tools is provided in Table 28.

**Table 28. Summary of Evaluation and Learning Tools – Objectives, Frequency and Costs**

<b>Tool/Method</b>	<b>Objective</b>	<b>Frequency</b>	<b>Estimated cost over life of project</b>
Baseline survey	To collect baseline data against which future progress and performance will be measured as well as to determine the Arbitration Council's cost structure	One-off activity before start of project implementation (depending on the availability of Project Preparation Funds) or shortly thereafter. To be partly (facilitation of FGDs etc., see below) contracted to an independent evaluator	\$20,000
Focus group discussions (FGDs) and/or key informant interviews separately with workers and employers with representatives from key industries, and other stakeholders as appropriate	To assess the level of stakeholders' and experts' confidence in the independence and credibility of the AC and the arbitral process	Biennially. To be contracted to an independent evaluator with experience in facilitation of FGDs and governance issues	\$16,000
Stakeholder scoring or rating scales	To score the perception of independence and credibility both of the AC and the AC process among key stakeholders. To assess the level of awareness of the AC by key stakeholder groups. To score the level of stakeholder understanding of AC processes	Biennially. Conducted as part of the panel discussions and FGDs	(see above and below)
Expert audit	To undertake an independent review of a selection of past AC cases to assess the standards and quality of work performed and the consistency of awards in their application of jurisprudence	Biennially. To be contracted to a very senior, highly experienced labour arbitrator or labour tribunal member	\$10,000
FGDs and/or key informant interviews separately with a representative selection of union and employer representatives	To assess the level of awareness of the AC by the range of stakeholders in key industries and location. To assess the level of stakeholder understanding of AC processes (again covering key industries and locations)	Biennially. To be contracted to an independent evaluator with experience in facilitation of	\$30,000

from target sectors in the formal economy, and other stakeholders as appropriate		FGDs, KIIs or surveys.	
Study on the economic value (benefits versus costs) of the Arbitration Council services	To evaluate the economic benefits of the Arbitration Council's services against the costs of running the Council	A one time study to be started prior to project implementation (depending on the availability of Project Preparation Funds). To be contracted to an experienced economic analyst	\$40,000
Newspaper review of AC-related articles	To determine the frequency with which the Arbitration Council is prominently mentioned in the press. To assess how press coverage of the Council is changing over time	Annual. To be contracted to a media consulting firm to undertake keyword searches of in all major Cambodian newspapers	\$10,000
Midterm evaluation	To discuss and review project progress and performance to date; to provide recommendations and lessons that will be the basis for improving implementation of the project and strengthening expected benefits	Once, by the end of the second year of project implementation	N/A
End of project evaluation	To provide an independent evaluation of project efficiency, effectiveness, relevance, impact/outcomes and sustainability. To provide recommendations to continue similar program of support to the AC, if appropriate. To document lessons for similar or future activities	A one-off activity near the end of the project	\$20,000

### *Learning*

M&E is only useful if the results of the process are analysed and used as feedback to improve future outcomes.

- **The critical reflection to improve action.** Priority must be given for time to analyse and study the information, in order to answer the key question: What does the data tell us on how to improve the management and the effectiveness of the project activities that will be carried out by the Arbitration Council?
- **The communication and reporting of results.** It is not enough for the people who have primary responsibility for M&E to have a good understanding of how the project responds to certain sets of indicators, to monitor results, and determine those activities that work and those that does not work. This information has to be shared with all stakeholders involved in the project, so that each, in line with his or her responsibility, can act upon it, and make the project better. This is expected to be done via various reporting and governance mechanisms detailed in this proposal, including the Representatives of the Arbitration Council and Regular Arbitrators Meetings; the ACF Board of Directors; the Project Collaboration Committee; the Stakeholder Advisory Group (see Section 9 for more details on these two bodies); and the MOI.

## 9. PARTICIPATION AND PARTNERSHIPS PLAN

### *The Arbitration Council: A product of participation and cooperation*

As noted earlier in this project proposal, the Arbitration Council's success to date can be attributed to a high level of cooperation between key stakeholders that include the Ministry, employer associations and unions. The Arbitration Council itself is a product of this cooperation. The tripartite partners worked closely together towards the creation of the Council through the Project Advisory Committee, a body organised by the ILO specifically to facilitate discussions and recommendations on industrial relations issues among the government, employers and unions.<sup>88</sup> They jointly endorsed the proposed tripartite structure and legal framework which resulted in the issuance by the Ministry of *Prakas* 339 in December 2002 formally establishing the Arbitration Council. Also all three tripartite stakeholders jointly endorsed the appointment of the first group of 21 arbitrators, whose recruitment and nomination had been facilitated by the ILO. The process leading to the creation of the Arbitration Council also provided for consultations with other stakeholders through formal and informal participatory mechanisms, including NGOs (most notably, the Phnom Penh-based Community Legal Education Center as a local partner organisation to the ILO in its support of the Council), international organisations, other Ministries of the Royal Government of Cambodia, courts, the Bar Association of the Kingdom of Cambodia, universities, etc.

Since the Council's inception, the Ministry and social partners have continued their cooperation in the development of the Arbitration Council. They supported the establishment of the independent Arbitration Council Foundation in 2005 to provide management and technical support functions of the Council previously carried out by the ILO. Recently, in June 2007, the Ministry and the ACF memorialised and clarified the respective roles of the SAC and ACF by executing the *Agreement Between Department of Labour Disputes and Arbitration Council Foundation on the Roles of Secretariat of the Arbitration Council and Arbitration Council Foundation* (see Annex 3). The Agreement is an important step toward ensuring the continued harmonious and collaborative relationship necessary to support the Arbitration Council.

To collect feedback from stakeholders on the functioning and operations of the Arbitration Council, several evaluations and stakeholder surveys were undertaken in the past years by the ILO and the Arbitration Council. Based on the results of these evaluations and surveys, improvements were made to the functioning of the Arbitration Council and to its legal framework. In April 2004, for example, after extensive consultations with the key stakeholders, a new *Prakas* 99 was issued, superseding the earlier *Prakas* of 2002, which contains amendments regarding, *inter alia*, the membership of the Arbitration Council, administration of hearing proceedings, guidelines to facilitate the arbitration process, and notification requirements for the closing of cases.

As noted in earlier sections of this project proposal, functionally and institutionally, the Arbitration Council, the ACF and the Ministry (especially the SAC) work closely together. The smooth functioning of the Arbitration Council hinges on their ability to work in good collaboration not only with each other but also with other stakeholders. To date several joint activities have been undertaken by the Ministry and the Arbitration Council and ACF, including the organisation of the annual National Industrial Relations Conferences (NIRC) in which key

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<sup>88</sup> The Project Advisory Committee, an oversight and consultation mechanism for the ILO's Labour Dispute Resolution Project, was established at the start of that project. The Project Advisory Committee is expected to continue operations until the end of the ILO project (currently planned for 2009).

industrial relations stakeholders are invited to attend its programmes as active participants, speakers and panel members. In addition, the Arbitration Council, the ACF and the SAC also collaborate to provide joint training programmes for the benefit of stakeholders, including employer associations, unions, judges and student judges, court clerks, practicing lawyers, lawyers in training, and other relevant stakeholders. The Arbitration Council, the ACF and the SAC are also active in training and exchange programmes with outside agencies, including regular visits to overseas bodies like the Australian Industrial Relations Commission (AIRC) for training and relationship-building purposes.

### ***Strategies for further participation and partnership***

The Arbitration Council and the ACF plan to build on their experiences and to develop a strong and wide partnership with all relevant stakeholders and partners, which is essential in developing program content, including diversity of views, and building overall support and sustainability for the DFGG Project. (For further discussion regarding the importance of participation and partnership plans vis à vis the sustainability of the Arbitration Council, see Section 4, Module 1.3, *Sustainability*, and Section 14, *Sustainability issues and arrangements*).

To this end, the very participatory process of preparing this project proposal has spurred on action among a wide swath of the Council's stakeholders. The project's Technical Advisory Group (TAG) was established precisely to solicit stakeholder participation in the project preparation process, and comprised 23 members, including representatives of employer associations, union federations, the ILO, and civil society and private sector. (For a description of this participatory planning process, see Annex 1.) The Arbitration Council anticipates continuing this process into and throughout project implementation, for example through the transformation of the TAG into a permanent advisory body (Stakeholders Advisory Group or SAG). In addition, the transformation of the TWG – a group also formed during DFGG Project preparation, and composed of representatives from the Arbitration Council, ACF and the Ministry of Labour and Vocational Training – into the Project Collaboration Committee will be important for information sharing and coordination of joint activities between the Ministry and the Arbitration Council. Further details are provided below and in Section 7, *Institutional and Implementation Arrangements*.

Though the Arbitration Council plans to strengthen its cooperation with key stakeholders under the DFGG Project through the establishment of partnerships and the conduct of outreach and training activities, it should be noted here again that as a general principle, the Arbitration Council should abstain from associating itself too closely with specific stakeholders, as this could affect the real and perceived independence and neutrality of the Council. For this reason, it is proposed that certain activities be carried out by Non-State Actors, rather than by the Arbitration Council itself. Suggestions for such complementary activities by non-state actors in this and other sections are compiled in tabular form and included as **Annex 10** for the reference of those preparing the Non-State Actor Component of the DFGG Project.

The following participation and partnership strategies and actions are outlined for the project:

**Strategy 1: Institutionalisation of partnerships with the key Cambodian industrial relations institutions and stakeholders.** This will involve the Arbitration Council and the ACF, the Ministry (including the SAC), employer associations and union federations. These groups are the ones most directly involved in the labour dispute resolution process, either as parties or (in the case of the Ministry) by facilitating parties' access to the Arbitration Council. As such, the Arbitration Council should have close relationships with representatives from these groups, to ensure that the groups are well-informed and have confidence in the Council, and also

that the Council is receiving adequate stakeholder feedback. Activities to be carried out under this strategy include:

- Action:** - Transformation of the DFGG Technical Working Group (currently composed of arbitrators, representatives from the Ministry, including SAC, and representatives from the ACF) into a DFGG Project Collaboration Committee (PCC). The PCC will serve as a platform for information sharing and coordination of joint activities between the Ministry and the AC/F. (For more details on the PCC, see Section 7, *Institutional and Implementation Arrangements*, and Annex 8.)
- Transformation of DFGG Technical Advisory Group (TAG) into a tripartite Stakeholder Advisory Group (SAG) to serve as a platform for information sharing, advice and feed back. Its structure and functioning may evolve from the already-existing Project Advisory Committee (PAC) of ILO's Labour Dispute Resolution Project, which is due to phase out in 2009. The SAG is envisioned as a permanent committee which will last beyond the DFGG Project lifetime. (For more details on the SAG, see Section 7, *Institutional and Implementation Arrangements*, and Annex 9.)
  - Conduct regular meetings between arbitrators and Ministry conciliators, in Phnom Penh and elsewhere, designed to share expertise in labour dispute resolution and develop capacity and professional relationships.
  - Conduct regular meetings with employers and unions, including the Meet & Greet activities that are currently being undertaken between arbitrators from the employer- and union-nominated lists and their respective stakeholders. Such activities present opportunities not only for raising awareness about the Arbitration Council generally, but also for stakeholders to become more familiar with the particular arbitrators who are available for selection to labour dispute cases.
  - Conduct joint training events for stakeholders regarding labour dispute resolution process with arbitrators, Ministry's staff and ACF staff as trainers; and provide technical support to refreshment and continuing training for conciliators, including those working in the Ministry's provincial offices. These activities are expected to strengthen the relationships between Ministry officials and the Arbitration Council and ACF.
  - Provide technical support to trainings, conducted by employer associations or labour unions, on issues related to the Arbitration Council, labour dispute resolution or industrial relations in general. Such support may be in the form of informal advice regarding training agendas or supply of certain relevant publications materials, to more formal support via speaking engagements or workshops.
  - Conduct stakeholder surveys on particular issues regarding the Arbitration Council and industrial relations and labour dispute resolution in Cambodia.

**Strategy 2: Continuation and expansion of collaborative and consultative projects with other stakeholders in Cambodia, project implementing agencies and donors.**

These groups are not directly involved in the labour dispute resolution process, but play important roles in disseminating information, building confidence in the Arbitration Council, and supporting the Council by acting in ways that reinforce and/or do not undermine it. The Arbitration Council should ensure that these groups are well-informed about the Arbitration Council and its role in Cambodia's labour dispute resolution system, the Council's successes and credibility. In addition to the direct training and promotion activities mentioned in Component 3 of this project proposal, other activities to be carried out under this strategy include:

- Action:**
- Provide technical support to trainings, conducted by NGOs, on issues related to the Arbitration Council, labour dispute resolution or industrial relations in general. Such support may be in the form of informal advice regarding training agendas or supply of certain relevant publications materials, to more formal support via speaking engagements or workshops.
  - Establish ties with local universities and higher education institutions and arrange for students to visit, research and learn about the Arbitration Council and the arbitration process. Such partnerships will also be developed with a view to incorporating training/lessons about the Arbitration Council and labour dispute resolution process into existing curricula for labour law classes.
  - Continue and expand the internship programmes at ACF for Cambodian and foreign law students.
  - Coordinate with Lawyer Training Centre on relevant training activities for student lawyers.
  - Continue organization of the annual National Industrial Relations Conference (NIRC). From 2005 to 2008, the Arbitration Council and the Ministry has organised NIRCs in which key industrial relations stakeholders, including the ILO, were invited as active participants, speakers and panel members. This annual conference, the only one of its kind in Cambodia, offers a non-confrontational forum for stakeholder dialogue on issues relevant to all actors in the industrial relations landscape. The NIRC is also an important means for promotion of the Arbitration Council and raising its visibility.
  - Encourage formation of an independent Industrial Relations Society. The Arbitration Council and the Ministry seek to encourage an independent Industrial Relations Society (perhaps to be supported by the DFGG Non-State Actor window), which can serve as a forum for stakeholders to interact, exchange views, and receive training on key industrial relations topics. As opposed to the NIRC, which happens only once a year, the Society would allow for ongoing relationships to develop through regular meetings, discussions, and seminars.

**Strategy 3: Institutionalisation of partnerships with international and overseas organisations.** There are a number of international and overseas bodies which have extensive experience in alternative dispute resolution generally, labour dispute resolution, and labour and industrial relations. Partnerships with such bodies will serve two purposes. First, they will provide the Arbitration Council with opportunities for the arbitrators and staff to improve their skills by learning from the experiences at other similar bodies. Second, such partnerships will show the support that such bodies give to the Arbitration Council – support which acts as a vote of confidence and an affirmation of the Council’s credibility in the eyes of international experts.

- Action:**
- Establish the Institution-Building Training Seminar (ITBS) as a formal body of select international advisors to train and advise on the institutional structure and development of the Arbitration Council and the ACF. It is expected that the IAG will comprise high-standing members of the international IR community who will advise on a range of issues based on international perspectives and individual expertise, and who will also provide assistance in networking and fundraising. It is anticipated that the IBTS will convene in Cambodia biennially, while contact will also be maintained through other means, including for example through video conferences.
  - Revise the ACF statute and provide for non-voting members on the ACF Board of Directors, including, for example, a representative from the ILO.

- Continued cooperation with the ILO, including on the selection and recruitment of arbitrators (see Section 4, paragraph 1.1); on the provision of training and capacity building programmes; and on possible support for the development of high quality proposals under the Non-State Actor window.
- Seek membership in relevant international bodies (e.g., the International Industrial Relations Association, regional mediation or arbitration associations, etc.).
- Consolidate the current ties with the Australian Industrial Relations Commission (AIRC) and establish relationships with other dispute resolution bodies in Asia, Europe, Africa and the US.

**Strategy 4: Establish and maintain collaborative and consultative projects with other DFGG partners.** As partners in achieving the DFGG goals of promoting, mediating and responding to DFGG, the Arbitration Council and the other three State Institutions (and, in some cases, the entities selected via the DFGG Non-State Actor window) should maintain regular contact in order to share information and coordinate joint activities. The Arbitration Council is in the early stages of discussing concrete activities with the other DFGG State Institutions, but has tentatively proposed the following actions:

- Action:**
- Discuss and negotiate agreement and framework for participation in RNK’s talkback programmes.
  - Explore possibility to cooperate with MONASRI on dissemination of regulations and information on the Arbitration Council.
  - Discuss with MOI One-Window Service Office and/or District Ombudsmen possible cooperation on issues of outreach and provision of information to the general public in target areas.
  - Explore possibility to cooperate with appropriate Non-State Actor to establish a one-stop shop for information about labour dispute resolution. The Arbitration Council would supply relevant brochures or other information to be distributed, but would also suggest that a Non-State Actor be funded to produce a simple printed guide (e.g., “Labour Dispute Resolution from A to Z”).

**Strategy 5: Adjust partnership plan in line with expansion of the Arbitration Council’s services.** As a key element of this proposal is the expansion of Arbitration Council services to new regions and sectors, it is clear that partnership activities should also be expanded in parallel, based on demand. Some or all of the following actions may be undertaken based on demand for the Arbitration Council’s services in new regions and sectors.

- Action:**
- Evaluate partnership plan regularly in light of the Arbitration Council’s expansion into new regions and sectors and adjust as appropriate.
  - Conduct Meet & Greet activities in new regions and sectors between arbitrators from the employer- and union-nominated lists and their respective stakeholders.
  - Invite representatives of tripartite partners from regions and sectors where there is most demand for the Arbitration Council’s services to sit on the tripartite Stakeholder Advisory Group.
  - As the Arbitration Council expands, collaborate with relevant regional and sectoral employer associations and union federations to raise awareness and conduct training on the Arbitration Council process.
  - Partner with government officials in new regions to train relevant officials on the Arbitration Council process.

## 10. FINANCIAL MANAGEMENT AND DISBURSEMENT ARRANGEMENTS

The DFGG Financial Management Specialist of the Ministry of Interior has carried out a financial management assessment of the ACF to determine the capacity of ACF to undertake project financial management activities including management of the designated account. The main conclusions of the assessment were: (a) the ACF has acceptable accounting policies and procedures and a computerised accounting system; (b) accounting staff have adequate qualifications and experience; (c) the ACF manages the current funds received from its development partners; (d) budgeting and reporting are in a sufficient detail to monitor Arbitration Council activities; (e) internal control environment is acceptable with clear policies, procedures and responsibilities; and (f) ACF financial statements are audited by independent auditors. The following section is based on the financial management assessment report.

### *Accounting Policies & Procedures and Staffing*

In 2007, the ACF developed a Financial Management Manual on the recommendation of its auditors. This manual has been revised to include the requirements of the Financial Management Manual for Externally Funded Projects approved by the Ministry of Economy and Finance (MEF). The ACF chart of accounts is being reviewed to accommodate DFGG Project requirements, and will be finalized by 1 January 2009. The accounting policies and procedures and the current computerised accounting system are expected to meet the minimum requirements for IDA projects. The Financial Management Manual has been reviewed for consistency with the Financial Management and Disbursement Manual for the DFGG Project and, subject to certain updates indicated below, determined acceptable for utilization during the DFGG Project.<sup>89</sup>

The ACF has two staff, the Finance & Administration (F&A) Manager and an accountant, to manage all accounting and office administration duties. The ACF F&A Manager will continue to report to the Executive Director of the ACF. Job descriptions for these two staff are included in the Financial Management Manual.

### *Funds Flow & Disbursement*

World Bank regulations do not permit IDA funds to be advanced from RGC designated accounts to any entity outside the government. Because ACF is a registered non-governmental organization, it therefore cannot obtain advance from the IDA funds, but will receive such funds on a reimbursement basis. In addition to IDA funds, the Australian Agency for International Development (AusAID) has committed to contribute funds from the East Asia and Pacific Australian Trust Fund for Social Accountability (AusAID Funds), for support to the AC component of the DFGG Project. AusAID will advance the AusAID Funds, as non-IDA funds, in a lump sum to the ACF, through a deposit into an ACF bank account.<sup>90</sup> This initial deposit

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<sup>89</sup> As stated in the Project Implementation Manual (PIM) of the DFGG Project, “ACF and [The Asia Foundation] will follow the Financial Management Manuals approved by their governing Boards. These manuals were reviewed during project preparation and found consistent with [the Financial Management and Disbursement Manual] of DFGG.” PIM, Section III, *Institutional and Implementation Arrangements*.

<sup>90</sup> The AusAID Funds will be treated as parallel financing for the AC component of the DFGG Project; the original contribution from IDA DFGG Project funds for the AC component has been reduced by a corresponding amount equivalent to the AusAID Funds. The ACF has a bank account with ACLEDA Bank to deposit funds received from its current donors. For the DFGG Project, a separate bank account may be opened at ACLEDA Bank or another commercial bank acceptable to the World Bank and AusAID as may be necessary.

will be used by ACF as operating capital for the DFGG Project: the ACF will pre-finance its DFGG Project expenses from these funds and then request reimbursement from IDA.

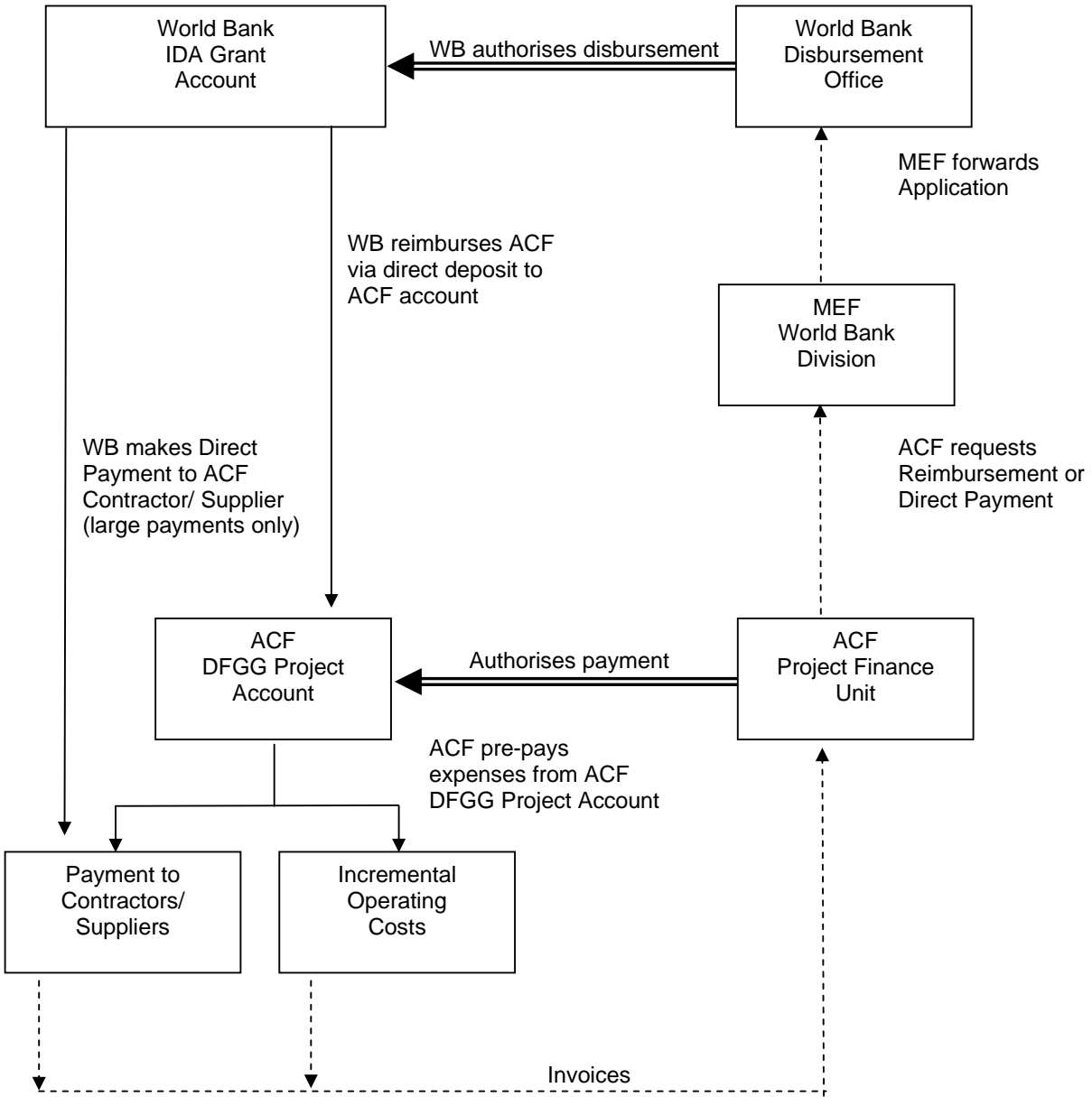
The ACF will be responsible for all authorization of payments. The fiduciary responsibility for ensuring payments are made for intended purposes will be with the ACF. The ACF will make all payments by check or bank transfer except for small petty-cash expenditures as stipulated in the Financial Management Manual.

The ACF will, as needed, request reimbursement from the World Bank's IDA grant account by preparing and submitting Withdrawal Applications for reimbursement. The applications will be submitted to the Ministry of Economy & Finance, World Bank Division, and to the IDA. Upon processing and approval, the World Bank will deposit the reimbursement payment directly into the ACF's bank account.

For large payments, the ACF may request the World Bank to make a Direct Payment to the vendor. The process for such Direct Payments will be similar to the process for reimbursements: the ACF will submit a Withdrawal Application for direct payment to the MEF and to the World Bank. Upon processing and approval, the World Bank will make the direct payment to the vendor.

The proposed fund flow is shown in the flow chart in **Figure 9**.

Figure 9. Proposed Fund Flow



Note:  
 —> Fund Flow  
 ==> Authorisation  
 -.-.- Document Flow

### ***Timing of Funds Flow***

As of 1 January 2009, non-IDA and IDA DFGG Project funds will cover a continuation of currently existing Arbitration Council activities. Therefore, the initial deposit from East Asia and Pacific Australian Trust Fund for Social Accountability will be transferred to the ACF bank account on or before 1 January 2009 for immediate use by the ACF to carry on DFGG Project activities related to the AC sub-component, including, for example, paying staff salaries and operating costs, hearing labour disputes, conducting training and workshops, and so on.<sup>91</sup>

### ***Budget System***

According to the financial management assessment, the planning and budgeting system in place is considered satisfactory. Budgets are prepared in sufficient detail by sources of funding, categories of expenditure and objectives and activities. It is expected that the current level of competency in budget planning is adequate for project requirements.

Financial reporting for budget management is well established. The ACF prepares monthly reports that are reviewed by the Executive Director. Quarterly reports are prepared and submitted to the Board and donors. Project-related financial monitoring reports have been designed during DFGG Project preparation. These can be made operational with a minimum of training and modifying the computerised report generation system.

### ***Accounting and Reporting***

The ACF will be responsible for all accounting and reporting activities of the DFGG Project related to the AC sub-component. Project accounts will be maintained in accordance with policies and procedures in the Financial Management Manual. Financial reports will be prepared monthly, with appropriate reconciliations with main and subsidiary accounts, comparison of budget and actual expenditures, and a variance analysis. Comprehensive Financial Monitoring Reports will be prepared quarterly for submission to IDA.

### ***Internal Control Environment***

According to the financial management assessment, the internal control environment is considered adequate. There are clear and established procedures. The ACF's F&A Manager and Executive Director closely monitor and approve all transactions. The ACF has formalised these procedures by incorporating them in its Financial Management Manual. However, some improvement needs to be made in segregation of procurement, goods receipt and payment activities. The ACF has agreed to appoint one additional staff to take responsibility for procurement. With this appointment, a clear segregation of procurement, payment and accounting functions would be achieved.

### ***Auditing***

In accordance with the ACF Statute, all ACF accounts are audited annually by independent auditors appointed by the ACF Board of Directors. Draft terms of reference for the Board-appointed auditor will be submitted to the WB for comment, and then approved by the ACF Board of Directors. In addition, additional audits may be carried out by auditors engaged by the MOI Project Coordination office.

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<sup>91</sup> To the extent certain trainings, workshops and other activities are scheduled for implementation shortly after 1 January 2009 but before, for example, the related activity plans are fully processed by the PCO, the ACF will seek provisional authorisation to implement such activities or delay implementation as may be necessary.

### ***Risk Analysis***

According to the financial management assessment, financial management risks are considered low given qualified and experienced financial staff and satisfactory financial management procedures and systems. The revision of the Financial Management Manual, the appointment of one additional procurement staff, and subjecting the ACF to regular internal audit minimises any residual risks.

### ***Financial Management Action Plan***

Actions that following the financial management assessment will be undertaken prior to project implementation are shown in the Financial Management Action Plan below.

**Table 29. Financial Management Action Plan**

<b>Action</b>	<b>Responsibility</b>	<b>Date for Completion</b>
Revise Financial Management Manual to incorporate IDA/MEF FMM requirements	ACF F&A Manager	Completed
Agree job descriptions for financial management staff and procurement staff	ACF F&A Manager	Completed
Design Financial Monitoring Reports	ACF F&A Manager	Completed
Appoint additional procurement staff	ACF F&A Manager	Three months before project effectiveness (depending on the availability of Project Preparation Funds)
Revise Chart of Accounts	ACF F&A Manager	January 1, 2009
Update computerised accounting system to new Chart of Accounts	ACF F&A Manager	January 1, 2009

## **11. PROCUREMENT PLAN**

### ***A. General Guidelines***

Procurement for the Arbitration Council component of the DFGG Project will be carried out in accordance with the World Bank's 'Guidelines on Procurement under IBRD Loans and IDA Credits', dated May 2004 and revised in October 2006 (hereinafter, the "WB Procurement Guidelines"); and 'Guidelines on Selection and Employment of Consultants by World Bank Borrowers' dated May 2004 and revised in October 2006 (hereinafter, the "WB Guidelines on Selection and Employment of Consultants"). The general description of various items under different expenditure categories are described below. The different procurement methods and consultant selection methods for each contract to be financed by the IDA grant, which includes the estimated costs, methods of procurement, prior and post review requirements, and timeframe, will be agreed on between the recipient and the World Bank (WB) project team in the Procurement Plan. The Procurement Plan will be updated annually to reflect the actual project implementation needs. Guidance for implementing procurement requirements is provided in the Procurement Manual (PM) specified in the Kingdom of Cambodia's Sub-Decree No. 14, dated February 26, 2007, on promulgating the Standard Procedures for Implementing the WB and the Asian Development Bank (ADB) assisted projects.

For expenditures funded by other (i.e., non-WB) sources – including, notably, expenditures for items listed in the DFGG Project budget for the AC component, but which are paid for using non-WB funds (e.g., expenditures paid out of funds provided by stakeholder contributions or other donors) – the ACF is not required to use the Independent Procurement Agent (IPA), nor to follow WB or RGC procurement guidelines. In such cases, the ACF will ensure that all purchasing, contracting and payment decisions follow the ACF's established procedures and policies.

### **Procurement of goods**

The project provides for the procurement of vehicles, computers, printers, office equipment, audio visual equipment, and furniture and fittings. The mode of procurement is governed by the threshold for each package and, to a large extent, the need for after-sales service and spare parts availability within the country. The procurement packages for goods are relatively small and will be limited to National Competitive Bidding (NCB) and Shopping. The thresholds for the bid packages are in line with the thresholds specified in Annex 5, Volume 1, of the PM referred to above. NCB is the preferred mode of procurement for the reasons indicated above and, in Cambodia, the availability of spare parts and after sales service is limited to the few brands of vehicles and office equipment being represented in the country. NCB procedure will be applied in accordance with paragraph 3.3 and 3.4 of the WB Procurement Guidelines. Goods estimated to cost less than the equivalent of \$20,000 per contract will be procured through Shopping procedures in accordance with paragraph 3.5 of the WB Procurements Guidelines.

### **Selection of consultants**

Consulting services for the AC sub-component will partly be undertaken through the recruitment of Individual Consultants (IC) for providing professional services. In general, IC will be selected based on the consultant's qualifications and in accordance with the provisions in paragraph 5.1-5.4 of the WB Guidelines on Selection and Employment of Consultants. Firms or institutions will be used for small specialised assignments following the selection based on consultants' qualifications (CQS) in line with paragraph 3.7 of the WB Guidelines.

- ACF Staff

The WB has advised that, for the purposes of budgeting, ACF staff are to be treated as consultants rather than as incremental operating costs. However, it is also recognized that it would be inappropriate for regular ACF employees to be subject to the same procurement guidelines for external consultants; that is, ACF staff will not be subject to the IPA or any other procurement procedures whereby non-ACF personnel would be able to influence or participate in the recruitment, hiring, promotion, and ongoing employment of ACF staff.

For ACF staff who are employed prior to the implementation of the DFGG Project, WB has suggested that their employment be treated as an extension of existing staff contracts subject to WB review. As a result, prior to DFGG Project implementation, the ACF will provide a list of the existing staff members, their start dates, positions, terms of reference (job descriptions) and CVs for review by the WB. The ACF will then prepare an addendum to the existing staff contracts, indicating that they are to be funded as consultants under the DFGG Project. The language of the addendum will be agreed between the ACF and WB.<sup>92</sup>

For ACF staff who are hired or promoted during the DFGG Project period, the WB has advised that the following procedures should be followed:

- Staff earning more than \$50,000 during the DFGG Project period

Individual staff earning more than \$50,000 during the DFGG Project period will be considered as IC exempt from the IPA and related guidelines, but still subject to the WB's Prior Review process (see point D below). This will require that ACF submit the job advertisement and Terms of Reference to the WB Task Team Leader for approval prior to circulation. ACF will then follow its standard recruitment process, as described in Section 7. Prior to the final step (job offer and negotiation) in that process, the ACF will submit its ranking and recommendation of candidates to the WB. Before an employment contract is signed, ACF will also submit the draft employment contract for the selected candidate to the WB.

- Staff earning less than \$50,000 during the DFGG Project period

Individual staff earning less than \$50,000 during the DFGG Project period will be considered as IC exempt from the IPA and related guidelines, but still subject to the WB's Post Review process. This will require that the ACF follow its own internal selection process, retaining all documentation (including job advertisement, terms of reference, ranking and recommendation of the candidates) for review by the WB post-recruitment. WB will review the documentation and procedures followed to ensure that ACF staff members are selected via a competitive, open and transparent process.

As noted in Component 4 of Section 4, the ACF sets staff salaries at appropriate levels in order to attract and retain top-quality staff, and these salaries are adjusted annually to account for inflation-based increases in the cost of living. Salaries may also be adjusted to reward exceptional performance, in order to attract and retain top-quality staff. Any such salary increases to staff positions will be memorialized in addenda to the staff contracts, following the same procedures as set out above. If the adjusted salary raises the total salary payment during the DFGG Project to more than \$50,000, then the ACF will submit the adjustment to the WB for Prior Review; if

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<sup>92</sup> All currently employed ACF staff are engaged on undetermined duration contracts (i.e., continuing contracts with no end date), and so the addendum will not technically be an extension with respect to the ACF's obligation as an employer under the law. Note that Cambodia's Labour Law requires that all employees hired for more than two years be engaged on undetermined duration contracts.

the total salary payment including the adjustment amounts to less than \$50,000, then the ACF will follow Post Review procedure.

- Emergency Consultants

At times in the past, the need has arisen for expert consultants to advise the Arbitration Council on particularly contentious or specialized disputes brought before it. Such consultants are generally very experienced labour arbitrators from other jurisdictions, with expertise in the specific field of the labour dispute. Given that the Council has a very limited timeframe in which to hear cases, and because such consultants are called on only in emergency situations (for example, when there is a threat to the stability of an important economic sector), hiring must take place at extremely short notice – making it difficult to follow a full procurement process.

To provide for this eventuality, WB has advised that the ACF proceed as follows: the ACF will establish terms of reference and advertise for expressions of interest, and develop a short list of qualified candidates in advance of any defined need. If and when the need arises, the ACF can invite the top-ranked candidate for negotiations and engage his or her services; if the top-ranked candidate is not available, then the ACF will proceed to the next highest ranked candidate on the list; and so on, until the position is filled. Alternatively, the ACF can invite the top-ranked candidate to enter into an indefinite delivery contract for a certain period, in accordance with paragraph 4.5 of the WB Guidelines on Selection and Employment of Consultants.

- Single-Source and Sole-Source Selection (SSS)

Single-Source Selection (for firms) and Sole-Source Selection (for individuals) (SSS) will be used in specific circumstances during the pre-implementation period and project implementation, in accordance with the provisions in paragraphs 3.9-3.13 of the WB Guidelines on Selection and Employment of Consultants.

*Budget line 4.8.2 – Technical Assistance*

During the pre-implementation period, the ACF plans to secure additional technical assistance via SSS from one or more international consultants for support to the Arbitration Council in finalising this Project Proposal and for assistance in tasks scheduled to be carried out prior to effectiveness of the Project Grant. These tasks represent a natural continuation of the work carried out during the project preparation phase; they are also expected to be categorised as “very small assignments” under the terms of paragraph 3.10 of the WB Guidelines on Selection and Employment of Consultants. Given the importance of maintaining continuity in the technical approach and the experience acquired during the project preparation phase, it was proposed that most or all of this technical assistance be provided by Mr. Michael Lerner, who was previously employed as Technical Advisor at the ACF and who, in that capacity, worked on DFGG Project preparation in 2006-2007.

*Budget line 3.3.2 – Soap Opera*

*Budget line 3.3.3 – Public Service Announcement*

*Budget line 3.3.4 – Training Video*

SSS will be used to contract the production of the video tools budgeted under these lines. As is explained in greater detail in Section 4, the Soap Opera that will be produced under this project is a follow-on to the series “At the Factory Gates”, which was produced by the ILO’s ‘Better Factories Cambodia’ (BFC) in 2005-2007, and which garnered praise from Cambodian workers, employers and even Prime Minister Hun Sen. To capitalise on this popularity, the Arbitration Council Soap Opera will use many of the same actors, characters and settings as “At the Factory Gates”. This will also offer economies of scale, as the Soap Opera will not have to spend time developing a whole new dramatic setting and cast of characters. However, this will require

contracting Navigator Communications, the same production company used for “At the Factory Gates”. The ACF has already had preliminary discussions with this production company and with BFC, to ensure that there are no copyright or production barriers to proceeding in this fashion.

Based on advice received during project preparation from the communications and media advisor, the Public Service Announcements (PSAs) and the Training Video should maintain consistency in content, message, actors and settings with the Soap Opera. This will create synergies across the three video tools, such that each reinforces the others. As a result, though, the same production company (Navigator Communications) must be contracted (via SSS) to produce the PSAs and the Training Video, in order to ensure the required consistency. It is expected that there should be additional economies of scale obtained by selecting the same production company.

The contract for production of the above video tools will also include technical assistance to the ACF in the strategic development, production and deployment of these tools, in order to increase the impact that these tools would have. As a result, in the first and second year of DFGG Project implementation, it is expected that the budgeted cost of the media and communications consultant (see Module 3.3 in Section 4) will be included in this SSS contract.

### **Use of Non-governmental Organisations (NGOs)**

NGOs are voluntary non-profit organisations that may be uniquely qualified to assist in certain aspects of the proposed project, largely because of their involvement and knowledge of local issues and community needs. Qualified NGOs may be included in the short list for consultancies if they express interest. The ACF will preferably not include consulting firms in the short list for services for which NGOs are better qualified. For assignments that emphasise participation and considerable local knowledge, the short list may be composed entirely of NGOs. The evaluation criteria shall reflect the unique qualifications of NGOs, such as voluntarism, nonprofit status, local knowledge/presence, scale of operation, and reputation. This is in line with the WB Guidelines referred to above. The ACF may select the NGO on a single-source basis, provided the criteria outlined in paragraph 3.10 of the Banks’ Guidelines on the Selection of Consultants are fulfilled.

### **Training workshops and incremental operating costs**

As per WB guidance received during the preparation of this proposal, consultants for training and workshops will not be included in the procurement plan under consulting services. The consultants (trainers or other relevant service providers) may be packaged with the training workshops and charged against operating costs. The selection of the consultants by the ACF would however follow one of the available methods under the WB Guidelines on Selection and Employment of Consultants. Incremental Operating Costs can be incurred on the basis of an annual or semi-annual plan approved in advance by the WB. The ‘Financial Management and Disbursement Manual’ prepared for the DFGG Project specifies procedures for the financial control and approval of training and related expenditures.

### ***B. Assessment of the ACF’s Procurement Capacity***

Within the ACF Finance and Administration Office, there is a small procurement unit. The procurements are limited to office equipment, furniture and fittings. These have been undertaken by simple canvassing for quotations. There are adequate staff and required office facilities in the department to undertake the proposed procurement. The staff will however require the

necessary training and guidance to undertake the procurement for the project in line with WB Guidelines. The project proposal includes funding for the recruitment by the ACF of one additional staff to take responsibility for procurement. In addition, strong support on procurement from the proposed Project Coordination Office (PCO) for the overall DFGG Project will be made available. (It is expected that the PCO will have an experienced Procurement Specialist on its team.)

Effective December 2007, MEF has contracted an Independent Procurement Agent (IPA) to handle all procurements for WB-funded projects. However, procurement responsibilities of the ACF will still involve the preparation and updating of procurement plans, drafting technical specifications for the procurement of goods and works, writing terms of references for consulting services, technical inputs if required to respond to clarifications on Bidding Documents or Request for Proposals, technical inputs if required during bid evaluation or evaluation of consultants' proposals, technical inputs if required during contract negotiations, contract signing and contract administration. The IPA will be responsible for drafting the Bidding Documents and the Request for Proposals through to contract negotiations.

### ***C. Procurement Plan***

The Arbitration Council has developed an 18-month Procurement Plan to cover the pre-implementation period and the first year of implementation, for procurement at the national level. This plan is attached as **Annex 11**. An overview of investment costs for procurement for the four years of project implementation is attached as **Annex 12**. The Procurement Plan and overview provide the list of goods and consultant services which forms the basis for the procurement methods and also the basis for review by the WB. The Procurement Plan will be updated annually to reflect actual project implementation needs.

### ***D. Prior Review Requirement***

Based on the current Procurement Plan, International Competitive Bidding (ICB) for Goods and Works or the selection of consultants following the quality and cost-based selection (QCBS) or quality based selection (QBS) methods are not foreseen. However, except as the WB shall otherwise determine by notice to the recipient, the following contracts shall be subject to prior review by the WB: (a) each contract for goods procured on the basis of ICB; (b) the first National Competitive Bidding (NCB) contract for goods procured in each calendar year and (c) the first contract for goods procured on the basis of the Shopping method in each calendar year. Prior review is also required with respect to each contract for the employment of Individual Consultant (IC) estimated to cost the equivalent of \$50,000 or more, and the first contract for employment of an IC, regardless of the value. The report on the qualification and experience of all evaluated candidates, the terms of reference and the terms of employment of the consultants will be subject to prior approval by the WB. Each contract involving Single-Source Selection of firms or individual consultants, irrespective of value will be subject to prior review by the WB. All other contracts will be subject to post review by the WB.

## 12. COMMUNICATION STRATEGY

### *Introduction*

Within the DFGG Project, the Arbitration Council, while expanding both geographically (to new regions) and substantively (to new sectors of the employment market), can serve as an example of the state supporting transparency, accountability and neutrality in mediating DFGG by the private sector. As a working model of good governance, the Arbitration Council communications effort would increase specific knowledge, understanding and use of the service, but also communicate the service itself as a living example of what good governance means. While certain audiences need to know how to use the service, others need to appreciate the service without necessarily knowing all the operational details. This two-pronged approach will help the Arbitration Council to be positioned as an effective player in the good governance landscape.

### *Audiences*

There are both internal and external audiences that need to be reached. Internal communication mainly concerns the arbitrators, but there is also a need to communicate within the Ministry of Labour (including the Secretariat of the Arbitration Council). Externally, the key audiences are both unions and their membership, and employers and their associations. Secondary audiences include other key staff within the Ministry of Labour and provincial labour officers, other Ministries (such as the Ministry of Commerce), NGOs and donors. Tertiary audiences include the media who play a key role in providing coverage of resolution of labour disputes through the Arbitration Council.

### *Objectives*

The objectives of the Arbitration Council's outreach and communication can be divided into three broad categories. The first objective supports the arbitration process itself; the second objective supports the process as an example of governance (branding); and a third objective relates to resource mobilisation, given the issue of the Arbitration Council's financial sustainability beyond the period where external funding has been committed. These objectives can be expressed as:

- Increase knowledge of and confidence in the arbitration process, its benefits and how to use the process.
- Increase appreciation in Cambodia for the work of the Arbitration Council as a working example of governance in Cambodia.
- Support resource mobilisation for the Arbitration Council.

As noted above, the Arbitration Council can be branded as a successful example of the mediation of demand for good governance. Such branding can, in turn, serve to promote DFGG by holding the Arbitration Council out as an example. This would also help support its resource mobilisation objectives.

### *Current Outreach and Communication Efforts by the Arbitration Council*

Since its establishment, the Arbitration Council has devoted considerable energy to raising awareness among stakeholders about its services.

- **Website.** The Arbitration Council has maintained a bilingual (Khmer and English) website where all Arbitration Council decisions (awards and orders) are available.

Awards are posted within days of being issued. With internet access around 1%, these reach a limited, but potentially important, audience in Cambodia. In addition, the mere fact that these are published in such a transparent way is itself an example of “governance in action”. Further information on the Arbitration Council’s structure and procedures, as well as information on the Labour Law and related regulations, is also available. In 2007, ACF initiated a broad effort to survey intended users of the website and re-design it to better respond to the needs and demands of potential parties and other stakeholders. This re-design should be completed and the new website launched by the middle of 2009.

- **Publications.** The Arbitration Council has developed and distributed a range of informational publications, which have been distributed to stakeholders. These include:
  - *Compilation of Arbitral Awards and Orders.* Two times a year, the Arbitration Council publishes a new hardbound volume in this series, which contains all awards and interim orders issued by the Arbitration Council since it began operation on May 1, 2003. Each volume also contains a digest, which provides statistics and summaries of cases during the period covered by the volume under consideration.
  - *The Arbitration Council – Questions and Answers.* A ten-page, basic presentation of the Arbitration Council (what it is and how it works).
  - *The Arbitration Council and the process for Labour Dispute Resolution in Cambodia.* A 75-page, deeper presentation of the Arbitration Council (what it is and how it works, with definitions, examples, legal and jurisprudential references). It includes chapters of the Labour Law which deal with labour dispute resolution, the Prakas on the Arbitration Council and Arbitration Council Procedural Rules in appendix.
  - *Arbitrator Biographies.* A 14-page document which provides information on each arbitrator (position, education and professional background) and which is distributed to stakeholders and parties whose case is brought before the Arbitration Council, in order to help them to select an arbitrator.
  - *The Arbitration Council Foundation – Building, supporting and sustaining Cambodia’s Arbitration Council.* A 4-page brochure on the ACF (what it does and how it works).

All the above publications are available in Khmer and English. The second and third publications listed above are also available in Chinese.

- **Training** programmes. The Arbitration Council organises trainings for a range of stakeholders including employers and union representatives (from the garment and tourism sectors mainly), lawyers and student lawyers, judges and student judges, usually for a half- or full day training. Training is on the labour dispute resolution process in general and on the arbitration process in particular.

### *A holistic approach under the DFGG Project*

As effective as the Arbitration Council has been in resolving labour disputes, and despite its outreach and communication efforts so far, there are still gaps in knowledge, and its role is still not fully recognised by Cambodian society at large. These communication gaps are both internal (within the Arbitration Council and with the Ministry of Labour) and external. Internally the

level of information among the individual arbitrators is not consistent. These internal gaps will be addressed by a number of initiatives, such as Regular Arbitrators Meetings, Representatives of the Arbitration Council meetings, annual arbitrator retreats, a monthly bulletin and regular meetings between the Arbitration Council and the Ministry (as described in Section 4).

Externally there are still segments of the populace to which the Arbitration Council can extend its reach. Over 90% of the cases brought before the Arbitration Council have come from the garment sector and already over 50% of garment workers were familiar with the Council in only its fourth year of existence.<sup>93</sup> Even so, the Council intends to both strengthen activities among the garment industry and to include other industrial sectors as part of its outreach efforts. In addition, the Arbitration Council plans to put more effort in reaching out to its secondary and tertiary audiences through a more targeted approach – matching each of its specific audiences with objectives and messages.

To this end, the Arbitration Council, building on its current work, plans to develop a more holistic and comprehensive approach to communication. Up to now the Council's communication effort has been heavily print-focused, with a number of publications designed with specific stakeholder audiences in mind. There is room however to increase awareness of the Arbitration Council, for example by using media that reach larger shares of the audience: ten times as many Cambodians state that they get their information from TV than from newspapers, while Internet access is very low at 1%. Another way to reach new audiences is through the “satisfied customer” approach. The arbitration process, if not mediated prior to a formal arbitration hearing, unavoidably results in a winner and a loser. Losers are likely to criticise the process, often describing it as unfair or biased. Winners however are more likely to see the process as it really is. Mobilising them in some way will be an effective strategy for the Arbitration Council. This would generate positive word of mouth communication, benefiting the arbitration process overall. Winners could be encouraged to talk about the process in a structured way within their communities.

A combination of mass media and interpersonal channels will be used. Messages delivered via the mass media can then be amplified at the face-to-face level. On the other hand, information provided, for example, at training sessions, can be confirmed through use of mass media. In addition, integration across the mass media activities will help reinforce the messages (for example, actors from the Arbitration Council Soap Opera appearing in the PSAs, see below).

Given the peculiarities of the media landscape in Cambodia, the Arbitration Council plans to develop its materials on two tracks. The first track is to develop its own materials and ensure that these are distributed and disseminated directly to the primary and secondary audiences. The second track is to expand its current efforts through the media.

### **Track One: Direct Dissemination**

This will include all the current communication activities, which will be continued and strengthened under the DFGG Project. A range of new activities is also planned, including new publications, new channels of communication (Arbitration Council library/information centre, information line) and new initiatives in collaboration with other DFGG institutions.

- **Current activities.** Publications will be continued – with a greater emphasis on electronic media (e.g. CD-ROM) and more demand-driven, making the user seek out

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<sup>93</sup> Jennifer Makin, *Women and Work in the Garment Industry* (Phnom Penh, ILO Better Factories Cambodia and World Bank, 2006).

the information, where feasible. The Arbitration Council decisions, currently published verbatim, may also be packaged in a way to reach a broader audience. The Arbitrator Biographies will be translated into Chinese<sup>94</sup>, while new publications, including simple user guides, will be developed as well as other printed communications tools such as posters and visual guides. The website will be continued, with posting of forms and additional information, while the training programme will be expanded, working closely with relevant stakeholders. (See Sections 4 and 9 for more details).

- **Key presentations by arbitrators** at employer associations and union federations about the process of the Arbitration Council. These training and outreach sessions would use a standard audio-visual presentation (combining messages with testimonials from case winners, as well as statements by arbitrators). These presentations could also be extended out to service clubs and other groups that may be interested (i.e. NGOs).
- **Information line.** The Arbitration Council plans to establish an information line to provide advice on procedure and resources available to parties. Its telephone number will be advertised, so that potential parties and other interested stakeholders can call for information on the labour dispute resolution process.
- **Library and information centre.** The Arbitration Council has a small but extensive (over 800 volumes) library with a collection of international and Cambodian materials about labour law, industrial relations, labour and alternative dispute resolution (conciliation/mediation and arbitration) and general law, which is currently used by arbitrators and ACF and SAC staff only. The Arbitration Council plans to make the library accessible to interested audiences such as jurists and legal scholars as an information centre. (More details are provided in Section 4).
- **Cooperation with DFGG State Institutions and Non-State Actors** to disseminate information more broadly. This includes possible collaboration with MONASRI (to distribute relevant publications as part of the dissemination of laws), MOI One-Window Service Offices (dissemination of Arbitration Council information, especially in areas targeted for expansion), RNK (talkback radio and radio spots – covered in Track Two below) and appropriate Non-State Actors (e.g., dissemination via a one-stop shop where people can get information about labour dispute resolution, or via a simple guide to labour dispute resolution).

### **Track Two: Media Relations and Promotion via the Media**

The Arbitration Council plans to expand its current outreach and communication efforts with activities that target the media and/or use the media as a channel to reach a broader audience of stakeholders and the general public. Given the nature of the Cambodian media, they are more likely to cover the more sensational aspects of labour relations (e.g. strikes) than to focus on a process of arbitration that result in a fair decision. That may be the communication challenge in the future.

- **Radio, video and TV** to raise awareness. To date, the Arbitration Council's outreach has focused on the garment sector and, within that, on union leaders and

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<sup>94</sup> A high percentage of the garment sector is owned and managed by ethnic Chinese from around the Asia-Pacific region.

representatives, often at the federation (not factory) level. However, given the large size of the target group of workers and employers (the garment sector alone employs around 340,000 people), direct outreach and training for all workers and employers is not feasible.

To reach a broader audience, the Arbitration Council intends to work together with **RNK's talkback radio program** (also supported by the DFGG Project), to use this medium to promote the Arbitration Council and raise awareness among workers and the general population.

In addition to outreach via radio, the Arbitration Council plans to develop and test several different video tools, all of which have a high potential for reaching large numbers of workers. (For details on these tools, see Section 4.) Two of these tools (the **Arbitration Council Soap Opera** and the **Public Service Announcement**) would be broadcast on television. Television is expected to have the highest likely impact: according to a 2003 study by The Asia Foundation, television has become the medium with the greatest reach in Cambodia, surpassing even radio, with 52% of the population watching television three or more times per week. By comparison, radio garners an audience of 38%, while a mere 9% of Cambodians read newspapers on a regular basis.<sup>95</sup> In addition to airing these tools on television, the Arbitration Council will organise outdoor screenings to reach a greater audience; these screenings are planned to be carried out on or around May 1<sup>st</sup> (International Labour Day), or other appropriate date/event, so that they are tied into the annual campaign (see below). The third tool, a **Training Video**, would be shown at training sessions, at the public waiting areas of the Arbitration Council and at the Arbitration Council library, with additional copies provided to relevant stakeholder groups.

- An **annual campaign** including posters, TV and radio spots timed around Labour Day or other appropriate events.
- Regular background **briefings for the media**, beginning with some training activities for journalists on how to cover labour dispute issues.
- **Monitoring media coverage** of labour disputes to develop more targeted approaches in the future.
- **Launching the Compilation of Arbitration Awards** with a media event (press conference or briefing). At this time, various other activities may be programmed, including the use of a targeted talk-back radio programme on RNK and other media.
- **Enhanced media relations**, pitching stories to the media and bringing case winners and losers in greater contact with the media so they can write their own stories.
- A focused **campaign**, targeting the media to be carried out around the National Industrial Relations Conference that is held annually. The NIRC is aimed at expert and other interested participants.

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<sup>95</sup> *Democracy in Cambodia - 2003, A Survey of the Cambodian Electorate* (Phnom Penh, The Asia Foundation, 2003). According to the same study, only 45% of Cambodians watched that amount of television in the year 2000, and so it is reasonable to expect that the figures for the present day would be even greater, due to the continued economic growth and media penetration from 2003 to the present.

A summary of the promotion and communication and tools is provided in Table 30.

**Table 30. Summary of Promotion and Communication Tools – Frequency and Costs**

Tool/Method	Frequency	Estimated cost over life of project
Website maintenance	Throughout project implementation. To be contracted to private company	\$4,000
Publication of hardbound volumes of Compilation of Arbitral Awards and Orders	Twice a year. To be produced by the ACF LST team	\$30,000
Development and production of other existing and new publications and tools	Throughout project implementation. To be developed and produced by ACF LST (legal publications) and ACF CTT (other publications)	\$78,218
Information line	Y1: Establishment. To be established and maintained under responsibility of ACF CTT	N/A
Library/information centre	Y1: Open for stakeholders. Y1-4: Additional book purchases. To be established and maintained under responsibility of ACF CTT. Books to be purchased under responsibility of ACF LST and CTT	\$6,000
Occasional strategic advice on media and communications	Y1: 20 days Y2: 15 days Y3: 10 days Y4: 10 days To be provided by international media and communications expert	\$27,500
Soap opera (including outdoor show)	Y1-2: Produced and launching Y2-4: Broadcast and screening Production to be contracted to production company; launch and outdoor shows to be organised by CTT	\$69,000
Public Service Announcement	Y1-2: Produced Y2-4: Broadcast To be contracted to production company	\$23,000
Training video	Y1: Produced Y1-4: Screening To be contracted to production company	\$13,000
RNK talkback radio	Throughout project implementation, depending on RNK programming schedule To be organised by RNK in collaboration with ACF CTT and arbitrators	N/A
Annual media campaign	Annually To be organised by ACF CTT	\$10,000
Media briefing	Regularly throughout project implementation To be provided by ACF CTT	\$5,880

### ***Monitoring & Evaluation***

A greater emphasis on monitoring the Arbitration Council communication activities will help fine tune its approach in the future and develop cost effective interventions. Outputs and Outcomes will be measured, and links made to impact where possible. The M& E plan is shown in Section 8, *Monitoring and Evaluation Arrangements*. Data will be collected through sample surveys, internal reports, as well as usage statistics for the website.

### 13. RISK ASSESSMENT AND MITIGATION

As noted in prior sections of this project proposal, the Arbitration Council is not a stand-alone institution. The Council is part of a larger labour dispute resolution system that involves the participation and cooperation of the Ministry of Labour, the ACF and other stakeholders. Naturally, the effectiveness and success of this system depend on certain assumptions: for example, that the government and other stakeholders remain committed to an independent, credible and sustainable Arbitration Council. Their continuing participation in and support for the work of the Arbitration Council is of paramount importance to the success of enhanced activities and attainment of expected outcomes in the DGFF Project. Given the tripartite nature of ALDR mechanisms, the other institutions play a strategic and integral role in addressing or mediating challenges. Importantly, there are limits to what the Arbitration Council or other institutions can do to address some issues directly. In such circumstances, and as may be appropriate, this proposal also provides suggestions for complementary activities involving stakeholders and social partners.

Potential risks to the effectiveness of the Arbitration Council, and thus to the achievement of the development objective for this component, are described in this section and summarised in the Risk Management Matrix in **Annex 13**.<sup>96</sup> The matrix indicates the ‘magnitude’ of the respective risks, based on expected impact and likelihood.

#### *Strain on the collaborative and interdependent relationship between The Arbitration Council, ACF and the Ministry of Labour*

The core institutional arrangement for managing industrial relations in Cambodia involves the Ministry (including the Labour Inspectorate Department, the Department of Labour Disputes, and the Secretariat of the Arbitration Council), the Arbitration Council, and the ACF.

As noted earlier in this project proposal, functionally and institutionally, the Arbitration Council, the ACF and the Ministry work closely together. The June 2007 Agreement between the Ministry and the ACF on the roles of the SAC and ACF (see Annex 3) is an important step toward ensuring the continued harmonious and collaborative relationship necessary to support the Arbitration Council. It provides for regular meetings and other activities between the ACF staff and SAC staff. Such meetings and activities are designed to ensure the continued collaborative relationship between the ACF and SAC necessary to support the Arbitration Council. It is envisioned that an important aspect of these meetings will be the monitoring and revision (as needed) of the working relationship between ACF and SAC and therefore, of the Agreement as well. In addition, the Arbitration Council, the ACF, and the SAC also collaborate to provide joint training and outreach activities to stakeholders; and the ACF organises regular domestic and international training sessions that are tailored for the benefit of arbitrators and Ministry officials.

This history of good collaboration and understanding of the respective roles and responsibilities among the Ministry, arbitrators, the SAC, and the ACF has so far been a crucial factor in ensuring the Arbitration Council is generally seen as both an organ of the state and a credible and independent forum for the resolution of labour disputes. Maintaining and developing such collaboration and understanding will be important to the strengthening of the Arbitration Council in particular, and more effective labour dispute resolution overall. There is a risk that such strong collaboration and coordination of their interdependent roles might be disrupted or

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<sup>96</sup> The Risk Management Matrix was developed in collaboration with the DFGG Risk Specialist during project preparation.

eroded over time, including in the midst of changes in and expansion of activities associated with the DFGG Project.

Measures to address this issue:

The very process of preparing this project proposal has galvanised discussion and action among the arbitrators, the ACF and the Ministry (including SAC), as representatives from each institution have been closely involved in the DFGG Project preparation, including the formation of and membership in the TWG and development of the joint vision statement cited in the Introduction to this proposal. The following further measures are planned, or in some cases already instituted, to address challenges to the management arrangement of the Arbitration Council:

- Maintain existing institutional framework wherein ACF provides managerial, financial, and technical support to Arbitration Council, and SAC provides clerical and registry functions for the Council.
- Hold regular meetings and other activities between the ACF staff and SAC staff pursuant to the *Agreement Between Department of Labour Disputes and Arbitration Council Foundation on the Roles of Secretariat of the Arbitration Council and Arbitration Council Foundation*, including monitoring and revision (as needed) of the working relationship between ACF and SAC and therefore, of the Agreement as well.
- Transform the DFGG Project’s Technical Working Group (currently composed of arbitrators, representatives from the Ministry, including SAC, and representatives from the ACF) into a DFGG Project Collaboration Committee to facilitate information sharing, consult with stakeholders and coordinate joint activities. (See also Section 7.) The PCC structure (see Terms of Reference in Annex 8) and regular meetings are designed to facilitate the continued smooth functioning and inter-institutional relationships between ACF and the Ministry.
- Hold regular meetings between arbitrators and Ministry conciliators, in Phnom Penh and elsewhere, which will be designed to share expertise in labour dispute resolution and develop capacity and professional relationships. It is expected that such meetings will also promote shared understanding and an appreciation of the work of each institution’s labour dispute resolution professionals.
- Hold regular meetings between arbitrators, the ACF staff, and SAC staff to facilitate the continued smooth functioning and inter-institutional relationships between ACF and the Ministry.
- Continue joint training and outreach activities both by and for arbitrators, the ACF, and the Ministry.
- Hold regular domestic and international training sessions organised by ACF that are tailored for the benefit of arbitrators and Ministry officials.

### ***Visibility & standing of the Arbitration Council among stakeholders***

Politically, the government and the clients of the Arbitration Council must continue to support an independent, impartial, and transparent institution. Likewise, at an operational level it is vital that stakeholders continue to support the Arbitration Council by disseminating important information to their members and associates. As stated earlier in this project proposal, the Ministry, employers and unions all lent their support to the establishment of the Council. Continued involvement of stakeholders gives them a real sense of ownership regarding the labour dispute resolution system and motivates disputing parties in particular to trust the Arbitration Council as a credible forum to address their labour claims. To that end, certain formal participation structures and regular activities have been organised to promote the

Arbitration Council and maintain stakeholders' engagement. Conversely, detachment of stakeholders can lead to a loss of standing of the Council among stakeholders and a decrease in their participation with the Council. Moreover, the recently published *Women and Work in the Garment Industry*<sup>97</sup> reports that nearly 50% of workers surveyed stated they did not know or had not heard of the Arbitration Council. This suggests a need to maintain the confidence of stakeholders, who are familiar with the Council, but also to raise awareness among and actively engage stakeholders who are not familiar with the Council, including in industries beyond the garment sector.

Additionally, under the DFGG Project, the Arbitration Council's inclusion as a state institution may give the impression that it operates as one of the four state institutions, like MONASRI and RNK, under MOI's project management and oversight. This could give rise to the public perception that the Council is accountable to the MOI or under the control of the state. The credibility and independence of the Arbitration Council, so critical to its moral standing and the legitimacy of its arbitral awards, could be adversely affected.

Measures to address this issue:

- Just as the process of the DFGG Project preparation has spurred engagement among arbitrators, the ACF, and the Ministry, a similar effect has taken place during the same period among unions and employer associations as the key industrial relations stakeholders (via the TAG as well as informally outside of the TAG). This proposal anticipates continued and expanded stakeholder engagement. (For details, see Section 9, Participation and Partnerships Plan.)
- Implement communication strategy to disseminate the principles, process and results of the Arbitration Council, thereby raising awareness and visibility, and building a positive brand image for the Council. (For details, see Section 12, Communication Strategy.)

### ***Improper influence exerted on the Arbitration Council***

As with any institution endowed with decision-making authority, the sustainability of the Arbitration Council may be susceptible to stakeholders and vested interests seeking to exert improper influence on the Council, calling into question the characteristics upon which it has built its reputation – independence, integrity and impartiality. Specific areas where such influence may be exerted include the selection, appointment, reappointment or removal of arbitrators to or from the list of arbitrators, and the decision-making process of arbitration panels on specific labour dispute cases. Improper influence on the Arbitration Council may also be attempted indirectly via inappropriate interference with the ACF, which is tasked to manage and support the work of the Council. Such interference may take the form of, for example, undue intrusion into the administrative, financial management, procurement or human resources aspects of ACF's work.

A delicate but crucial balance between engaging stakeholders and keeping them at an arm's length has so far allowed the Arbitration Council to maintain its independence and integrity while at the same time generating a demand among stakeholders for its dispute resolution services. Such a balance must be maintained in order to ensure that the stakeholders will continue to have faith in and to rely upon the Arbitration Council to legally and fairly resolve disputes.

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<sup>97</sup> Jennifer Makin, *Women and Work in the Garment Industry* (Phnom Penh, ILO Better Factories Cambodia and World Bank, 2006).

Measures to address this issue:

- Continue the facilitating role of the ILO to ensure that arbitrators are selected for membership to the Arbitration Council on the basis of merit and can only be removed or replaced for specific legitimate reasons.
- Parties themselves continue to select arbitrators for the cases and the hearings are conducted according to agreed and established rules.
- Develop procedures to ensure that arbitrators are not influenced by stakeholders or vested interests, including dissemination of the statement of ethical conduct for arbitrators, titled *Professional Guidelines for Arbitrators*.
- Continue to publish and widely disseminate arbitral awards and the legal reasoning behind them.
- The ACF, as an independent organisation mandated to protect and maintain the integrity of the Arbitration Council, continues its role to manage and administer certain aspects of the Arbitration Council, including financial matters (see also *Financial and procurement management*, below).
- The ACF continues to fully control and document its recruitment and employment of ACF staff, and continues to regularly orientate and ensure all ACF staff are aware of and abide by ACF's policies, including the Conflict of Interest policy, and guidelines and regulations regarding the Arbitration Council.

### ***Disproportionate reliance on Arbitration Council to resolve collective disputes***

In a sense, the success of the Arbitration Council highlights some of the very problems which pose a challenge to the sustainability of the Council. Whereas in a sound industrial relations system activity levels would diminish between the areas of prevention (comprising inspection, workplace cooperation, collective bargaining, enterprise level grievance procedures, etc.), conciliation, arbitration and adjudication, in Cambodia the lion's share of activity relative to what can be expected takes place in the area of arbitration.

The Arbitration Council's work is very much integrated with that of its key partners, including the Ministry. The Ministry handles dispute prevention and conciliation; these activities affect the mediation and arbitration work of the Arbitration Council downstream and can have an impact on the attainment of outcomes of DFGG Project initiatives. Building the capacity of Arbitration Council alone without the parallel strengthening of capacity for conciliation in the Ministry may result in an imbalance as there is a risk of bottlenecks at the arbitration stage due to the inability of the Ministry to handle its caseload in preventive, mediatory and conciliatory work.

Indeed, the high number of cases referred to the Arbitration Council suggests that insufficient capacity is present at the levels of prevention and conciliation to avoid or deal at an early stage with labour disputes. The fact that 36% of the cases referred to the Arbitration Council were settled through negotiation and conciliation during the arbitration period is a clear indication that this is indeed the case and that many of the disputes that come before the Arbitration Council could have been prevented or resolved at an earlier stage. As an example, some disputes originally involving only individual parties and issues can rapidly transform into collective disputes involving entire workforces, multiple demands, and prolonged strikes. Continuation of this phenomenon and the larger trend of growing and complex cases risks overwhelming the resources of the Arbitration Council to address cases that have already erupted into full-blown collective disputes. Moreover, to the extent this project is successful in stimulating even greater demand for the Arbitration Council, then the Ministry's conciliators too risk being overwhelmed by that demand.

Measures to address this issue:

- The Ministry should secure the necessary technical and financial support for its Department of Labour Inspection and Department of Labour Disputes. This would result in these departments being sufficiently resourced and receiving capacity-building so that the prevention and conciliation functions are exercised in a robust manner. The Arbitration Council and ACF will encourage donors, as well as the government (including the Ministry itself), to provide the needed support.
- Likewise, the employers and unions also need to build their capacity in workplace cooperation, with a view to improve their ability to prevent labour disputes. The ACF will encourage donors to support such efforts.
- Relatively few CBAs are negotiated in Cambodia, and those that are concluded often lack comprehensive grievance and dispute resolution provisions. The ACF will cooperate with social partners in the provision of capacity building for employers and unions in collective bargaining with a view to concluding more CBAs that provide for grievance procedures at enterprise level (see also *Illegal Strikes*, below).
- Over a period of time, the Arbitration Council and ACF will examine and discuss with all stakeholders the desirability and feasibility of individual rights disputes coming under the explicit jurisdiction of the Arbitration Council, study the connection between individual and collective disputes, examine the desirability and feasibility of a pilot program on individual disputes limited for example to certain specified claims and examine the legal implications and resource requirements of such activities.

### *Illegal strikes*

The Cambodian labour laws provide a framework specifying required procedures to be followed prior to any strike. Such legal procedures include prior notification by the union of an intention to strike, conciliation with Ministry officials and, if unsuccessful, arbitration at the Arbitration Council. These procedures provide a cooling-off period wherein no strikes are legally permitted during the mandatory conciliation and arbitration of collective disputes. Legal strikes are only possible in case a party lodges an objection to an arbitral award. Almost all strikes in Cambodia have so far been illegal in the sense that the workers have not followed the procedures laid out in the law and have gone on strike before their case is heard by the Ministry and the Arbitration Council. The Council can issue Return-to-Work orders once it receives a case from the Ministry – and, indeed, striking workers comply with nearly 100% of such orders. But the very occurrence of illegal strikes undermines the credibility and thus the sustainability of the Arbitration Council.

The union movement in Cambodia is still relatively immature. Union representatives claim that illegal strikes are occurring both because of a lack of capacity in the union movement and because of a lack of knowledge and/or faith among workers in their employers and the labour dispute resolution system. Strikes are used too frequently and often as a measure of first resort rather than as last resort. Illegal strikes also occur because in non-unionised sectors, groups of workers have limited understanding of how to conduct industrial relations.

Measures to address this issue:

Because of the labour dispute resolution process in Cambodia (wherein the arbitration process begins after the Ministry has referred a case to the Council), there are legal and practical limits to what the Arbitration Council can directly do to address this risk. Beyond the development of workplace cooperation between employers and their workers, the Ministry's labour inspectors and conciliators, as the 'front-line' of the labour dispute system, may have the largest interventionist role to play on this issue. As noted earlier, however, the capacity of the Ministry needs to be developed in order to effectively reduce illegal strikes in the long run. The National Committee for Strikes Prevention is also given a role to help in finding effective measures to

reduce and prevent the illegal strikes initiated by trade unions and/or their union federations or confederations.

- The Arbitration Council and ACF may cooperate with social partners that promote CBAs with no-strike clauses and binding arbitration.<sup>98</sup>
- The Ministry and other social partners will engage employers and unions in promotion of workplace cooperation schemes.
- The Ministry and ACF will continue to conduct and expand trainings to stakeholders (including unions at local-, federation- and confederation-levels) regarding the labour dispute resolution process.
- The Ministry and ACF will continue to work to increase the visibility of dispute resolution mechanisms so workers know there are fora where disputes can be resolved before/instead of resorting to strike.
- When cases are forwarded to the Arbitration Council from the Ministry and an illegal strike is ongoing, the Arbitration Council will continue to issue Return-to-Work orders when the case arrives at the Council while workers are on strike or there is other industrial action pending.
- Preliminary proposals regarding direct access of parties to the Arbitration Council have been raised by stakeholders as a means to reduce the length of illegal strikes. Further discussion, studies and testing will occur as part of the DFGG Project implementation process.
- DFGG funds should be provided under the Non-State Actor window in order to build capacity of unions to conduct industrial relations in the framework of the law (with limited recourse to strikes). Support should also be provided to ensure that as unions move into new sectors or areas, they organise workers in an appropriate and responsible fashion. (As noted earlier, it would not be appropriate for the Arbitration Council itself to engage in such activities, as it would affect its real and perceived independence and neutrality).

### ***Capacity of the Ministry at national and provincial levels, in forwarding cases to the Arbitration Council***

An issue related to the visibility of the Arbitration Council among stakeholders and the disproportionate reliance on the Arbitration Council in the labour dispute resolution scheme is the capacity of the Ministry in its role of forwarding disputes to the Council. Lack of awareness by the Ministry's Provincial Labour Offices (PLOs) of how to forward cases to the Arbitration Council or even of the existence of the Council means that, in turn, some stakeholders (especially those based outside of Phnom Penh) will not have access to the services of Council.

Measures to address this issue:

- The Ministry will continue to strengthen the capacity of its conciliators in Phnom Penh and PLO's, including joint training and outreach provided by the Ministry, the Arbitration Council and the ACF to conciliators on labour dispute resolution, the arbitration process, and conciliation.
- The Ministry and ACF will continue to cooperate to build close relations and good understanding of their respective roles, the role of the Arbitration Council and their mutual obligations to parties, through joint events, workshops, etc.

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<sup>98</sup> Binding arbitration and no-strike clauses are, in effect, an exchange in which the unions agree to give up, for the period of the CBA, their right to strike – or, at least, to eliminate the practice of illegal strikes – in exchange for the employer's agreement to submit to binding arbitration on all rights disputes.

- When conciliation is not successful, the Ministry’s conciliators hand out relevant information regarding the arbitration process and arbitrators to parties (including location of the Arbitration Council, what a hearing is, how to select the arbitrators, where the arbitrator biography can be found, etc.).

### *Non-implementation of awards*

The Arbitration Council has a very high success rate (68% of the cases are successfully resolved through mediated agreements or awards that are implemented). However there are still cases in which awards are issued which are not implemented. This can result in parties, particularly workers, expressing frustration with the labour dispute resolution process in general and the Arbitration Council in particular. This obviously undermines the credibility and thus the sustainability of the Arbitration Council. The causes of non-implementation are both nuanced and varied, ranging from a lack of legal compulsion, to higher-level strategic decisions, to the loss of ownership over the resolution of a dispute. Each party has a right under the law to file an objection against an arbitral award once it is issued by the Arbitration Council; if any such objection is filed, then the award is not legally enforceable. However, prior to the issuance of an award, parties may also opt for binding arbitration, and thus relinquish their right to file an objection against the award. Through August 2007, among the 273 arbitral awards issued by the Arbitration Council, parties formally agreed to be bound by an arbitral award in only 28 cases; and parties have exercised their right to file objections against 146 awards.

Notwithstanding the fact that many parties who lodge formal objections also go on to actually implement the decisions of the Arbitration Council (thereby resulting in the 68% success rate of the Council), without the force of law behind an award, parties are less compelled to implement those decisions of the Council with which they do not agree. Even where parties may agree with an award, their respective associations or federations (or other membership or advisory entity) to which they belong may direct them not to implement a decision based upon strategic or political considerations that are determined at the association or federation level. The very issuance of an arbitral award regarding a particular dispute means that parties have failed to successfully resolve their dispute between themselves and instead required the intervention of a third party, an arbitration panel, to make a decision for them. While the reasons for such failure to reach agreement may vary, the effect is that parties lose ‘ownership’ over disputes that are ultimately resolved by the Arbitration Council’s awards. Moreover, although the Arbitration Council articulates its legal reasoning in published decisions, parties may lack the capacity to effectively comprehend, and thereby carry out, the Arbitration Council’s awards.

Measures to address this issue:

To the extent parties have a legal right to choose non-binding arbitration and lodge their objection to any arbitral award, there are limits to what the Arbitration Council (or any other institution) can do to address this issue.

- The Arbitration Council and ACF may cooperate with social partners in promotion of CBAs with non-strike clause and binding arbitration (see above). Such cooperation might include, for example, dissemination of a range of model arbitration clauses for inclusion in CBAs.
- Conciliators communicate advantages of binding arbitration (which provides a final resolution and so ends the dispute) to parties at the conciliation stage before the case is referred to the Arbitration Council.
- Arbitrators communicate with parties more clearly to explain the advantages of binding awards, and the implications of the arbitral award that may be issued (e.g., in interest cases, where the law provides that an enforceable award will be treated as a CBA).

- The Ministry, the Arbitration Council and the ACF conduct co-trainings for potential parties on binding awards, legal strikes, and how to read and understand the arbitral awards.
- The Ministry and the Arbitration Council engage with other social partners and stakeholders to help train stakeholders to promote labour dispute resolution, and other appropriate topics.
- The Arbitration Council will continue to publish the arbitral awards on its website, which enables third parties such as ILO’s *Better Factories Cambodia* to monitor compliance with the awards. Efforts by Non-State Actors should be supported to “name and shame” enterprises / unions which do not comply with arbitral awards. (As noted earlier in this project proposal, it would not be appropriate for the Arbitration Council itself to engage in such an activity as this could affect the real and perceived independence and neutrality of the Council).

### ***Creation of a Labour Court***

The Labour Law provides for the establishment of a Labour Court. To date, the creation of such a court has been subject of recurring discussions, and draft legislation is still in progress. Though it is unlikely that a Labour Court will come into existence in the short term, its establishment could pose a risk to the Arbitration Council. Given the state of the judicial system in Cambodia<sup>99</sup>, a nascent Labour Court might be slow, inefficient, and vulnerable to corruption. As there is still inadequate understanding and appreciation in the judicial system for arbitration and ADR frameworks, such a court might review the Arbitration Council’s awards *de novo*.<sup>100</sup> Rulings from such a Labour Court (or, until such Labour Court is established, any other court) could undermine the arbitral awards of the Council and the body of jurisprudence that has developed. Consequently, the employers, employees and Ministry officials risk losing the consistent interpretations of the law and ground rules for industrial relations in Cambodia that the Arbitration Council has provided.

Measures to address this issue:

- In the event of the creation of a Labour Court, the government (Ministry) as well as the Arbitration Council should advocate for the incorporation into the relevant legislation of provisions (similar to Articles 349 – 353 of the Code of Civil Procedure and Article 47 of

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<sup>99</sup> Judicial reform forms an important aspect of both Cambodia’s National Strategic Development Plan (NSDP) 2006-2010 (which replaces Cambodia’s National Poverty Reduction Strategy 2003-2005) and the Royal Government of Cambodia’s Rectangular Strategy (November 2004). According to the World Bank, as of 2004 ‘[o]nly one in six of Cambodia’s 117 judges has a law degree, and only one of the nine Supreme Court judges. Only 10% of public prosecutors has a law degree. Thus the judiciary inherited by democratic Cambodia is ill-equipped to do its job, conditioned to being subservient to the executive branch, poorly paid and allegedly corrupt’. World Bank, *Cambodia at the Crossroads: Strengthening Accountability to Reduce Poverty* (November 2004). A more recent study by the World Bank notes the following assessment of the judicial system in Cambodia: ‘A review of the literature on legal and judicial reform in Cambodia reveals a limited but informative body of empirical research. Survey research conducted in 2003 (CAS) showed that Cambodians perceived only a slight improvement in the performance of the courts over the period of 1998 through to 2003. More strikingly, the same survey indicated that, although taking into account improvements, Cambodians retained little or no faith in the courts as institutions of justice. Similarly, respondents identified judges and prosecutors as the public officials whom they were least likely to trust. These findings support other research and expert opinions, which stress the continued weaknesses of the Cambodian judicial system, including endemic corruption, lengthy delays before hearings, difficulties with the enforcement of judgments and a shortage of legal aid, all of which present major barriers to justice for the average Cambodian.’ World Bank, *Justice for the poor? An exploratory study of collective grievances over land and local governance in Cambodia* (October 2006).

<sup>100</sup> The current Code of Civil Procedure in Cambodia, ratified in July 2006, generally prohibits courts from reviewing the merits of “domestic arbitral awards” (see Art 349 – 353 of the Code); however, to date, such provisions of the Code have not been tested.

Prakas 99 on the Arbitration Council) recognising the Arbitration Council and the enforceability of its awards, and disallowing *de novo* review by the Labour Court of the arbitral awards.

- Legal provisions should be made to ensure that structure and proceedings of the Labour Court are in accordance with international labour standards and consistent with national law provisions and regulations. This could be accomplished through seeking the input and technical advice of the Arbitration Council,<sup>101</sup> ACF and ILO when preparing regulations for the Labour Court.
- Judges should be trained in cooperation with social partners regarding the legal and jurisdictional issues at the intersection of alternative labour dispute resolution and the judicial authority.

### ***Disbursement delays, financial mismanagement and misprocurement***

As presented earlier in Section 10 on *Financial Management and Disbursement Arrangements*, the capacity of the ACF and fiduciary controls are adequate to handle the financial activities related to the DFGG Project. The Financial Management Specialist assessed that the ACF has an acceptable accounting system; qualified accounting staff; suitable budgeting, monitoring and reporting procedures; independent external audits and experience in managing funds from international donors. The ACF has a good computerised accounting system and adequate financial reporting and budget management capacity in place. The internal fiduciary controls are considered sufficient, with the ACF's Executive Director and Finance and Administration Manager overseeing and approving all transactions. Segregation of procurement, goods receipt and payment activities are expected to be improved for DFGG Project activities.

However, the fund flow arrangement (according to which the ACF will pre-finance DFGG Project expenditures and will then submit applications for reimbursement to the MEF and WB) may present opportunities at the MEF and WB for delay in the processing and approval of applications for reimbursement; and, at the WB, for delay in disbursement of funds. Given that the ACF will pre-finance its payments, and that the ACF's operating capital will be limited, any unreasonable delays could pose a risk to the continued operations of the Arbitration Council.

Two additional issues to be addressed are the absence of an internal audit function and a dedicated procurement officer to ensure that all procurement of goods and services under the DFGG Project are well managed and conform to World Bank procurement guidelines.

Measures to address this issue:

- The ACF will ensure that all financial management paperwork, including requests for reimbursement, is prepared correctly and delivered to MEF and WB at once. This should reduce the time required for processing and approval.
- The ACF will track processing times and delays, and will, as appropriate, raise the issue of any unreasonable delays or slow processing times to the Project Coordination Office, WB and/or the MEF.

In addition, as per the recommendations in Section 10 on *Financial Management and Disbursement Arrangements*:

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<sup>101</sup> As indicated earlier at note 27, as a neutral body, the Arbitration Council generally refrains from making substantive, public comments regarding the law. Any input or advice provided by the Arbitration Council would therefore require prior consideration and appropriate management of relevant conflict of interest issues or other concerns regarding the Council's independence and integrity.

- The ACF will recruit an additional officer to handle procurement in the Project.
- The Financial Management Manual has been revised to include requirements for externally funded projects as approved by the MEF.
- A DFGG Project-wide internal audit team will be established by the Project Coordination Office of MOI.
- The residual risks of misappropriation and misuse of project funds will be addressed as shown in the Good Governance Framework (see **Annex 14**).

## 14. SUSTAINABILITY ISSUES AND ARRANGEMENTS

As has been noted in this project proposal, sustainability is a key issue for the Arbitration Council. The Arbitration Council is not a project with a limited timeframe; rather, it is a statutory body established in 2003 with quasi-judicial authority under the laws of Cambodia. However, the Arbitration Council is vulnerable to political attacks and attempts at co-optation by vested interests; and its future financial stability is not assured. Below is a summary of the sustainability issues and arrangements for the Arbitration Council as identified and described more fully elsewhere in this project proposal. Moreover, all critical risks referred to in Section 13 that may interfere with the achievement of the expected project outcomes also potentially affect the future sustainability of the Arbitration Council.

1. **Partnerships.** The nature of industrial relations and the labour dispute resolution process, with the intimate involvement of employers, unions and the government, means partnerships with key stakeholders is a critical sustainability issue for the Arbitration Council. Without such partnerships the Arbitration Council is simply not sustainable. Over the course of the DFGG Project period, the Council will build new partnerships and strengthen existing ones with all key stakeholders. These partnerships are expected to carry on beyond the end date of the DFGG Project, and to contribute to the future sustainability of the Council.
2. **Capacity building for arbitrators, SAC and ACF staff.** The sustainability of the Arbitration Council depends on the continued high level of professionalism, competence and skills of the arbitrators and supporting staff, which in turn depend on high levels of training and skills development. This proposal provides for an on-going program to maintain and develop the professional skills and knowledge of the arbitrators, SAC and ACF staff. It is expected that the impact of this training will extend beyond the life of the DFGG Project, and thus will promote the Council's sustainability.
3. **Stakeholder capacity building.** Building stakeholder capacity in dispute prevention and resolution will make for a more sustainable and less costly labour dispute resolution process. This proposal includes a number of stakeholder training programmes and development (as well as printing and re-printing) of related materials to build stakeholder capacity, the impact of which is expected to last beyond the lifetime of the DFGG Project.
4. **Development of legal tools and systems for legal & industrial relations research.** Related to capacity building for the Arbitration Council, but also in order to decrease the risk of over-reliance on foreign advisors, this proposal includes funding for the development of sustainable legal tools and systems that enable arbitrators and the ACF legal support team staff to effectively carry out their work regarding the resolution of labour disputes. These systems will continue even when the DFGG period has ended, and so comprise a lasting impact that will contribute to Arbitration Council sustainability in the long run.
5. **Material resources.** The hardware and office equipment budgeted for in this proposal is expected to have a useful life lasting beyond the project implementation period. This will contribute to Arbitration Council sustainability and reduce operating costs in the post-DFGG period.

6. **Financial sustainability.** To date, the Council has been funded almost entirely by international donors; and this will largely continue to be the case under the DFGG Project. The Council has, however, already held preliminary discussions with the tripartite stakeholders, to garner their support for a financial model based on tripartite contributions. However, the Arbitration Council expects that the local stakeholders' limited capacity to pay means that, for the foreseeable future, the Council's operations will continue to be funded in large part by international donors. The project will carry out a study to explore options for longer-term institutional and financial sustainability of the Arbitration Council, and prepare a strategy with proposed financing mechanisms for discussion by the time of the project's mid-term review.
7. **Institutional sustainability.** The institutional arrangements for the Arbitration Council, ACF and the Ministry of Labour are complex and present a number of risks, as discussed in Section 13. However, it is crucial to the Council's effectiveness that this collaboration continue. At the same time, the sustainability study referred to above will examine different possible models for institutional arrangements, with a view to determining if alternative models exist which might bring about a closer cooperation between the Arbitration Council, ACF, SAC and the Ministry, while still maintaining the Arbitration Council as an independent, neutral, transparent and efficient institution.
8. **Branding and visibility.** Any institution is vulnerable to attacks on its credibility and reputation. An institution with a strong and trusted public image can more easily defend itself against or respond to such attacks. Over the course of the DFGG Project, the Arbitration Council will build its brand image among stakeholders and the general public through promotional tools and activities across a spectrum of media. This impact is expected to last far beyond the DFGG Project period, and to contribute markedly to the sustainability of the Arbitration Council.

Finally, as previously noted, a number of the activities and outputs contained in this proposal are designed to have an impact that will last long beyond the life of the DFGG Project. In this way, the activities conducted and funding spent during the project implementation period can be expected to reduce future costs by obviating the need for similar activities and expenditures after the end of the DFGG Project, while simultaneously leaving the Arbitration Council in a strong position to meet the challenges of the future.

# ANNEXES



MINISTRY OF LABOUR AND VOCATIONAL TRAINING

AND

ARBITRATION COUNCIL

JOINT VISION STATEMENT

(Adopted June 2008)

Joint Vision Statement of the Ministry and the Arbitration Council, issued in June 2007, which sets out the key goals and guiding principles that are imperative to the further development of a mature and effective industrial relations system in Cambodia:

*Economic growth and social development with a stable investment climate based on harmonious industrial relations, stakeholder involvement, and credible, effective dispute prevention and resolution mechanisms.*

- *Dispute prevention based on workplace cooperation, dialogue and collective bargaining between workers and employers, supported by government*
- *Dispute resolution through an effective conciliation function and a credible, transparent and independent Arbitration Council*

**Participatory planning process and lists of Members of the  
Technical Working Group (TWG)  
and the  
Technical Advisory Group (TAG)**

**Participatory planning process:**

In developing this project proposal, the Ministry of Labour and Vocational Training (the Ministry) and the Arbitration Council have been working closely together through a Technical Working Group (TWG), which was established by decision of the Ministry on 20 March 2007. The TWG comprised ten representatives, i.e. five from the Ministry and five from the Arbitration Council / Arbitration Council Foundation. Their names and positions are listed below.

In order to gather necessary inputs for the development of the project proposal from key stakeholders and to raise their awareness of the project, a Technical Advisory Group (TAG) was established by the TWG on 9 May 2007. The TAG comprised 23 members representing key stakeholders, including employer associations, union federations, the Ministry, Arbitration Council and Arbitration Council Foundation (ACF), the International Labour Organization (ILO) and civil society. A full list of names and positions of the members of the TAG is provided below. Advice and feed back was also collected through separate consultation meetings with individual stakeholders throughout the participatory planning process, including with the International Labour Organization, employer associations and union federations and through email contact with representatives of labour dispute resolution bodies outside Cambodia and with other international experts in industrial relations and labour dispute resolution.

Joint TWG-TAG meetings were convened twice during the participatory planning process, i.e. on 9 May 2007 and on 3 August 2007. The meetings were also attended by representatives of the Ministry of Interior (MOI), representatives of other DFGG State Institutions and national and international DFGG consultants.

The first joint TWG-TAG meeting on 9 May 2007 included a brain storming session during which ideas, suggestions and concerns were raised and extensive discussions held with regard to the future direction of the Arbitration Council under the DFGG Project. The meeting also focused on the development of a Joint Vision Statement by the Ministry and the Arbitration Council, which would set out the core goals and principles which underlie the request for DFGG funding and which would also address the key characteristics which make the Arbitration Council an effective and credible national institution for labour dispute resolution.

The stakeholder inputs, gathered during the first joint TWG-TAG meeting, have contributed to the development of the Zero Draft project proposal and the First Draft project proposal, which were submitted by the TWG to the MOI on 4 June and 16 July 2007 respectively. In addition, the TWG-TAG meeting also laid the basis for the development of the Joint Vision Statement. This statement was issued by the Ministry and the Arbitration Council jointly in June 2007 and is based on several key elements agreed on by the participants in the TWG-TAG meeting. The full text of the Joint Vision Statement is included in the Introduction to the present project proposal.

The second joint TWG-TAG meeting on 3 August 2007 aimed at reviewing and providing feed back on the First Draft project proposal. Discussions were held and suggestions and recommendations made on various issues, including the future role of the Arbitration Council; partnerships between the Arbitration Council and its stakeholders; implementation of arbitral awards; sustainability of the Arbitration Council; and extension of the Arbitration Council's services into new regions and sectors.

Inputs collected during this second TWG-TAG meeting have contributed to the further improvement of the project proposal and the development of the Second and the Final Drafts, which were submitted by the TWG to the MOI on 17 September and 5 October respectively.

Throughout the participatory planning process, which was facilitated by an international and national consultant, the TWG has convened regularly, both in formal meetings and in the form of informal consultations between individual members. Technical inputs were received from consultants and specialists hired by the MOI, and incorporated in the project proposal. Further fine-tuning has taken place based on discussions with the MOI and the WB, which has resulted in the submission of the present project proposal.

The very process of preparing the project proposal has enhanced the relationship between the Arbitration Council and its stakeholders and has also galvanised discussion and action among the arbitrators, the ACF and the Ministry (including SAC). Based on the experience during the preparatory planning process, the Arbitration Council plans to transfer the above consultation and coordination mechanisms over into the implementation phase. To this end, the Arbitration Council plans to transform the TAG into a permanent tripartite Stakeholder Advisory Group (SAG), which will serve as an important platform for key stakeholder consultation. In addition, the TWG will evolve into a Project Collaboration Committee (PCC), which will be a platform for information sharing between the Arbitration Council/ACF and the Ministry and for coordination of joint or complementary activities; the PCC Terms of Reference were finalized and agreed between the Ministry, the Arbitration Council and the ACF in May 2008 (see Annex 8). Finally, strategies for further strengthening existing partnerships and establishing new ones under the DFGG Project have been developed during the participatory planning process and are described in greater detail in the present project proposal.

**List of TWG Members:**

<b>No.</b>	<b>Name</b>	<b>Position</b>	<b>Organisation</b>
1	H.E. Seng Sakda (Chairman of TWG)	Director General of General Department of Labour	MOLVT
2	Mr. Sok Borei	Deputy Director General of General Department of Labour	MOLVT
3	Mr. Chan Sovannareth (Permanent Deputy Chairman of TWG)	Deputy Director General of General Department of Labour	MOLVT
4	Mr. Koy Tepdaravuth	Director of Labour Disputes Department	MOLVT
5	Mr. Tho Bunthan	Deputy Director of Labour Inspection Department	MOLVT
6	Mr. Sok Mathoeung	Arbitrator Chairman of the Board of	AC

		Directors	
7	Mr. Men Nimmith	Executive Director	ACF
8	Mr. Sok Lor	Chief Legal Officer	ACF
9	Mr. Tuon Siphann	Arbitrator Member of the Board of Directors	AC
10	Mr. Mar Somborana	Arbitrator Member of the Board of Directors	AC

**List of TAG Members:**

<b>No.</b>	<b>Name</b>	<b>Position</b>	<b>Organisation</b>
1	Mr. Pheng Puthearith	Deputy Director of Labour Inspection Department	MOLVT
2	Mr. Choup Narath	Deputy Director of Employment & Manpower Department	MOLVT
3	Mr. Khiev Savuth	Deputy Director of Labour Disputes Department	MOLVT
4	Mr. Huon Soeur	Deputy Head of Office of Labour Disputes Department	MOLVT
5	Mr. Van Sou Ieng	President  Chairman	Cambodian Federation of Employers and Business Associations (CAMFEBA) Garment Manufacturers Association in Cambodia (GMAC)
6	Mr. Ken Loo	Secretary General	GMAC
7	Mr. Cheat Khemara	Senior Labour Officer	GMAC
8	Mr. Matthew Rendall	Secretary General	CAMFEBA
9	Mr. Holl Sina	Information & Legal officer	CAMFEBA
10	Mr. Le Leang	Administrator	Fortune Garment Factory
11	Mr. Kong Phallack	Arbitrator	AC
12	Mr. Liv Sovanna	Arbitrator	AC
13	Ms. Ann Vireak	Arbitrator	AC
14	Ms. Morm Nhim	President	National Independent Federation of Textile Unions in Cambodia (NIFTUC)
15	Mr. Ath Thorn	President	Cambodian Labour Confederation

			(CLC)
16	Mr. Ly Korm	President	Cambodian Tourism and Service Workers Federation (CTSWF)
17	Mr. Nuon Chantha	President	Dhama Thipaiktay Federation Union (DTFU)
18	Ms. Tep Kim Vannary	Member of Board of Directors	Cambodian Confederation of Trade Unions (CCTU)
19	Mr. Heng Bunchhun	Member of Board of Directors President	CCTU Cambodian Industrial Food Union Federation (CIFUF)
20	Mr. John Ritchotte	Chief Technical Advisor, Labour Dispute Resolution Project	International Labour Organization (ILO)
21	Mr. Nuon Rithy	National Coordinator, Workers' Education Assistance to the Cambodian Trade Union Movement	ILO
22	Mr. Alonzo G. Suson	Country Program Director	Solidarity Center (ACILS)
23	Ms. Lean Chenda	Lawyer	Lean Chenda's Law Firm



## Agreement

### Between

Department of Labour Disputes, Ministry of Labour and Vocational Training  
and  
Arbitration Council Foundation

### on

The Roles of Secretariat of the Arbitration Council and Arbitration Council  
Foundation

#### Purpose of This Agreement

This Agreement has been made explicit in order to clarify the respective roles of the Arbitration Council Foundation (ACF) and the Secretariat of the Arbitration Council (SAC), with a view to ensuring the continued harmonious and collaborative relationship necessary to support the AC. Further details on the procedures of the SAC are stated in the SAC Procedures Manual (attached to this Agreement). The SAC Procedures Manual has already been developed in consultation with SAC staff and will be changed from time to time as procedures are updated by the SAC.

#### Arbitration Council

The Arbitration Council (AC) was established on 1 May 2003 and operates pursuant to *Prakas No. 099 of 2004*. The AC is an independent body whose function is to resolve collective labour disputes that have not been resolved by conciliation. The AC provides parties with an opportunity to settle their disputes without resorting to industrial action. It is part of the system of labour dispute resolution provided for in the *Labour Law 1997* Articles 310-317.

The AC is responsible for making decisions and orders which settle the dispute between the parties. The AC is linked to two other organizations, the SAC and the ACF, each of whose primary function is to support the AC.

#### Secretariat of the Arbitration Council

The SAC is a body established by *Prakas No. 174 of 2003*. *Prakas No. 099 of 2004*, including the annexed Arbitration Council Procedural Rules sets out the roles and responsibilities of the SAC and is attached to this Agreement. These include to:

- Administer and facilitate the resolution of disputes by the AC

- Facilitate and ensure communication between the parties and an arbitration panel outside a hearing
- Assist the parties with their queries concerning procedural aspects of the dispute and assist in clarifying issues arising out of the Prakas or the Procedural Rules

According to the Rules, the SAC also plays specific roles in relation to the following procedures:

- Initiating arbitration (*Rule 2 of the Arbitration Council Procedural Rules*)
- Selection of Arbitrators (*Rule 3*)
- Receiving and managing documents and communications (*Rules 1-6*)
- Arbitration proceedings (*Rule 4*)
- Issuing the Arbitral Award (*Rule 5*)

The SAC is staffed by the Ministry of Labour and Vocational Training (MoLVT). Currently, it is staffed by the Head of the SAC and two SAC officers.

### **Arbitration Council Foundation**

The ACF is an independent Foundation. The ACF was established and registered at the Ministry of Interior in September 2004. Currently it is staffed by over ten staff members and managed by an Executive Director under the oversight of a Board of Directors. ACF's main duties include:

1. To support and facilitate the work and activities of the Arbitration Council;
2. Enhance independence, reliability and efficiency of the AC's work; and
3. To develop individuals and institutions to resolve labor disputes.

The ACF's main activities include:

- Fund raising
- Financial and administrative management of ACF
- Institutional development
- Communications and raising awareness of the AC and ACF
- Legal support to arbitration panels on labour dispute cases including legal research and legal education
- Provision of administrative and managerial support for the AC
- Facilitating the labour dispute process by providing training to stakeholders on arbitration and conciliation techniques and AC procedures

### **Operational Roles of the ACF and SAC**

The SAC and the ACF work cooperatively to support the work of the Arbitration Council. The *Arbitration Council Procedural Rules (Appendix 3, Prakas 099/04)* set out the general duties of the SAC. The following tables set out the operational roles of the ACF and a more specific description of the work done by the SAC. The SAC table is a summary drawn from the SAC Procedures Manual, which has been under review in consultation with the SAC throughout 2006. The revised SAC Procedures Manual shall be referred to for a complete listing of the specific duties of the SAC.

## Roles of the SAC

### 1. Case Registration:

- Stamp the non-conciliation report with a date received stamp
- Allocate a case number to the dispute
- Check the parties and their contact details
- Create a file cover
- Enter the case details into the relevant databases
- Create a folder on the server with the case number, for electronic filing of documents related to the case

### 2. Facilitate the selection of Arbitrators

- The SAC will make every effort to constitute an Arbitration Panel within three days
- The SAC will facilitate the selection of Arbitrators by liaising with the parties and Arbitrators; the SAC will not advise the parties on their choice of Arbitrators
- Where parties or Arbitrators are unable or unwilling to select an Arbitrator, the SAC will arrange to select the Arbitrator by lot, as provided in the AC Procedural Rules
- Once the Panel has been formed, the SAC will note the Arbitrators and the Award due date on the case file cover
- Enter the details of the Arbitrators and the Award due date in the relevant databases
- Copy non-conciliation report and any other documents received for each Arbitrator and Legal Support Team (LST) for inclusion in the case file
- Contact Arbitrators and LST to collect the report and documents
- Assist the Arbitrators to schedule a hearing date
- Prepare case notification and forward to Arbitrators, ACF, ILO-LDRP and other relevant parties as appropriate

### 3. Hearing

- Schedule the hearing and complete the SAC calendar and note the hearing date in the case file
- Contact the Arbitrators to confirm the hearing
- Invite parties to attend the hearing and request evidence required by the Arbitration Council
- Register any evidence received in the 'Documents Received' section inside the case file and in the Arbitral Award template and file a copy in the case file
- Place copies of the documents in the relevant Arbitrators' AC mail boxes
- Notify the Arbitration Panel and LST that new documents have been filed
- Prepare the hearing room
- Monitor the use of the documents/leaflets in the waiting room and ensure that they are sufficient for use by the stakeholders
- Register any additional documents provided by the parties on the day of the hearing (as above) and make copies if the party does not have enough copies to distribute to; (i) to the other party(s), (ii) the Arbitration Panel, and (iii) the SAC case file
- Prior to the hearing, inform parties of internal regulations and rules of conduct during arbitral hearings
- If a witness will be giving evidence during the hearing, the SAC will have the witness

complete the Witness Oath form, copy this form and provide to each Arbitrator and file the original copy in the case file

- Provide administrative support to Arbitration Panels, including but not limited to taking minutes
- Email Award Announcements to all registered recipients of the Announcement.
- Email Conciliation Announcements to the Arbitrators, ACF and ILO-LDRP.
- Complete the Weekly Hearing Schedule (to be completed for the upcoming week) and email to Arbitrators, the ACF and the ILO-LDRP

#### **4. Postponements**

- Contact the Arbitration Panel to advise them of the party's request for a postponement and record their decision
- Contact the other party to determine whether they agree to the request
- If approved by the Arbitration Panel, update the SAC calendar, and hearing details in the case file and relevant databases
- Advise parties of postponement and new hearing date
- Inform the Arbitration Panel and ACF of the new hearing date

#### **5. Communications Systems and Public Information**

- All communication between the Arbitration Panel and the parties outside of a hearing shall take place through the SAC as per Rule 1.4 of the AC Procedural Rules annexed to *Prakas No. 099 of 2004*.
- Prepare correspondence to parties in dispute at the request of the Arbitration Panel (for which the LST may be asked to assist) in accordance with the template provided in the SAC Procedures Manual. The Head of the SAC signs all correspondence issued.
- Attach a copy of any correspondence on the case file
- Provide a copy of the correspondence sent by the SAC to the Arbitrators and notify the LST that correspondence has been issued
- When the SAC receives non-case related correspondence filed in the Letter-In Folder (year), the SAC will respond to the writer as appropriate
- Assist visitors (including but not limited to parties or potential parties) to the AC as appropriate, by answering questions, providing publications or other information, or forwarding inquiries to appropriate ACF staff as needed.
- Invite parties to attend a meeting with the SAC when the parties attend to select an Arbitrator. The SAC will provide any relevant information or forms as required to the parties at this meeting
- Prior to the hearing, refer the parties (especially if first-time parties), to read in advance the relevant documents/leaflets related to the hearing available in the waiting room
- Ensure that parties understand the outcomes of the hearing by answering questions the parties may have about procedural matters. These responses may be provided orally (in person or by telephone) or in writing as appropriate.
- Assist the parties with their queries concerning procedural aspects of the dispute and assist in clarifying issues arising out of the *Prakas on the Arbitration Council* and/or the *Procedural Rules*. This assistance may be oral or in writing.
- Participate in training stakeholders on the role of the SAC in the AC process

#### **6. Interpreter**

- In the event that one party will use an interpreter during a hearing, the SAC will advise the

<p>Arbitration Panel and the other party</p> <ul style="list-style-type: none"> <li>▪ Register the interpreter details on the Attendance-at-Hearing Form</li> </ul>
<p><b>7. Handling Requests to Observe Hearings</b></p> <ul style="list-style-type: none"> <li>▪ Receive requests for hearing observation</li> <li>▪ Ensure that the observer has read and completed the observer policy/form</li> <li>▪ Notify the request to the LST</li> <li>▪ Obtain permission from Arbitration Panel and parties in dispute before allowing observation in the hearing room</li> <li>▪ Respond to requests submitted to the Arbitration Council for observation.</li> </ul>
<p><b>8. Award</b></p> <ul style="list-style-type: none"> <li>▪ Facilitate extending award deadlines resulting from requests by the Arbitration Panel or the parties in dispute, as per the procedures set out in the SAC Procedures Manual</li> <li>▪ Save the Award document to the Award folder</li> <li>▪ Check the spelling and formatting, facilitate signing by Arbitrators and carry out reasonable administrative duties in relation to the Arbitral Award, as requested by Arbitrators</li> <li>▪ Copy the Award and stamp each copy with the Arbitration Council seal</li> <li>▪ Make copies of the Award as required</li> <li>▪ Note Award made in the relevant databases</li> <li>▪ Invite the parties to collect the award. When parties collect Award, get the parties to sign the ‘written account’ form acknowledging they have received the Award. File form on case file.</li> <li>▪ Post the Award on the AC website within 24 hours of issuance</li> <li>▪ Email the Award Announcement to all registered recipients of the Announcement</li> <li>▪ Register objections to Arbitral Awards</li> <li>▪ Periodically archive finalized case files</li> </ul>
<p><b>9. Internal Procedures</b></p> <ul style="list-style-type: none"> <li>▪ As SAC procedures are updated, the SAC will update the Procedures Manual to reflect these updates</li> </ul>

<b>Roles of the ACF</b>
<p><b>1. Fund Raising</b></p> <ul style="list-style-type: none"> <li>▪ Develop fund raising strategy to present to the Board of Directors for approval</li> <li>▪ Conduct fund-raising for the AC from domestic and international sources</li> <li>▪ Report performance with respect to the fund-raising strategy at quarterly Board meetings</li> <li>▪ Develop and maintain relationships with potential and existing funding sources and key individual donors</li> <li>▪ Meet with visitors to the AC and the ACF, including government officials, aid organization representatives, NGO leaders, and consultants</li> <li>▪ Develop close contacts with other relevant individuals, organizations, groups, and networks (including journalists, government officials, diplomats, aid officials, and academics) in order to further the ACF’s aims and to support the activities and objectives of the AC</li> <li>▪ Establish and maintain sound professional working relationships and cooperative</li> </ul>

<p>arrangements with stakeholders (including employer and employee groups, and the government)</p>
<p><b>2. Financial and Administrative Management of the ACF</b></p> <ul style="list-style-type: none"> <li>▪ Develop and maintain sound financial practices, monitor project expenditures, and manage cash flow</li> <li>▪ Develop revenue projections and a fund-raising plan to meet them</li> <li>▪ Work with staff, donors, and the Board to prepare annual budgets, and to ensure that the organization operates within budget guidelines</li> <li>▪ Complete monthly accounts and/or quarterly and annual reports in a timely manner and ensure that an annual external financial audit is conducted</li> <li>▪ Maintain the overall fiscal soundness of the organization</li> <li>▪ Recruit and manage ACF staff for the effective operation of the ACF and the AC</li> <li>▪ Ensure all ACF staff, contractors and long term volunteers have contracts and/or job descriptions /terms of reference</li> <li>▪ Ensure that, for ACF staff, regular performance evaluations are held and sound human resource practices are in place</li> <li>▪ Develop appropriate policies and procedures to uphold the ACF compliance with the Labor Law and Regulations</li> <li>▪ Maintain a work climate that attracts, keeps, and motivates a diverse staff of top quality people</li> </ul>
<p><b>3. Institutional Development</b></p> <ul style="list-style-type: none"> <li>▪ Prepare an annual operating plan, including a plan of action for each of the ACF's program areas developed in conjunction with the Board, Arbitrators, and other stakeholders</li> <li>▪ Develop the internal policies of the ACF, ensure that these are understood and followed by staff. Key policies include a code of conduct, policies on recruitment and conflict of interest</li> <li>▪ Improve and implement effective systems for record keeping and for protecting and maintaining data</li> <li>▪ Improve and implement systems for ensuring that the ACF completes activities it has agreed to perform under the terms of funding agreements.</li> <li>▪ Establish performance measures to assess the quality of the ACF's work</li> <li>▪ Coordinating the schedule of all ACF activities to ensure coherence and to avoid overlap and time conflicts</li> <li>▪ Conduct regular program reviews and evaluations to monitor performance.</li> <li>▪ Organize training to develop and build capacity of staff</li> </ul>
<p><b>4. Communication and Outreach for the Arbitration Council</b></p> <ul style="list-style-type: none"> <li>▪ Publicize the activities of the AC and the ACF</li> <li>▪ Represent the programs and point of view of the ACF to employer and employee groups, agencies, organizations, and general public</li> <li>▪ Communicate and articulate the role and strategic direction of the ACF to all stakeholders</li> <li>▪ Speak about the AC and on behalf of the ACF at appropriate local and international gatherings, conferences, meetings, and other occasions</li> <li>▪ Develop systems to ensure that arbitrators and other stakeholders are kept informed of matters of relevance</li> <li>▪ Maintain the web site for the AC on which decision, procedures, and forms are published</li> </ul>

<ul style="list-style-type: none"> <li>▪ Publish compilations of AC Arbitral Awards</li> <li>▪ Produce bi-annual digests of Arbitral Awards issued by the AC</li> <li>▪ Write reports and circulate with respect to the AC and ACF</li> </ul>
<p><b>5. Provision of Technical Assistance to the Arbitration Council</b></p> <ul style="list-style-type: none"> <li>▪ Provide legal support to Arbitration Panels on labour dispute cases, including but not limited to, researching legal issues and assisting the SAC with administrative and procedural matters as directed by Arbitrators</li> <li>▪ Organize trainings and meetings for the Arbitrators, including exchange visits with foreign arbitrators or overseas conference attendance</li> <li>▪ Organize retreats and workshops for Arbitrators</li> <li>▪ Update compilation of laws and regulations in Khmer and English -</li> <li>▪ Conduct research on labor and employment law issues</li> <li>▪ Compile materials and issue to Arbitrators and the SAC</li> </ul>
<p><b>6. Provision of Administrative and Managerial Support for the Arbitration Council</b></p> <ul style="list-style-type: none"> <li>▪ Pay allowances to Arbitrators for services including travel and per diem for provincial hearings as necessary</li> <li>▪ In cooperation with SAC, manage website, database, and print information on operations of AC</li> <li>▪ Take care of office rentals, computers, office equipment, networking, and amenities</li> <li>▪ Organize annual review of AC management systems and operational performance</li> <li>▪ In cooperation with SAC, review and update existing SAC procedures and information sheets integrating these into ACF information system</li> <li>▪ Drafting of policies with respect to the administrative elements of the AC</li> </ul>
<p><b>7. Facilitating the labour dispute process by providing training to stakeholders on arbitration and conciliation techniques and Arbitration Council procedures</b></p> <ul style="list-style-type: none"> <li>▪ Provide training for employer and union representatives and other stakeholders on LDR skills and the AC process</li> <li>▪ Produce, update and distribute publications, information leaflets and posters explaining the labor dispute resolution process with a focus on the work of the Arbitration Council</li> <li>▪ Organize regular meetings regarding labor law and labor relations for groups comprising lawyers, union leaders, representatives of employer organizations, civil society and government.</li> </ul>
<p><b>8. ACF and SAC</b></p> <ul style="list-style-type: none"> <li>▪ Assist SAC in development of capacity, including periodic review of case management systems and organizing domestic and/or overseas training for SAC staff</li> <li>▪ Assist SAC in their provision of administrative support to Arbitration Panels on labour dispute cases, including but not limited to: LST communicating with SAC regarding meeting schedules with Arbitrators and LST support to Arbitration Panels, drafting status of Awards, assisting in the drafting or reviewing of correspondence as requested by Arbitrators or the SAC.</li> </ul>

**The Head of the SAC and the ACF Executive Director have core responsibilities respectively as follows:**

**Core Responsibilities of the Head of the Secretariat of the Arbitration Council:**

1. Manage SAC staff and resources in order to provide effective administrative support to the Arbitration Council including, but not limited to: communicating with Arbitrators, scheduling cases, managing correspondence, filing and disseminating awards.
2. Assist in the development of a system to manage AC cases.
3. Provide information to arbitrators, parties and the public about the procedures of the SAC and AC
4. Coordinate with the ministerial staff, Arbitrators, ACF staff, the ILO, and consultants in the preparation of a procedures manual, which covers SAC and AC procedures
5. Requesting the procurement of equipment for the SAC and AC from ACF, and be responsible for arranging required maintenance.
6. Deliver training on the administrative procedures to SAC staff and others where required by the AC.
7. In cooperation with ACF, coordinate the preparation and dissemination of information regarding the activities of the AC.
8. Collaborate with ACF Executive Director on office management issues

**Core Responsibilities of the Executive Director of the ACF:**

1. Manage and ensure the efficient operation of the Foundation
2. Maintain professional relationships with key AC stakeholders
3. Fundraising for the AC from domestic and international sources
4. Monitor and take responsibility for the financial accounts of the ACF
5. Recruit and manage ACF staff for the effective operation of the Foundation and the AC
6. Inform the Board of legal, financial and other operational aspects of the ACF and AC
7. Collaborate with the Head of the SAC on office management issues.

**Parties to the Agreement & Regular Communication**

The ACF and Department of Labor Disputes are parties in implementing this Agreement. The two parties shall meet regularly (approximately once per month or as deemed necessary at the request of either party) in order to discuss issues related to their respective roles or other relevant issues. The place of the meetings shall alternate between the Department of Labour Disputes and the ACF. At every meeting between the two parties, an officer of the ACF or Department of Labour Disputes shall be assigned to take minutes, which will be signed by both parties. The ILO and/or the Director General of the General Department of Labour will participate in the meetings at the request of either party.

**SAC Staff and Contractual Arrangements**

To operate the SAC, the Department of Labour Disputes shall assign numbers of staff necessary to process the AC caseload, taking into account available resources. Where the SAC needs to recruit new or additional staff, selection shall be carried out as done in the past, where views of key stakeholders were solicited and taken into account.

Contracts formalizing the appointment will be signed between ACF and each individual SAC staff assigned by the Department of Labour Disputes in consultation with the ACF, under this Agreement, and countersigned by the Director of the Department of Labor Disputes.

Should either party deem it necessary to discuss the performance of SAC staff, this shall take place at the regular meetings between ACF and the Department of Labour Disputes as described above.

### **Financial Obligations, Revisions and Termination**

The obligations of both parties to carry out their respective functions as described in this Agreement shall be contingent upon receipt of the necessary funds for operation. If funds are not received, all such functions may be reduced or suspended by an agreement between the two parties.

Either Party may seek to revise this Agreement through consultation with the other Party. All revisions must be mutually agreed by the Parties, and the parties' agreement must be recorded and signed at least ninety (90) days after receipt of this notice unless agreed otherwise by the parties.

This Agreement shall remain in force unless suspended by both parties in accordance with the provisions in this paragraph. After consultations have taken place between the two Parties, either Party may give the other Party written notice of suspension of these Terms of Reference. Such suspension shall take effect at least ninety (90) days after receipt of this notice unless agreed otherwise by the parties.

The Parties shall use their best efforts to settle amicably all disputes, controversies or claims arising out of or in connection with these Terms of Reference.

The original of this Agreement has been signed in two (2) copies in Khmer which is the authoritative language. A reference copy in English will also be signed.

This Agreement shall enter into force upon signatures by the authorized representatives of the Parties.

**SIGNED:**

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Men Nimmith  
Executive Director  
Arbitration Council Foundation

**COUNTERSIGNED BY:**

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Seng Sakda  
Director General  
General Directorate of Labour

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Koy Tepdaravuth  
Director of  
Department of Labour Disputes

**WITNESSED BY:**

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

John Ritchotte  
Chief Technical Advisor  
ILO – Labour Dispute Resolution  
Project

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## Alternative Labour Dispute Resolution: Global Best Practices and Their Application at the Arbitration Council of Cambodia<sup>1</sup>

### Introduction

This paper serves to list and explain the lessons learned from the international experience in Alternative Labour Dispute Resolution (ALDR), and highlight the application of these lessons in the structure and procedures of Cambodia's Arbitration Council (AC). Culled from years of ALDR experience across a multitude of nations, six primary lessons stand out as essential to any effective ALDR system. Learning from its peers, the AC incorporated these lessons into its own design; the lessons are designated here as six main "good practices". Following this is a short discussion on new possible activities the AC is currently considering. The paper concludes with a statement on how the AC furthers the agenda of the Demand for Good Governance project.

### Lesson #1: The Trend Towards ALDR For All Labour Disputes

In the past ten years, conciliation, mediation and arbitration have risen in the ranks to become the present day preferred methods of labour dispute resolution for many nations around the world, including the United States, Canada, and Australia. These methods, which can collectively be called Alternative Labour Dispute Resolution (ALDR), have been embraced even in countries with labour courts, with many having gone so far as to establish mandatory mediation as a prerequisite to adjudication. In fact, a survey by the International Labour Organization (ILO) of thirteen countries with labour courts,<sup>2</sup> revealed that only four (Finland, Israel, Slovenia, and Sweden) did not have formal conciliatory procedures in place prior to adjudication, but all four did allow ALDR procedures to be mandated by Collective Bargaining Agreements (CBAs) or agreed to by the parties.<sup>3</sup> CBAs that require ALDR in the event of a rights dispute are increasingly commonplace, with many now also including "no extra claims" provisions that bar interests disputes for the life of the agreement, typically one to two years. These measures found in CBAs not only responsibly anticipate disagreements and establish a method of resolution for rights disputes in advance, but also guard against an endless cycle of interest dispute ALDR by requiring parties to abide by the CBAs for one to two years.

These developments reflect a change in attitude toward ALDR: a decade ago ALDR was commonly viewed as simply an obstacle to justice, but satisfaction with the quick and fair rulings of ALDR has raised its standing to its present day status as the preferred alternative to adjudication within the realm of labour disputes. While court systems seek to resolve past wrongs, ALDR is, by nature, forward-looking and aims to preserve the working relationships of disputing parties by producing decisions designed to resolve present conflict in the context of

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<sup>1</sup> Hugo van Noord, lead author, with support provided by Michael Lerner, Technical Advisor to the Arbitration Council, and Erin O'Leary, student at University of Michigan Law School. Special thanks to: Michael Gay, Commissioner of the Australian Industrial Relations Commission (AIRC); Arnold Zack, Lecturer at the Labor and Worklife Program at Harvard Law School; Martin Malin, Professor and Director of the Institute of Law and the Workplace, Chicago-Kent College of Law, Illinois Institute of Technology; Allen Ponak, Emeritus Professor of Industrial Relations at the Haskayne School of Business, University of Calgary; Corinne Vargha, Senior Specialist at the Social Dialogue, Labour Law & Labour Administration Department of the ILO; and Charles Nupen, Chief Technical Advisor of the ILO.

<sup>2</sup> Belgium, Denmark, Finland, France, Hungary, Ireland, Israel, Norway, Slovenia, Spain, Sweden, United Kingdom, and Venezuela

<sup>3</sup> M. Pierra Salgos, Gen. Reporter, *Do We Need Labour Courts?: Synopsis of Answers to the Questionnaire*, 12th Meeting of European Labour Court Judges, Sept. 8,9 (2004).

greater cooperation in the future. This unique perspective of ALDR serves in part to explain its growing popularity. In Canada, the Supreme Court, in a landmark decision in 1995, recognised arbitration as the preferred method of resolving disputes in unionised settings including tort claims, defamation suits, insurance claims, harassment, and petty assault.<sup>4</sup> Martin Malin, Professor and Director of the Institute for Law and the Workplace at Chicago-Kent College of Law, argues that the origin of this trend in the United States lies in the Supreme Court decision in *Gilmer v. Interstate/Johnson Lane Corp* in 1991, which upheld agreements to arbitrate all workplace claims as a condition of employment, sparking the extension of arbitration agreements into almost every other employment statutory right, including Title VII discrimination suits.<sup>5</sup>

Specialised ALDR institutions for labour disputes are gaining recognition and respect for displaying experience, sensitivity, and creativeness in their decisions, prompting new countries to create similar systems, including Japan, the Philippines, and South Africa. All three of these countries turned to ALDR in order to calm riotous employer-labour disputes that gripped the countries in economic, social, and political turmoil. The Philippines, for example, weathered over 220 strikes annually prior to instituting ALDR.<sup>6</sup> Alejandro C. Villaviza, the Vice President of the Trade Union Congress of the Philippines, credits arbitration for tempering labour-management relations by guiding parties to realise “the value of non-confrontational dialogue and cooperation”.<sup>7</sup>

South Africa’s Council for Conciliation, Mediation, and Arbitration (CCMA), which opened in 1996, sprung from the Labour Relations Act’s mission to reduce industrial relations conflict, and has become hugely popular, receiving 80,000 cases in 2003.<sup>8</sup> Most parties attempt to mediate prior to arbitration, a practice that has proven successful, with only 14,000 cases moving on to arbitration in 2003.<sup>9</sup> From 2005 to 2006, over half of all cases were settled by conciliation.<sup>10</sup>

## **Lesson #2: The Benefits of Stakeholder Involvement**

The traditional reliance on the rule of law through legislation, ministerial mediation, and court enforcement of statutes has been recognised as less effective than a system that values stakeholder involvement and encourages voluntary participation to reach mutual resolution of disputes in preference to court enforcement of the law. The traditional judicial system denies parties the ability to govern the direction of their own relationships and instead imposes an outsiders’ solution that is seen as an intervention rather than a solution. In contrast, the “self help” attitude of ALDR encourages parties to actively participate in the search for sustainable solutions.

It is no accident that disputing parties become deeply and proactively involved in their own cases. Many ALDR systems are designed to encourage stakeholders to navigate their own resolution at every step of the process. Disputing parties are often able to initiate ALDR proceedings and, during conciliation and mediation in every country, parties are expected to make genuine efforts to cooperate and reach a settlement. ALDR systems in the US<sup>11</sup> and

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<sup>4</sup> *Weber v. Ontario Hydro* [1995] 2 S.C.R. 92; Donald Carter, “Remedies at Arbitration – the Evolving Role of Damages”, in Allen Ponak *Proceedings of the University of Calgary Labour Arbitration and Policy Conference*, Calgary, Alberta CA, 2006.

<sup>5</sup> Martin Malin, *Arbitrating Statutory Employment Claims in the Aftermath of Gilmer*, 40 ST. LOUIS L.J. 77, 77-78 (1995-96).

<sup>6</sup> Rommer M. Balaba, *Alternative Dispute Resolution Modes Help Keep Industrial Peace*, BUSINESS WORLD, Dec. 9th, 2005, at 1.

<sup>7</sup> Id.

<sup>8</sup> Calvin William Sharpe, *Integrity Review of Statutory Arbitration Awards*, 54 HASTINGS L.J. 311, 362 (2003).

<sup>9</sup> Id.

<sup>10</sup> Commission for Conciliation, Mediation & Arbitration of South Africa, ANNUAL REPORT 2005-2006.

<sup>11</sup> Frank Elkouri, Edna Asper Elkouri, *HOW ARBITRATION WORKS*, § 4.8 (6th ed. 2003).

Canada<sup>12</sup> allow parties to elect their own arbitrators and many countries allow parties to present their own cases at hearings. Australia's Industrial Relations Commission (AIRC) recently jumped on the bandwagon, altering its procedures to allow for parties to agree to elect their own arbitrators or set out their own procedures to follow in order to nominate an arbitrator in the event a dispute arises.<sup>13</sup> Elements such as these infuse disputing parties with a real sense of ownership over their ALDR experience and the responsibility to arrive at a workable agreement.

Stakeholder involvement is commonly built into the structure of ALDR institutions as well. Through the creation of bi- and tripartite systems, employers and employees select the decision makers who make up the boards. By requiring the stakeholders to determine who the conciliation, mediation, or arbitration board members will be, the stakeholders are able to contribute to the ALDR process from its inception. Both France and Vietnam have bipartite ALDR systems in place, while England, Japan, the Philippines, South Korea, Indonesia, Malaysia, Singapore, and Thailand all have tripartite institutions.<sup>14</sup>

### **Lesson #3: The Importance of Adequate Training for All Stakeholders**

But it should not be forgotten that ALDR systems are only employed to the extent stakeholders are trained to utilise them. Therefore, the road to successful conciliation, mediation, and arbitration must begin with proper training for both employers and employees. For example, in Australia, and notably with bipartisan political support, the Trade Union Training Authority Act of 1975 provided for federal funding for a body to deliver training to workplace representatives, on the premise that delegates informed of their roles and of the procedures of the system would lead to reduced disputation. Ultimately when the political consensus for such a body no longer existed the legislation was repealed.<sup>15</sup> In retrospect, some commentators now believe that it was a mistake to train only the workers' representatives and are calling for a new training program that includes managers as well, with the thought that training both employers and employees may increase the likelihood that such training programmes survive political change. In the meantime, Australia has instituted a hotline number any potential party may call to ask questions regarding ADR procedures, but not legal or strategic advice. South Africa's CCMA has this type of call centre as well.

In the UK, some experts point to this gap in knowledge of ALDR between workers on one hand, and their employers on the other, as to why the labour dispute caseload has steadily increased. Christine Pratt, Founder of the National Bullying Helpline, views the increase not as a failure of ALDR to settle claims prior to entering the courtroom, but in fact, as a measure of success for workers in that they are becoming better educated on their rights due to the proliferation of ALDR measures.<sup>16</sup> However, Pratt also points out that mid-level managers, the employer-side representatives most often directly engaged in these disputes, are poorly trained, if at all, in ALDR and are often overseen by higher-ups who are unwilling to fund this training. Thus, commentators in both Australia and the UK acknowledge that the training of managerial-level employer representatives is vital for the resolution of labour disputes prior to the courtroom.

Although Japan's ALDR systems are designed to be accessible to the average worker and to make workers feel capable of handling their own cases, some of the nation's commentators

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<sup>12</sup> Kenneth Thornicroft, "The Grievance Arbitration Process" in Morley Gunderson, Allen Ponak, and Daphne Taras (2005), *Union-Management Relations in Canada (5th)*; Toronto: Pearson Publishing. D. Brown and D. Beatty (2006), *Canadian Labour Arbitration (4th)* Aurora Ontario: Canada Law Book.

<sup>13</sup> [http://www.airc.gov.au/wc2k6/fact\\_sheets/dispute\\_guide.html](http://www.airc.gov.au/wc2k6/fact_sheets/dispute_guide.html)

<sup>14</sup> Ok Serei Polleak, *Comparative Study of Labour Dispute Prevention and Resolution Systems in Selected Countries*, ILO Labour Dispute Resolution Project, October 2002, at 34, 37.

<sup>15</sup> Email from Michael Gay, Commissioner of the Australian Industrial Relations Commission (AIRC) to Hugo van Noord, lead author (July 3, 2007, 16:46 EST).

<sup>16</sup> Christine Pratt et al., *Are Dispute Resolution Regulations Working?*, HUMAN RESOURCES, July 2006, at 6.

still push for the professional representation of disputing parties in ALDR for the sake of efficacy and speed.<sup>17</sup> However, unlike in the US, where union and company officials usually serve as their party's representatives, or Australia, where the presumption is that parties will represent themselves, Japan's ALDR system requires party representatives to be registered lawyers. This rule currently leaves the country in a bind: while it desires the most effective and expedient ALDR procedures possible, the requirement that representatives be registered lawyers raises a very real possibility that the country simply does not have enough qualified labour lawyers to fulfill this need.<sup>18</sup> This problem may force Japan to loosen its standards for the party representatives in the future.

#### **Lesson #4: The Appeal of Informal Procedures and Quick Results**

From a practical standpoint, ALDR is very attractive to disputing parties not only because of its accessibility, but also because, unlike the courtroom, ALDR is designed to be an informal and quick process. And, in turn, the informal tone of proceedings presents ALDR as even more accessible to the spectrum of disputing parties. But, of course, a balance must be struck. In Australia, despite a hearing room with all the trappings of a court room, the AIRC is required to conduct its dispute settling functions with a "minimum of legal form and technicality", by following the rules of natural justice rather than strict rules of evidence, and by the legislative injunction to decide cases "according to equity, good conscience, and the substantial merits of the case".<sup>19</sup>

The import placed upon the speed of ALDR proceedings is easily found in many countries. In the UK, the mission of the Advisory, Conciliation and Arbitration Service (ACAS) is to "weed, concede, and speed" employment disputes.<sup>20</sup> In the Philippines, Villaviza blames the recent downturn in their voluntary arbitration caseload on the appeals process to higher courts which lengthens the process significantly.<sup>21</sup> The CCMA of South Africa's Annual Report of 2005-2006 states that cases averaged 26 days from referral until conciliation, and that 90% of the arbitral awards were handed down within 14 days.<sup>22</sup> It is apparent that the informality and speed of every ALDR system are, by design, in contrast to each nation's courts, and integral to the strategy devised to achieve resolution in the unique environment of labour disputes.

#### **Lesson #5: The Necessity of Procedural Fairness**

"Due process" in the US, "natural justice" in the UK, "fundamental justice" in Canada, and "procedural fairness" in Australia, whatever the title, the values of fairness encompassed in these phrases serve as the foundation of legal systems worldwide, and ALDR is no exception. In order for stakeholders to trust and rely upon ALDR, and for the resulting decisions to be abided by, these institutions must serve as pillars of fairness and equity under the law, as a common ground for employers and employees alike.

Among these values, neutrality of the decision maker is paramount. In the US, the National Academy of Arbitrators Code of Professional Responsibility states that for labour arbitration, an arbitrator must be impartial. Both the Federal Mediation and Conciliation Services (FMCS) and the American Arbitration Association (AAA) explicitly mandate the full time neutrality of the decision maker in labour management cases as well.<sup>23</sup> In fact, the Federal

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<sup>17</sup> Kazuo Sugeno, *Developments in Workplace Dispute Resolution: A 5 Country Study: Japan*, 25 COMP. LAB. L. & POL'Y J. 519, 523-3 (2004).

<sup>18</sup> Id.

<sup>19</sup> Workplace Relations Act of Australia, Section 110, (1996); Email from Michael Gay, Commissioner of the Australian Industrial Relations Commission (AIRC) to Hugo van Noord, lead author (July 3, 2007, 16:46 EST).

<sup>20</sup> Paul L. Latreille, et al., *Employment Tribunal and ACAS: Evidence from a Survey of Representatives*, 38 INDUST. REL. J. 136, 137 (2007).

<sup>21</sup> Balaba at 2.

<sup>22</sup> Commission for Conciliation, Mediation & Arbitration of South Africa, ANNUAL REPORT 2005-2006.

<sup>23</sup> Frank Elkouri, Edna Asper Elkouri, HOW ARBITRATION WORKS, § 4.9B (6th ed. 2003).

Arbitration Act requires awards written by arbitrators with “evident partiality” to be vacated.<sup>24</sup> Sugeno states that the preservation of neutral arbitrators is essential for the success of ALDR in Japan,<sup>25</sup> while East African ALDR systems explicitly agree that it is the duty of the mediator to be fair and neutral in his or her decision making.<sup>26</sup>

This focus on neutrality has provoked a plea by some in the US and abroad to abolish the adversarial tactics of advocacy as applied to ALDR and for the creation of non-adversarial ethical standards of collaborative lawyering.<sup>27</sup> Commentators argue that courtroom tactics are not conducive to mediation and the like, and that, in fact, the integrity of ALDR is compromised when arbitrators are biased.

The independence of the decision makers and transparency of ALDR institutions are two additional prongs of procedural fairness. To ensure the independence of the mediators and arbitrators, some ALDR systems split the bill for the services equally between the disputing parties while some institutions provide their services free of charge.<sup>28</sup>

One way transparency of an institution can be achieved is through the publication of its arbitral awards. South Africa’s CCMA, which has become the model ALDR institution for other countries in Southern Africa, posts its decisions on a website, alongside annual reports that provide statistics on the number of cases handled each year. These annual reports track from year to year the proportions of decisions that favour the employer and employee parties. When the proportions remain consistent from year to year, as they do in the CCMA, they are a useful tool in maintaining credibility and assuring stakeholders that the institution does not sway with bias from case to case, or year to year. As these examples show, procedural fairness, as evidenced by neutrality, independence, and transparency, is at the heart of any legal institution, ALDR included. When this information is made available to the public, an institution itself must produce consistent, well-reasoned decisions, or risk being discredited.

### **Lesson #6: The Utility of Flexible Procedures that Allow For Conciliation or Mediation at the Arbitration Stage**

While ALDR itself encompasses several different avenues to settlement, the line between mediation and arbitration is becoming blurred in many systems as countries learn of the interconnected nature of these two procedures, and are beginning to reap the benefits of flexible institutions. For example, mediation in Canada can commence at the initiative of the parties or at the suggestion of the arbitrators themselves, and can occur at the beginning or middle of the arbitration hearing.<sup>29</sup> This flexible system is settling more and more disputes in this manner.

“While in Australia there remains a clear distinction between the informality of conciliation relative to the more formalised procedures of arbitration, the long-standing tradition of that country continues whereby the conciliator of industrial disputes also arbitrates - unless objected to by a party or where the conciliator has indicated a concluded view. Both these latter contingencies are rarely encountered. In termination of employment cases in Australia there also

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<sup>24</sup> Federal Arbitration Act, 9 U.S.C. § 10(a)(2); *Commonwealth Coatings Corp. v. Continental Casualty Co.*, 393 US 145 (1968) (vacating an arbitrated award due to an arbitrator’s failure to disclose a past business relationship with the victorious party).

<sup>25</sup> Kazuo Sugeno, *Developments in Workplace Dispute Resolution: A 5 Country Study: Japan*, 25 COMP. LAB. L. & POL’Y J. 519, 523-3 (2004).

<sup>26</sup> ILO Strengthening Labour Relations in East Africa Sub-Regional Workshop on Conciliation and Mediation, *Rapporteurs’ Report*, Dec. 3-7th (2001).

<sup>27</sup> Christopher M. Fairman, *Ethics and Collaborative Lawyering: Why Put Old Hats on New Heads?*, 18 OHIO ST. J. ON DISP. RESOL. 505, (2003).

<sup>28</sup> For example, the costs of labor arbitration in the US and Canada are generally split evenly by the parties, whereas institutions such as the Australian Industrial Relations Commission or South Africa’s Commission for Conciliation, Mediation and Arbitration provide their services free of charge.

<sup>29</sup> Email from Allen Ponak, Emeritus Professor of Industrial Relations, Haskayne School of Business, University of Calgary to Michael Lerner, Technical Advisor of the Arbitration Council Foundation (May 11, 2007, 12:35 MST).

exists some capacity for conciliation at the arbitration stage. This is despite the fact that the practice is for the conciliator in termination cases to not also arbitrate. Occasionally in termination cases further conciliation occurs with the arbitrator, if the parties agree, say, when the evidence is all in, and with the parties' formal acknowledgement that such further conciliation will not jeopardise the arbitration continuing to finality in the event the further conciliation proves unsuccessful".<sup>30</sup>

In the UK, a recent increase in ACAS' caseload has sparked scrutiny over the structure of the ALDR system, and commentators are arguing over whether this trend is a positive or negative indicator. Some say the increase is positive and simply a reflection of the growing pains of an increasingly educated, and thus litigious, workforce while others believe a structural problem in the ALDR procedure is to blame.<sup>31</sup> Currently, conciliation (mediation) and arbitration remain totally distinct processes, with conciliation occurring at the beginning of litigation for a fixed period of time, only after which, do parties enter the arbitration phase. Furthermore, arbitrators are not trained in or allowed to mediate between parties at the arbitration hearing and some say this delineation drastically reduces the likelihood of settlement during conciliation. Richard Fox, Chair of the Employment Tribunal Monitoring Working Party, believes that if conciliation was available after parties could measure each other up, resolution would be more likely.<sup>32</sup> Reformers such as Fox argue for a system with the flexibility of the Canadian and Australian models, an argument that will likely remain cogent in the future.

## **The Arbitration Council: Applying the Lessons of International ALDR in Cambodia**

### **Good Practice #1: The Use of ALDR to Strengthen Labour Relations and Stabilise Industries**

With the establishment of the Arbitration Council in 2003, Cambodia added its name to the growing list of countries that have joined the global trend of ALDR. With the help of the ILO, the AC was designed to strategically incorporate elements of successful ALDR institutions from around the world to achieve a system that reflects the valuable lessons learned from older, more established ALDR institutions.

Like so many other nations, Cambodia instituted an ALDR system in order to provide a forum for settling collective labour disputes while simultaneously preserving the working relationships of the parties, in order to free the country from the disruption these disputes incite. The less Cambodia is embroiled in labour conflicts that result in the strikes and lock outs that paralyze the economy, the more stable the country's investment environment becomes, which fosters the development of Cambodia as a whole.

### **Good Practice #2: The Incorporation of Stakeholders at Both the Institutional and Procedural Level**

Having learned from the trials and tribulations of nations with established ALDR institutions, the architects of the AC designed a system that incorporates stakeholder involvement at every step of the way. In fact, the AC itself is a product of this involvement, as the stakeholders elected the people who became the board of arbitrators in the first place: 10 were elected by the union federations, 10 by the employer associations, and 10 by the Ministry of

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<sup>30</sup> Email from Michael Gay, Commissioner of the Australian Industrial Relations Commission (AIRC) to Hugo van Noord, lead author (July 3, 2007, 23:34 EST).

<sup>31</sup> Christine Pratt, Richard Fox, et al., *Are Dispute Resolution Regulations Working?*, HUMAN RESOURCES, July 2006, at 6.

<sup>32</sup> Richard Fox, *Taking a Fresh Look at Dispute Resolution*, PERSONNEL TODAY, Jan 16th, (2007) at 19.

Labour. The AC depends upon the initiative of the stakeholders during the AC's proceedings as well. Either side of a dispute may commence ALDR by bringing a grievance to the Ministry of Labour and, in arbitration, the AC allows the parties to select the arbitrators for their case hearing's panel from the board. The parties also determine what type of decision they would like: binding (requiring parties to follow the decision) or non-binding (parties wait until the award is issued before deciding whether or not to abide by the decision). Perhaps most importantly however, at every stage of ALDR, in the conciliation, mediation, or arbitration, the AC's system depends upon the cooperation and candor of the parties, resulting in solutions that they shape themselves.

### **Good Practice #3: The Educating and Training of Stakeholders and Community Members**

The AC aims to make the entire ALDR process accessible and clear to potential parties and recognises from the experience of established ALDR systems that stakeholder training is vital to achieving these goals. The roles of the administrative bodies supporting the AC, the Arbitration Council Foundation (ACF) and the Secretariat of the Arbitration Council (SAC), have been crucial in meeting this need. Efforts to educate stakeholders include the ACF's regular outreach programmes in the community that educate workers, employers, law students, and community members on the structure and proceedings of the AC. The AC's website, which includes published case decisions in both Khmer and English, serves as a useful tool to interested parties worldwide. Additionally, the AC sidesteps the problem Japan is facing over the looming dearth of qualified lawyers by not requiring party representatives to be registered lawyers. Not imposing this restriction supports the AC's goals of accessibility and informality of procedure, as well as the AC's mission to directly involve stakeholders.

Through discussions on how to make the AC even more accessible, several proposals have been made. Access to the AC could be improved through an increase of the ACF's outreach activities and training sessions, as well a strengthening of its coordination and communication with the provincial offices of the Ministry of Labour. An additional proposition has been to make the AC directly accessible by disputing parties, with an exploration into the possibility of this structural change being the first step.

### **Good Practice #4: The Focus on Informal and Fast Procedures**

The AC is very aware that the appeal of ALDR is closely associated with its informality and rapid results, and thus, runs accordingly. Closely tied to its goal of accessibility, the AC's proceedings are designed to be less formal than those of the courtroom, which is conducive to the collaborative nature of ALDR. The arbitration hearings are structured, yet the panel takes time to explain procedures to the parties if necessary, and encourages their candid remarks throughout the hearing. On the other hand, the timeline the AC follows for each case is strict, to ensure quick resolution. Each arbitration panel has only 15 working days to issue a decision after the hearing takes place. Compared to the US, where the average labour arbitration takes between 259<sup>33</sup> and 315<sup>34</sup> days from the parties' request until the award issuance, and France, where it takes the Conseil de Prud'hommes<sup>35</sup> more than a year to resolve the average case,<sup>36</sup> the AC is remarkably quick, even on a global scale.

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<sup>33</sup> American Arbitration Association, *National Academy of Arbitrators 2007 Annual Meeting 2006 Labour Statistics*, p. 5.

<sup>34</sup> Federal Mediation and Conciliation Service, *National Academy of Arbitrators 2007 Annual Meeting Fiscal Year 2006 Statistics*, p. 9.

<sup>35</sup> The Conseil de Prud'hommes handles individual disputes only.

<sup>36</sup> Philip Simon, *France: Freedom of Association and Labour Law*, at <http://www.legislationline.org/.tid=221&jid=19&less=false>, April 2007.

### **Good Practice #5: The Institutionalisation of Procedural Fairness**

With the understanding that the success of a Cambodian ALDR system would hinge upon the integrity of its procedural fairness, which has been seen internationally, the AC was designed to be neutral, independent, and transparent. The AC joins the international consensus on the primacy of neutrality in any legal institution. The arbitrators of the AC are not allowed to hold memberships in any unions or employer organisations,<sup>37</sup> and are required to be neutral throughout the decision making process. Although the thirty member board is divided into thirds, with 10 arbitrators available for the employer party to select an arbitrator from, and 10 from which the employee party selects, the arbitrators do not serve as advocates for the parties who select them. Moreover, the two appointed arbitrators elect a third arbitrator from the final 10 of the board to serve as the head of the panel, a procedure that further ensures the neutrality of the panel. The arbitrators themselves are nominated by stakeholders, who forward their candidates to the ILO which then reviews and investigates the candidates and returns an approved list to the stakeholders for their endorsement. Overall, the nomination process has a high approval rating by the stakeholders.

Over 95% of the decisions have been unanimous, meaning that the arbitrators selected by the worker and employer parties came to agreement. This percentage serves as strong evidence that the arbitrators maintain neutrality. This conclusion is further supported by the case record: out of 113 cases heard during the AC's first two years of operations, from May 2003 to May 2005, 60 decisions benefited the employee party, 41 the employer party, and 12 were split, a record that reveals no pattern of favouritism.<sup>38</sup>

In order to preserve their independence, arbitrators receive an allowance from the AC, but must still rescue themselves from a case if a possible conflict of interest exists.<sup>39</sup> Furthermore, the Labour Law authorises the AC to reach decisions on labour disputes regarding the interpretation and enforcement of laws, regulations, and collective agreements.<sup>40</sup> The AC has received accolades for its transparency and fairness from the stakeholders, with a nearly unanimous consensus among them that the AC's decisions are fair. This sentiment is also supported by DFID and the World Bank,<sup>41</sup> and USAID.<sup>42</sup> Notably, the AC is the only judicial body in Cambodia to publish its decisions, solidifying its position at the forefront of legal reform in the country.

### **Good Practice #6: The Provision of Mediation Services at the Arbitration Stage**

As in Canada and Australia, the AC enjoys the benefits of a flexible procedure that does not cut off conciliation or mediation from the arbitration stage. The AC provides multiple opportunities for disputing parties to settle during the arbitration procedure, and even in the arbitration hearing itself. The Ministry of Labour conducts an initial conciliation hearing and if that hearing is unsuccessful, the dispute is then handed over to the AC. The AC's arbitrators are trained in mediation and offer to mediate at the beginning of every hearing, with a view to helping parties reach a settlement and thereby end their dispute. From 2003 when the Council was established, until the end of 2006, 36% of all cases were fully resolved through such settlements. However, if the parties elect to mediate and do not achieve a resolution, the panel

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<sup>37</sup> Prakas 099, 21 April 2004, Cl. 7,10.

<sup>38</sup> International Labour Organization-Labour Dispute Resolution Project, *Arbitration Council statistics* (June 2005), cited in Lejo Sibbel, *Arbitration Council Review* (June 2005).

<sup>39</sup> Prakas 099, 21 April 2004, Cl. 15.

<sup>40</sup> Article 312 of the Labour Law, 1997.

<sup>41</sup> A. Burke and N. Vanna, *Options for Increasing Social Accountability in Cambodia*, DFID and the World Bank, 15 February 2005, p. 13 (“[s]ome of the early successes in the Arbitration Council suggest that structures which are outside the main justice system, especially with internal checks and balances...could be used as a template for other efforts”).

<sup>42</sup> USAID/Cambodia, *Cambodian Corruption Assessment*, May-June 2004, p. 9 (“[u]nder the Industrial Arbitration Council established under ILO sponsorship...arbitrators are independent and sound decisions are being reached”).

can smoothly transition into arbitration. This system ensures that disputing parties are given plenty of opportunities to mediate which, in turn, reinforces the AC's goals of voluntary participation and cooperative resolution.

### **Possible New Activities**

Currently, the AC is addressing several possible new activities to strengthen both its mediation and arbitration track records. These new proposals include a move to place even greater emphasis upon mediation throughout the entire ALDR procedure. Combined with more thorough training on mediation for both the arbitrators and stakeholders, the AC anticipates that these measures would result in an increased success rate of mediated agreements. Additional training is also suggested in order to increase the number of arbitrated awards that are implemented. One way to increase the percentage of implemented awards is to increase the frequency with which parties elect binding awards, at the arbitration hearing or in CBAs, as opposed to non-binding awards. Informing stakeholders about the benefits of binding arbitration through education and training would likely result in an increase in implemented awards.

In addition, the AC plans to develop and implement several studies and strategies that would help ensure the AC's future sustainability, including financial sustainability. The key functions of the AC are currently funded by international donors. The AC is contemplating several funding options, based on international experience and taking into account the specific Cambodian circumstances.

Funding options for ALDR institutions range from full funding by the state to full private funding, with several modalities in between. In developing countries dispute resolution services are generally funded by the state and are offered free of charge. This is for example the case with the services provided by the CCMA in South Africa. The institutions are often given the statutory authority to engage in income generation activities like fundraising for special projects, training users, running conferences, etc. These activities do generate however only a limited amount of income. In the US, funding is mostly party pay. Most arbitration there occurs in accordance with the parties' CBA which spells out who pays for the cost of the proceeding. Most of the time, the costs are divided equally between the employer and the union, although some CBAs provide that the loser pays for everything. However, even in public sector interest disputes, where the statute imposes interest arbitration on the parties, and thus parties are not acting pursuant to their own agreement, the statute typically provides that the parties divide the costs equally. The AAA and JAMS, the two primary providers of employment arbitration services in the non-union setting in the US, require the employer to pay the entire cost of the proceeding except for a nominal filing fee which the employee is required to pay. In Australia however, the AIRC is fully public funded, while it delivers its services essentially free of charge.

As said, the AC is considering several funding models that would ensure its financial sustainability in the future and which take into account the particularities of the Cambodian context. These latter include the statutory requirement that arbitration services be provided free of charge as well as the very reduced capacity of Cambodia's unions to make significant contributions. Different funding models might therefore be developed for the short, mid and long term respectively, including a possible model of funding by the tripartite partners, supplemented by funds from associated entities such as international buyers and international union movement.

### **The Arbitration Council: A Partner in the Demand for Good Governance**

As explained above under Good Practice #1, the AC is a common ground upon which disputing parties from the industrial sector can reach agreements or receive arbitral awards; a

system which stabilises industrial relations as a whole, thus creating a more favourable environment for foreign investment in Cambodia. Yet, although Chapter XII of the Labour Law (1997) provided for an AC, steps toward designing and implementing the services of the AC were not begun until 1999, when the United States and Cambodia signed a 3-year Trade Agreement on Textile and Apparel, within the framework of which the two governments agreed to steady the labour relations of Cambodia by institutionalizing ALDR, including the establishment of the AC; thus, the AC was essentially born out of the nation's garment sector.

However, the early successes of the AC in the garment sector quickly sent out a ripple effect that has spread into new industries: in less than 8 months the AC began to receive cases from the Hotel industry<sup>43</sup> and, more recently, cases involving a golf club,<sup>44</sup> a gas station,<sup>45</sup> and a casino.<sup>46</sup> The AC is currently addressing several activities that would enhance this development and enable it to further expand its capacity to provide services to new regions and sectors.

The AC has also impacted legal reform beyond its own jurisdiction, as it is now serving as the model for a future commercial arbitration council of Cambodia. The minds behind this new arbitral system even want some of the AC's arbitrators to serve on the commercial arbitration panels as well.

In the meantime, however, the AC can be confident that, although it was designed to bring economic investment into Cambodia, its footprint is in fact much larger. By becoming the country's model legal institution, the AC is establishing a precedent that is spreading to other areas of the law beyond labour. Currently, the AC is instilling faith in the workers and employers of Cambodia in the rule of law, a faith that is evolving into an expectation by the Cambodian people that its courts, officials, and governmental institutions follow just and fair legal principles. In time, this expectation will foster a government and society that are true reflections of the law.

In conclusion, the AC readily serves the objectives of the Demand for Good Governance (DFGG) by promoting, mediating, and responding to the DFGG. The AC promotes the DFGG by demonstrating to the disputing parties that impartial institutions of law, like the AC, are not only available, but also can be counted on to uphold the rights of the parties, resulting in fair decisions. The AC successfully mediates between opposing parties, who each demand good governance but from polar directions, through its procedural fairness and legally-based decisions. Finally, the AC responds to the DFGG, by its timely provision of hearings and rapid decision making, all with transparency and without compromising the integrity of the procedure. At every step, the AC heeds the call for those demanding good governance in Cambodia today.

## ANNEX 6

### ACF Fundraising Policy

Monday, 30 July 2007

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<sup>43</sup> Raffles Grand Hotel D'Ankor v. Union of Grand Hotel D'Ankor, Case #28, 2003; Raffles Le Royal v. Union of Raffles Le Royal, Case #29, 2003.

<sup>44</sup> South Bay Enterprise Co. Ltd. v. Local Khmer Youth Trade Union at South Bay Factory, Case #99, 2006.

<sup>45</sup> Caltex Cambodia Ltd. v. Cambodia Workers Democratic Union, Case #64, 2006.

<sup>46</sup> Grand Diamond City Co. Ltd. v. Worker Union at Grand Diamond City, Case #9, 2006.

1. The ACF, with the support of its Board of Directors, ILO and the MoLVT, will seek and welcome funds, donations, support or in-kind assistance from any and all domestic and international organizations or governments that do not affect the independence, neutrality and integrity of the Arbitration Council's operations, goals and objectives in order to fund the operation of the Arbitration Council.
2. ACF shall work closely with MoLVT to seek such funds that may come from or through the Royal Government of Cambodia.
3. ACF will seek to maintain diversity in its funding sources, in an effort to minimize reliance on any single donor and to prevent any bias or influence by that donor, or perception thereof. Where funds are received from an entity that is aligned with one of the social partners (Employer and Employee) (for example, CAMFEBA, union federations, etc.), ACF will seek funds from entities aligned with the other social partner, in an effort to preserve a balance of interests.
4. ACF is not a donor-driven organization. ACF will seek funds to support activities that are designated or planned by ACF Board and management. Any acknowledgement of donor funding will be done in an appropriate way, so that the integrity, independence and neutrality of ACF and the Arbitration Council is not compromised or called into question.
5. ACF will attempt to obtain medium to long-term funding commitments in order to promote financial stability and minimize any disruption to the core activities of labour dispute resolution.
6. ACF will work with Royal Government of Cambodia, the social partners, donors and other stakeholders to find and pursue financially sustainable models of operations. ACF may consider introducing or charging fees, to the extent permitted by law, in pursuit of cost-recovery. However, any such fees will be introduced or charged on an equitable basis, so that no party is disadvantaged or prevented from having its dispute heard for lack of funds.

This Policy approved by the ACF Board on

Board Members:

\_\_\_\_\_  
Sok Mathoeung

\_\_\_\_\_  
Tuon Siphann

\_\_\_\_\_  
Mar Samborana

\_\_\_\_\_  
Martin Desautels

\_\_\_\_\_  
Max Howlett

**Arbitrator Payment Policy**

**Arbitration Council**

(Approved by Regular Arbitrator Meeting, 30 March 2006)

**and**

**Arbitration Council Foundation Board of Directors**

(Approved 13 July 2006)

- a. When a panel is formed, a hearing date has not been set and the panel take no action(s) mentioned in point “d” below, the panel is entitled to no pay.
- b. When a panel is formed, a hearing date has been set, but the hearing is cancelled more than 72 hours before its scheduled commencement time without any activities mentioned in point “d” below, the panel is entitled to no pay.
- c. When a panel is formed, a hearing date has been set, and the hearing is cancelled 72 hours or less before its scheduled commencement time without activities mentioned in point “d” below, the panel is entitled to 50% of the total pay.
- d. When a panel is formed and the panel has taken action(s) such as a pre-hearing meeting, issuing an interim order, conciliation, etc... then, regardless whether or not a hearing takes place, the panel is entitled to 100% of the total pay.
- e. In case of change of Arbitrators upon a request of a party, the former and new Arbitrator(s) shall be paid according to points “a” through “d.”



**MINISTRY OF LABOUR AND VOCATIONAL TRAINING**  
**ARBITRATION COUNCIL AND ARBITRATION COUNCIL FOUNDATION**  
**DFGG PROJECT COLLABORATION COMMITTEE (FORMER TWG)**  
**TERMS OF REFERENCE**

(Adopted May 27, 2008)

**Background**

1. In early 2007, the Ministry of Interior (MOI) and the World Bank (WB) selected the Ministry of Labour and Vocational Training (MoLVT) and the Arbitration Council (AC) among three other state institutions to participate in preparing a project under the World Bank's Demand for Good Governance (DFGG) project.
2. In response to the MOI's and WB's recommendation and the need to oversee the project preparation process, the Minister of MoLVT established a Technical Working Group (TWG) by letter of 20 March 2007, comprising ten members—five from the MoLVT and five from the AC and Arbitration Council Foundation (ACF).
3. In the project proposal submitted to the MOI and the WB by the TWG, the TWG has been changed to be a Project Collaboration Committee (PCC), which will be a platform for information sharing between the AC/F and the MoLVT and for coordination of joint activities.

**Purpose**

4. The PCC exists to serve as a platform for MoLVT and AC/F to share information on the DFGG project and to coordinate joint activities of the MoLVT and AC/F under the DFGG project. The PCC will also provide support to the AC/F. Project implementation shall remain the responsibility of the AC/F project manager.

Specific functions of the PCC are:

- To receive briefings on project implementation and to share information regarding the project

- To discuss and collaborate on joint or complementary activities.
- To facilitate and coordinate administrative support and official correspondence between the AC/F and MOI and WB, as appropriate.
- To support and attend the meetings of the Stakeholder Advisory Group (SAG) in accordance with the Terms of Reference of the SAG.

### **Membership**

5. The PCC shall comprise 10 ex-officio members drawn from MOLVT, AC, and AC/F, as follows:

- Five (5) representatives from MOLVT
- Three (3) representatives from AC
- Two (2) representatives from ACF

The members appointed to the former TWG by letter of the Minister of Labour and Vocational Training dated March 20, 2007 shall continue to serve as members of the PCC in their respective positions throughout the DFGG project.

6. Members of the PCC and their replacements will serve for the life time of the project.

### **Resignation**

7. Should any members wish to resign from the Committee this should be done in writing and sent to the PCC Chairperson. The relevant group – MOLVT, AC, or ACF – shall assign a replacement at the earliest possible date by notifying the Chairperson in writing.
8. Should a member resign from their offices or otherwise die or be incapacitated or unable to continue for any reason, the constituent groups will assign a replacement at the earliest possible date by notifying the Chairperson in writing.

### **Operation**

9. Regular quarterly meetings and special meetings of the PCC can be called at the request of the PCC Chairperson, at the request of the AC/F project manager, or by at least six of the Committee's ten members.

### **Agenda**

10. Meetings will be held in accordance with an agenda for each meeting prepared by the AC/F project manager.
11. The agenda and related papers for each regular meeting will be distributed by the ditto at least one week before the meeting.

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**MINISTRY OF LABOUR AND VOCATIONAL TRAINING**  
**ARBITRATION COUNCIL AND ARBITRATION COUNCIL FOUNDATION**  
**STAKEHOLDERS ADVISORY GROUP**  
**TERMS OF REFERENCE**

(Draft)

### Background

1. The Arbitration Council is an independent, statutory decision-making body with quasi-judicial authority, mandated to resolve labour disputes through mediation and arbitration. The Arbitration Council was established in 2003 and is provided for in the Labour Law and related *prakas* of the Ministry of Labour and Vocational Training (the Ministry). Functionally and institutionally, the Arbitration Council works closely with the Ministry, which appoints the arbitrators based on nominations from the tripartite stakeholders and also staffs the Secretariat of the Arbitration Council.
2. In order to provide for a permanent management structure for the Arbitration Council, the Arbitration Council Foundation (ACF) was established in 2004 by the arbitrators of the Arbitration Council, with the support and endorsement of the Ministry, union federations and employer associations, and with the assistance of the International Labour Organization (ILO). The ACF is mandated by its statute to provide technical and management support to the Arbitration Council. The Arbitration Council has oversight of the ACF through the election of one arbitrator from each stakeholder group as representatives, who form a majority of the ACF Board of Directors. The ACF is a non-government entity registered with the Ministry of Interior.
3. The institutional arrangement among the Ministry, the Arbitration Council and the ACF, and which continues to include formal participation from the key stakeholders, ensures that the Arbitration Council is a credible and independent forum for the resolution of labour disputes.

### Purpose

4. The Stakeholders Advisory Group (SAG) exists to provide advice and support to the Arbitration Council and the ACF (collectively, AC/F) at their request and direction, but it is not authorised to exercise responsibility for management execution or day-to-day implementation of AC/F's activities. The SAG will respect the independence of the Arbitration Council and its decision-making authority in settling disputes that come before the Council, and the SAG will therefore abstain from any attempt to influence the Arbitration Council's awards, decisions and orders.

Specific functions of the SAG as may be requested by AC/F are:

- To advise on work plans as prepared and presented by the ACF Executive Director.
- To advise how activities can best contribute to AC/F's objectives.
- To advise how AC/F can best coordinate its work with other agencies and institutions and to provide an institutional link to key partners at national and provincial levels.
- To advise the AC/F of the viewpoints of the constituents represented by SAG members.
- To advise on the design of relevant policies and legal issues.
- To provide feedback on the results of AC/F's activities.
- To undertake other functions as may be requested by AC/F, to the extent any such additional functions are consistent with the Arbitration Council's mandate, the ACF Statute and these Terms of Reference.

### **Membership**

5. The Stakeholders Advisory Group shall comprise nine (9) members and nine (9) alternates drawn from three groups as follows:
  - Three (3) members and three (3) alternates representing the Ministry of Labour and Vocational Training. One of the Ministry members will be designated as the Chair of the SAG;
  - Three (3) members and three (3) alternates representing Cambodia's employer associations; and
  - Three (3) members and three (3) alternates representing Cambodia's workers' unions.
6. The Executive Director of the ACF shall sit as an *ex officio* non-voting member of the SAG. The ACF Executive Director shall be designated the Vice-Chair of the SAG.

### **Selection of Members**

7. The Chair will facilitate the selection of the SAG members and alternates who represent the Ministry. The Ministry shall appoint in writing six officials (three members and three alternates) to the SAG.
8. The Vice-Chair will facilitate the selection of the SAG members and alternates who represent the employer associations and workers' unions.
9. The employer associations shall submit the names of six candidates (three members and three alternates) to the Vice-Chair. The Vice-Chair shall forward the names in writing to the Chair who shall appoint all six candidates to the SAG.
10. The workers' unions shall submit the names of six candidates (three members and three alternates) to the Vice-Chair. The Vice-Chair shall forward the names in writing to the Chair who shall appoint all six candidates to the SAG.
11. The candidates submitted by employer associations and workers' unions will be chosen on the basis of their own respective procedures.
12. There are no designated qualifications for membership of the SAG but it is expected that constituent groups would nominate men and women with the capacity to advise on a wide range of activities based on knowledge of and experience in industrial relations in Cambodia, with particular reference to dispute prevention and resolution.
13. Members of the SAG will be appointed for a period of two years with an unlimited term of renewals.

### **Resignation and Replacement**

14. Should any member wish to resign from the SAG this should be done in writing and forwarded to the Chair, with copy to the Vice-Chair. The relevant constituent group will nominate a replacement at the earliest possible date, who shall be appointed for the remaining part of the term in accordance with the provisions above.
15. Should a member die or be incapacitated or unable to continue for any reason, the relevant constituent group will nominate a replacement at the earliest possible date, who shall be appointed for the remaining part of the term in accordance with the provisions above.

### **Observers**

16. The Arbitration Council, the ACF and its Board of Directors, the Secretariat of the Arbitration Council and the DFGG Project Collaboration Committee shall also be entitled to have their representatives attend meetings of the SAG at all times.
17. Representatives of the following institutions may also attend meetings of the SAG as observers:
  - ILO
  - Employer associations that are not represented in the SAG
  - Union federations that are not represented in the SAG
  - Donors to the AC/F
  - Other agencies, institutions or organisations at the invitation of the SAG

### **Operation**

18. Meetings of the SAG will be held every six months. Special meetings can be called at other times if a majority of SAG members determine the need to raise any particular issue that cannot wait for the next scheduled regular meeting.
19. The Vice-Chair is responsible for organizing secretarial support for the effective operation of the SAG, and for attending each meeting. The secretarial responsibilities include maintaining updated contact information of SAG members and alternates, and notifying SAG members and alternates of the date and time of each SAG meeting.
20. Meetings will be held in accordance with an agenda prepared by the Vice-Chair in consultation with the Chair. The agenda and supporting papers should generally be available in both English and Khmer language.
21. The agenda and any related papers for each regular or special meeting, should be timely distributed by the Vice-Chair prior to the meeting to give all members sufficient time to review such agenda and related papers.
22. The agenda for each regular meeting will follow a standard format as follows.

Record of attendance, including members and observers.

Confirmation of the minutes of the previous meeting.

Discussion of matters arising from the minutes of previous meetings.

Activities report.

Other matters.

### **Voting**

23. As the SAG is an advisory committee to the AC/F the need for formal voting is limited in that all viewpoints and advice will be considered. The SAG will strive for consensus in its providing of advice but if it considers there is a need for its advice to be formalised into a resolution decided by vote, voting will be on the basis of one-person one-vote. Voting will be decided by a majority of valid votes cast by those members present.
24. In the event of a need to cast a formal vote this will be by show of hands unless the SAG, by a majority, agrees to a secret ballot.

### **Language:**

25. The operating language of the SAG will be Khmer.

### **Press and Public:**

26. Meetings of the SAG will be closed and not open to the press or general public.

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### Suggested complementary activities to be undertaken by Non-State Actors

Activity	Page
1. Relevant NGOs, unions or associations to facilitate better organisation and increased stakeholder capacity in areas where unions and/or employer organisations are inactive or non-existent.	49
2. Formation of an independent Industrial Relations Society, which can serve as a forum for stakeholders to interact, exchange views on, and receive training on key industrial relations topics.	102
3. Establishment of a one-stop shop for information about labour dispute resolution.	103
4. Production of a simple printed guide (e.g., “Labour Dispute Resolution from A to Z”).	103
5. Building the capacity of unions to conduct industrial relations in the framework of the law (with limited recourse to strikes). Support should also be provided to ensure that as unions move into new sectors or areas, they organise workers in an appropriate and responsible fashion.	126
6. To support efforts to “name and shame” enterprises / unions which do not comply with arbitral awards (award compliance monitor).	128

### Project Procurement Plan for First 18 months (submitted by AC)

**Project Name: Cambodia - Demand for Good Governance Project (DFGG): Component 1A - Support to Arbitration Council (IA - ACF)**

Grant Start Date: Grant End:

Task Manager: Bhuvan Bhatnagar

Procurement Accredited Staff: Oithip Mongkolsawat

#### I. Goods

Contract Package No.	Description of Contract Package	Total Estimated Cost (USD)	Method of Procurement (ICB/NCB/ Shopping etc.)	Domestic Preference (for ICB only) Yes/No	Review by Bank (Prior/Post)	Procuring Agency's Name	Estimated Date of Invitation for Bids	Estimated Contract Signing Date	Estimated Contract End Date	Comment
1	Passenger van	38,000	UNOPS	No	Prior	ACF	15-Jan-09	1-Jun-09	31-Jul-09	
2	Motorcycles	1,200	SH	No	Post	ACF through IPA	15-Feb-09	1-Apr-09	1-May-09	
3	Computer and Peripherals (Laptop computer, desktop computers, Printers, scanner, Network cable, Photocopies, telephone sets)	16,535	SH	No	Prior	ACF through IPA	15-Mar-09	1-May-09	1-Jun-09	
4	Audio Visual Equipment (Digital Video Digital Camera, Television, DVD player, Voice Recorder)	3,720	SH	No	Post	ACF through IPA	15-Mar-09	29-Jun-09	1-Jun-10	
5	Office Furniture (Office desk, meeting table (set) meeting chaire, adjustable chaire, Filing cabinet, Library Furniture, miscellaneous Furniture (lounge Reception)	10,070	SH	No	Post	ACF through IPA	15-May-09	31-Aug-09	1-Aug-10	
<b>TOTAL</b>		<b>69,525</b>								

## II. Consultant Services

Contract Package No.	Description of Contract Package	Firm or Individual	Total Estimated Cost (USD)	Method of Procurement (QCBS/QBS/LCS, etc for firms and IC for individuals)	Review by Bank (Prior/Post)	Procuring Agency's Name	Estimated Date of Invitation for Proposal/CVs	Estimated Contract Signing Date	Estimated Contract End Date	Comment
<b>1</b>	<b>International consultant/specialist</b>		<b>202,000.00</b>							
1.1	Study on economic value	Firm	40,000.00	CQS	Post	ACF through IPA	15-Nov-08	15-Mar-09	15-Jun-09	<b>Funded from PPF-2</b>
1.2	Study sustainability Phase 1 (scoping and TOR) (Pre- implementation)	IC	10,000.00	Selection of Individual Consultants	Post	ACF through IPA	15-Nov-08	15-Feb-09	31-Mar-09	<b>Funded from PPF-2</b>
1.3	Study sustainability Phase 2 (study itself)	Firm	30,000.00	CQS	Post	ACF through IPA	15-May-09	15-Sep-09	15-Dec-09	
1.4	Sustainability and fundraising Consultant	IC	40,000.00	Selection of Individual Consultants	Post	ACF through IPA	1-Dec-09	1-Apr-09	31-Mar-13	<b>Budgeted for 80 days of assistance</b>
1.5	Study on demand for AC services	IC	10,000.00	Selection of Individual Consultants	Post	ACF through IPA	15-Apr-09	1-Aug-09	1-Nov-09	<b>Budgeted as lump sum</b>
1.6	Baseline study (Pre - Implementation)	Firm	20,000.00	CQS	Post	ACF through IPA	15-Nov-08	15-Feb-09	31-Mar-09	<b>Funded from PPF-2</b>
1.7	TA project management consultant (Pre - implementation)	IC	40,000.00	SSS	Prior	<b>MOI</b>	1-Mar-08	1-Jun-08	1-Nov-08	SSS funded from PPF-2. Further TA is expected to be required during pre-effectiveness.
	<b>Pre-listed Consultants for Labour Dispute</b>		12,000.00 (average contract amount is 4,000.00)							costs are difficult to predict given the emergency nature of the situations when such
1.8	Short Term Legal Expert	IC		Selection of Individual Consultants	Prior	<b>ACF</b>	1-Dec-08	1-Apr-09	31-Mar-13	expert on a short notice for emergency/urgent labor disputes
1.90	Short Term Legal Expert	IC		Selection of Individual Consultants	Prior	<b>ACF</b>	1-Dec-08	1-Apr-09	31-Mar-13	expert on a short notice for emergency/urgent labor disputes
1.10	Short Term Legal Expert	IC		Selection of Individual Consultants	Prior	<b>ACF</b>	1-Dec-08	1-Apr-09	31-Mar-13	expert on a short notice for emergency/urgent labor disputes

<b>2</b>	<b>National Consultants/Specialists</b>		<b>90,000.00</b>							
2.1	Production Firm for (1) Public service announcement/Develop sport, (2) Soap opera, and (3) Training Video (4) media consultant	Firm	83,500.00	SSS	Prior	ACF	15-Nov-08	15-Feb-09	31-Dec-10	SSS justification to be submitted
2.2	Media monitoring	Firm	2,500.00	CQS	Post	ACF through IPA	15-Dec-08	1-Apr-09	31-Mar-10	
2.3	Financial audit	Firm	4,000.00	LCS	Post	ACF	15-Jan-09	1-Mar-09	1-May-09	pursuant to ACF legal requirements, exemption from procurement sought - see email from ACF to WB dated 5-Sept-08
<b>3</b>	<b>ACF Regular Staff</b>		<b>34,690.50</b>							
3.1	Senior Legal Officer 1	IC	16,011.00	Selection of Individual Consultants	Post	ACF	1-Dec-08	1-Apr-09	30-Sep-10	New Staff Waiver from IPA sought
3.2	Procurement and Admin Officer	IC	18,679.50	Selection of Individual Consultants	Post	ACF	1-Nov-08	1-Jan-09	30-Sep-10	New Staff Waiver from IPA sought <b>During pre-effectiveness period, costs funded from PPF 2</b>
<b>TOTAL</b>			<b>326,690.50</b>							

## Investment Costs for Four Years Procurement for AC

*Component 1: Institutional Integrity and Sustainability*  
*Component 3: Partnerships and Stakeholder Outreach and Training*

*Component 2: Labour Dispute Resolution*  
*Component 4: Project Management and Support*

Items	Component/ Working Group	Description	Estimated Cost for four Years				Year 1		Year 2		Year 3		Year 4	
			Unit	Q'ty	Unit price	Total	Q'ty	Total	Q'ty	Total	Q'ty	Total	Q'ty	Total
I	Civil Work													
II	Vehicles													
		<i>Passenger Van</i>		1	38,000	38,000	1	38,000						
	<i>Component 4</i>	Passenger van												
		<b>Total Passenger Van</b>				<b>38,000</b>		<b>38,000</b>						
		<i>Motorcycles</i>												
	<i>Component 4</i>	Motorcycle		1	1,200	1,200	1	1,200						
		<b>Total Motorcycles</b>				<b>1,200</b>		<b>1,200</b>						
		<b>Total Vehicles</b>				<b>39,200</b>		<b>39,200</b>						
III	Goods and Equipment													
		<i>Computers and Peripherals</i>												
	<i>Component 4</i>	Laptop computers		4	2,000	8,000	2	4,000	2	4,000				
	<i>Component 4</i>	Desktop computers		23	920	21,160	8	7,360	10	9,200	5	4,600		
	<i>Component 4</i>	Printer Laser Jet (Black & White)		3	250	750	1	250	2	500				
	<i>Component 4</i>	Printer Color Laser Jet		1	3,000	3,000			1	3,000				
	<i>Component 4</i>	Scanner		3	250	750	1	250	2	500				
	<i>Component 4</i>	Network cable cat6		1	1,000	1,000	1	1,000		-				
	<i>Component 4</i>	Photocopier machine digital		1	3,500	3,500	1	3,500		-				
	<i>Component 4</i>	Photocopier machine digital		1	7,500	7,500		-	1	7,500				
	<i>Component 4</i>	File server HP Reliant		1	3,100	3,100		-	1	3,100				
	<i>Component 4</i>	E-mail server		1	760	760		-	1	760				
	<i>Component 4</i>	Firewall computers		1	580	580		-	1	580				
	<i>Component 4</i>	Telephone set		10	35	350	5	175		-	5	175		
	<i>Component 4</i>	Telephone system		1	175	175		-	1	175				
	<i>Component 4</i>	Fax Machine		1	315	315		-		-	1	315		
		<b>Total Computers and Peripherals</b>				<b>50,940</b>		<b>16,535</b>		<b>29,315</b>		<b>5,090</b>		<b>-</b>
		<i>Audio Visual Equipment</i>												
	<i>Component 4</i>	LCD projector		1	2,000	2,000			1	2,000				
	<i>Component 4</i>	Digital Video camera		1	1,500	1,500	1	1,500		-				
	<i>Component 4</i>	Digital camera		1	1,200	1,200	1	1,200		-				
	<i>Component 4</i>	Television		2	250	500	1	250	1	250				
	<i>Component 4</i>	DVD player		2	200	400	1	200	1	200				
	<i>Component 4</i>	Voice recorder		1	120	120	1	120		-				

	<b>Total Audio Visual</b>				<b>5,720</b>		<b>3,270</b>		<b>2,450</b>		<b>-</b>	<b>-</b>	<b>-</b>
	<i>Office Furniture</i>												
Component 4	Office desk	8	280	2,240	5	1,400	3	840					
Component 4	Meeting table	2	250	500	1	250	1	250					
Component 4	Meeting chair	20	50	1,000	20	1,000		-					
Component 4	Adjustable chair	10	100	1,000	10	1,000		-					
Component 4	Filing cabinet	5	110	550	2	220	3	330					
Component 3	Library furniture	1	3,000	3,000	1	3,000		-					
Component 4	Miscellaneous furniture (Lounge/reception)	4	3,200	12,800	1	3,200	1	3,200	1	3,200	1	3,200	3,200
	<b>Total Office Furniture</b>			<b>21,090</b>		<b>10,070</b>		<b>4,620</b>		<b>3,200</b>	<b>1</b>	<b>3,200</b>	<b>3,200</b>
<b>IV.</b>	<b>Consultant Services &amp; Studies</b>												
	<i>International consultant/specialist</i>												
Component 1	Study on economic value	1	40,000	40,000	1	40,000							
Component 1	Study sustainability Phase 1 (Scoping and TOR) (Pre-implementation)	20	500	10,000	20	10,000							
Component 1	Study sustainability Phase 2 (Study itself)	1	30,000	30,000	1	30,000							
Component 1	Sustainability and fundraising consultant	140	500	70,000	80	40,000	20	10,000	20	10,000	20	10,000	10,000
Component 2	Study on demand for AC services in different areas	1	10,000	10,000	1	10,000		-		-		-	-
Component 3	Media and communication consultant	10	500	5,000					10	5,000			
Component 4	Baseline survey (Pre-implementation)	1	20,000	20,000	1	20,000		-		-		-	-
Component 4	Evaluation of confidence/credibility	2	8,000	16,000			1	8,000			1	8,000	8,000
Component 4	Assessment of awareness /understanding	2	15,000	30,000			1	15,000			1	15,000	15,000
Component 4	Biennial expert audit	2	5,000	10,000			1	5,000			1	5,000	5,000
Component 4	End of project management consultant(Pre-implementation)	1	20,000	20,000							1	20,000	20,000
Component 4	TA project management consultant (Pre-implementation)	1	40,000	40,000	1	40,000		-		-		-	-
	<b>Total International Consultants</b>			<b>301,000</b>		<b>190,000</b>		<b>38,000</b>		<b>15,000</b>		<b>58,000</b>	<b>58,000</b>
	<i>National Consultants/ Specialists</i>												
Component 3	Production Firm for :												
	(1) Public service announcement/develop sport	2	4,000	8,000	1	4,000	1	4,000					
	(2) Soap opera	3	15,000	45,000	1	15,000	2	30,000					
	(3) Training Video	1	12,000	12,000	1	12,000							
	(4) Media consultant	35	500	17,500	20	10,000	15	7,500					
Component 4	Media monitoring	4	2,500	10,000	1	2,500	1	2,500	1	2,500	1	2,500	2,500
	<b>Total National Consultants</b>			<b>999,185,000</b>		<b>469,887,000</b>		<b>44,000</b>		<b>2,500</b>		<b>2,500</b>	<b>2,500</b>
	<i>Pre Listed Consultants for Labour Dispute</i>												
Component 2	Short term legal expert	4	8,000	32,000	1	8,000	1	8,000	1	8,000	1	8,000	8,000
	<b>Total Pre Listed Consultants for Labour Dispute</b>			<b>32,000</b>		<b>8,000</b>		<b>8,000</b>		<b>8,000</b>		<b>8,000</b>	<b>8,000</b>
	<i>ACF Regular Staff</i>												
Components 2, 3 & 4	Senior Officers	8	10,679	85,432	2	21,358	2	21,358	2	21,358	2	21,358	21,358
	<b>Total ACF regular staff</b>			<b>85,432</b>		<b>21,358.00</b>		<b>21,358.00</b>		<b>21,358.00</b>		<b>21,358.00</b>	<b>21,358.00</b>
	<b>Total Four Years</b>			<b>999,720,382</b>		<b>470,175,433</b>		<b>147,743</b>		<b>55,148</b>		<b>93,058</b>	<b>93,058</b>

## Risk Management Matrix

This Risk Matrix is a management tool to be used by the senior managers of the organisations to discuss key areas of concerns (especially where the Risk Magnitude is rated High or Moderate) during project preparation and at the start of project implementation. Due to the changing circumstances, the risk plan and matrix need to be updated at regular intervals.

For the purposes of interpretation of ratings in this matrix, the following should be noted:

Risk Score: Magnitude = Consequence x Likelihood\*

Consequence: 5=very serious, 4=serious, 3=moderate, 2=minor, 1=insignificant

Likelihood: 5=very high, 4=high, 3=medium, 2=low, 1=very low

Magnitude Rating: 6 or less is **low risk (L)**, 8 – 12 is **moderate risk (M)** and 14 – 20 is **high risk (H)**, and any score above 20 is a **top risk (T)** requiring immediate attention.

The following review system is recommended according to the Risk Magnitude:

1. A risk score of 6 or less (low risk) should require no mitigating action. However, risk owners should review controls for low risk areas to ensure they are effective and not disproportionate.
2. Risk score from 8 to 12 (medium risk) should trigger a review of the existing mitigation measures, if a new risk, and may require the implementation of additional controls.
3. A risk score of 14 to 20 (high risk) should trigger a review of the mitigation measures, and is likely to require additional mitigation measures. The problem may need to be brought to the attention of senior management. Such risks should be reviewed at least 6 monthly.
4. Finally a risk score of above 20 (top level of risk) should trigger an immediate review of the mitigation measures, and is likely to require additional mitigation measures. The problem should be promptly brought to the attention of senior management. Such risks should be kept in view until all possible controls and preventive measures are put in place.

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\* In Column 3 of the Risk Matrix, the rating of the Risk is by a simple formula: Magnitude = Consequence x Likelihood. Consequence and Likelihood are rated on a scale of 1 to 5. For instance, if the Consequence is assessed to be 5 and the Likelihood is rated 3, then the Risk Score is 3 x 5 = 15. Different Risk Scores are designated a Risk Magnitude: 1 - 6 is Low Risk, 8 - 12 is Moderate Risk, 14 - 20 is High Risk, 20 and above are designated Top Risks. The purpose of this rating is to focus management attention on a prioritised scale.

Risk Description	Impact	Risk Score	Mitigation Strategy	Action Agents	Progress Status (Give details of tasks completed)	Remaining Action (Give resource requirements and timelines)
Strain on the collaborative and interdependent relationship between the AC/F and the Ministry.	Loss of harmonious and collaborative relationship necessary to support the Arbitration Council in its DFGG activities.	Consequence: 5 Likelihood: 4 Risk Score: 20 H	<ol style="list-style-type: none"> <li>1. Maintain existing institutional framework wherein ACF provides managerial, financial, and technical support to Arbitration Council, and SAC provides clerical and registry functions for the Council.</li> <li>2. Hold regular meetings and other activities between the ACF staff and SAC staff pursuant to the <i>Agreement Between Department of Labour Disputes and Arbitration Council Foundation</i>, including monitoring and revision (as needed) of the working relationship between ACF and SAC and therefore, of the Agreement as well.</li> <li>3. Transform the DFGG Project's Technical Working Group (currently composed of arbitrators, representatives from the Ministry, including SAC, and representatives from the ACF) into a DFGG Project Collaboration Committee to facilitate information sharing, consult with stakeholders and coordinate joint activities.</li> <li>4. Hold regular meetings between arbitrators, the ACF staff, and SAC staff.</li> <li>5. Hold regular meetings between arbitrators and Ministry conciliators, in Phnom Penh and elsewhere, which will be designed to share expertise in labour dispute resolution and develop capacity and professional relationships. It is expected that such meetings will also promote shared understanding and an appreciation of the work of each institution's labour dispute resolution professionals.</li> <li>6. Continue joint training and outreach activities both by and for arbitrators, the ACF, and the Ministry.</li> <li>7. Hold regular domestic and international training sessions organised by ACF that are tailored for the benefit of arbitrators and Ministry officials.</li> </ol>	MOLVT, AC/F, SAC, and PCC	<ul style="list-style-type: none"> <li>• ACF and SAC provide support to AC</li> <li>• ACF and SAC meet regularly</li> <li>• ACF and SAC staff invited to Regular Arbitrators Meetings</li> <li>• Training activities conducted jointly by arbitrators, ACF and SAC staff</li> <li>• ACF organises capacity building activities for arbitrators and SAC/Ministry officials</li> </ul>	<ul style="list-style-type: none"> <li>• TWG to be transformed into PCC</li> <li>• Meetings to be arranged between arbitrators and Ministry conciliators</li> </ul>

Risk Description	Impact	Risk Score	Mitigation Strategy	Action Agents	Progress Status (Give details of tasks completed)	Remaining Action (Give resource requirements and timelines)
Improper influence exerted on the AC, especially in the selection, appointment, removal of arbitrators or in the decision-making process of arbitration panels on specific labour dispute cases.	Loss of reputation – independence, integrity and impartiality.	Consequence: 5 Likelihood: 3 Risk Score: 15 H	<ol style="list-style-type: none"> <li>1. Using the process of the DFGG Project preparation to engage arbitrators, the ACF, and the Ministry, as well as unions and employer associations to set further rules to safeguard the independence and impartiality of the Council.</li> <li>2. ILO to continue its facilitating role in selection of arbitrators.</li> <li>3. Development of procedures to ensure that arbitrators are not influenced by stakeholders or vested interests, including finalisation of the statement of ethical conduct for arbitrators, tentatively titled <i>Professional Guidelines for Arbitrators</i>.</li> <li>4. Arbitral awards and the legal reasoning behind them to be continued being published and widely disseminated.</li> <li>4. Measures to institutionalise and expand AC's partnership with other industrial relations institutions and stakeholders as listed in Section 9 on <i>Participation and Partnerships Plan</i> to ensure countervailing forces and interests prevent improper influence by particular interests.</li> <li>5. Measures to raise awareness and visibility of the Arbitration Council as listed in Section 12 on <i>Communication Strategy</i>.</li> </ol>	AC/F, SAC	<ul style="list-style-type: none"> <li>• DFGG TWG and TAG helps to enhance stakeholder engagement</li> <li>• ILO facilitates the selection process for new arbitrators</li> <li>• Arbitral awards are published</li> </ul>	<ul style="list-style-type: none"> <li>• Agreement to be reached with ILO regarding the future status (after 2008) of its role in facilitating the selection process for new arbitrators</li> <li>• Partnerships to be expanded and institutionalised</li> <li>• Measures listed to be undertaken in order to raise awareness and visibility</li> </ul>

Risk Description	Impact	Risk Score	Mitigation Strategy	Action Agents	Progress Status (Give details of tasks completed)	Remaining Action (Give resource requirements and timelines)
Disproportionate reliance on Arbitration Council to resolve collective disputes.	Bottlenecks in resolving disputes. Backlog results.	Consequence: 3 Likelihood: 3 Risk Score: 9 M	<ol style="list-style-type: none"> <li>1. MOLVT to build its capacity to improve labour inspection and conciliation functions, including development of guidelines and procedures manuals for conciliation.</li> <li>2. Employers and unions to build their capacity in workplace cooperation, with a view to improve their ability to prevent labour disputes.</li> <li>3. ACF to cooperate with social partners in the provision of capacity building for employers and unions in collective bargaining with a view to concluding more CBAs that provide for grievance procedures at enterprise level.</li> <li>4. Review the desirability and feasibility of individual rights disputes coming under the explicit jurisdiction of the Arbitration Council.</li> </ol>	MOLVT, Employers' groups, unions, social partners of the AC/F	<ul style="list-style-type: none"> <li>• ACF carries out training programmes for employers and unions on the Arbitration Council and the process for resolving labour disputes</li> </ul>	<ul style="list-style-type: none"> <li>• MOLVT to seek resources to build its capacity in inspection and conciliation</li> <li>• ACF to cooperate with social partners in order to promote appropriate CBAs</li> <li>• ACF to arrange for study to be carried out on the link between individual and collective rights disputes</li> </ul>

Risk Description	Impact	Risk Score	Mitigation Strategy	Action Agents	Progress Status (Give details of tasks completed)	Remaining Action (Give resource requirements and timelines)
<p>Illegal strikes, in which workers contravene the procedures laid out in the law and have gone on strike before their case is heard by the Ministry and the Arbitration Council.</p>	<p>The credibility and effectiveness of the Arbitration Council are undermined.</p>	<p>Consequence: 4 Likelihood: 5 Risk Score: 20 H</p>	<ol style="list-style-type: none"> <li>1. Cooperate with social partners in promotion of CBAs with non-strike clause and binding arbitration in exchange for the unions' agreement to give up their right to strike for a certain period of time, or at least to eliminate the practice of illegal strikes.</li> <li>2. Ministry and other social partners to engage employers and unions in promotion of workplace cooperation schemes and collective bargaining agreements.</li> <li>3. Ministry and ACF to expand trainings to stakeholders (including unions) regarding the labour dispute resolution process.</li> <li>4. Ministry and ACF work together to increase the visibility of dispute resolution mechanisms so workers know the alternatives to a strike.</li> <li>5. Preliminary proposals regarding direct access of parties to the Arbitration Council have been raised by stakeholders as a means to reduce the length of illegal strikes.</li> <li>6. DFGG funds to be provided under the Non-State Actor window in order to build capacity of unions to conduct industrial relations in the framework of the law (with limited recourse to strikes). Support also to be provided to ensure that as unions move into new sectors or areas, they organise workers in an appropriate and responsible fashion.</li> </ol>	<p>MOLVT, especially the labour inspectors and conciliators, AC/F, and National Committee for Strikes Prevention, Non-State Actors</p>	<ul style="list-style-type: none"> <li>• ACF carries out stakeholder training activities</li> </ul>	<ul style="list-style-type: none"> <li>• ACF to cooperate with social partners in order to promote appropriate CBAs</li> <li>• Stakeholder training activities to be expanded</li> <li>• Activities to be carried out to raise awareness and visibility of dispute resolution mechanisms</li> <li>• Direct access by parties to the Arbitration Council to be assessed for piloting</li> <li>• DFGG to fund Non-State Actors to build union capacity</li> </ul>

Risk Description	Impact	Risk Score	Mitigation Strategy	Action Agents	Progress Status (Give details of tasks completed)	Remaining Action (Give resource requirements and timelines)
Capacity of Ministry at national and provincial levels, in forwarding cases to the Arbitration Council	Access of stakeholders outside of Phnom Penh to Arbitration Council's services are limited or undermined.	Consequence: 3 Likelihood: 3 Risk Score: 9 M	<ol style="list-style-type: none"> <li>1. Strengthen the capacity of conciliators in Phnom Penh and Provincial Labour Offices, including joint training and outreach provided by Ministry, Arbitration Council and ACF to conciliators on labour dispute resolution, arbitration process and conciliation.</li> <li>2. Ministry and ACF will continue to cooperate to build close relations and good understanding of their respective roles, the role of the Arbitration Council and their mutual obligations to parties, through joint events, workshops, etc.</li> <li>3. Ministry conciliators to hand out information to parties regarding the arbitration process and arbitrators (including location of the Arbitration Council, what a hearing is, how to select arbitrators, where the arbitrator biography can be found, etc.)</li> </ol>	MOLVT, especially PLOs, and conciliators, AC/F	<ul style="list-style-type: none"> <li>• MOLVT and AC/F organise joint events to strengthen relations and understanding of respective roles</li> <li>• MOLVT and ACF develop information materials for parties</li> </ul>	<ul style="list-style-type: none"> <li>• Joint trainings and outreach to be carried out for conciliators on labour dispute resolution, arbitration and conciliation</li> <li>• MOLVT to distribute information materials to parties</li> </ul>

Risk Description	Impact	Risk Score	Mitigation Strategy	Action Agents	Progress Status (Give details of tasks completed)	Remaining Action (Give resource requirements and timelines)
Non-implementation of awards	Credibility and sustainability of the Arbitration Council are undermined.	Consequence: 3 Likelihood: 5 Risk Score: 15 H	<ol style="list-style-type: none"> <li>1. AC to cooperate with social partners in promotion of CBAs with non-strike clause and binding arbitration.</li> <li>2. Conciliators to communicate advantages of binding arbitration (which provides a final resolution and closure to a dispute) to parties at the conciliation stage before the case is referred to the Arbitration Council.</li> <li>3. Arbitrators to communicate with parties to explain the advantages of binding awards.</li> <li>4. Educate parties in the understanding of arbitral awards. The Ministry, the Arbitration Council and the ACF may conduct co-trainings for potential parties and parties in dispute on binding awards, legal strikes, and how read and understand the arbitral awards.</li> <li>5. MOLVT and AC to engage with other social partners and stakeholders to help train stakeholders in labour dispute resolution, and other appropriate topics.</li> <li>6. The Arbitration Council to continue to publish the arbitral awards on its website, which enables third parties such as ILO's <i>Better Factories Cambodia</i> to monitor compliance with the awards. Efforts by Non-State Actors should be supported to "name and shame" enterprises / unions which do not comply with arbitral awards.</li> </ol>	AC/F MOLVT, social partners, Non-State Actors	<ul style="list-style-type: none"> <li>• Stakeholder training activities carried out to build capacity in the labour dispute resolution process</li> <li>• Arbitral awards published on the Arbitration Council website</li> </ul>	<ul style="list-style-type: none"> <li>• ACF to cooperate with social partners in order to promote appropriate CBAs</li> <li>• Stakeholder training activities to be expanded</li> <li>• Conciliators to be trained on how to communicate the advantages of binding arbitration</li> <li>• DFGG to support Non-State Actors to "name and shame" parties that fail to comply with arbitral awards</li> </ul>

Risk Description	Impact	Risk Score	Mitigation Strategy	Action Agents	Progress Status (Give details of tasks completed)	Remaining Action (Give resource requirements and timelines)
Creation of a Labour Court	A nascent Labour Court may have inadequate understanding and appreciation for arbitration and ADR frameworks. Rulings might undermine the AC awards and the body of jurisprudence that has developed.	Consequence: 4 Likelihood: 2 Risk Score: 8 M	<ol style="list-style-type: none"> <li>1. Advocate for the incorporation of provisions similar to <i>Articles 349 – 353</i> of the Code of Civil Procedure and <i>Article 47</i> of the Prakas on the AC into the law and regulations governing the Labour Court to recognise the AC and the enforceability of AC's awards.</li> <li>2. Ensure that structure and proceedings of the Labour Court are in accordance with international labour standards and consistent with national labour law and regulations. In particular, using input and technical advice of the International Labour Organization when preparing regulations for the Labour Court.</li> <li>3. Train Labour Court judges in cooperation with social partners regarding the legal and jurisdictional issues at the intersection of alternative labour dispute resolution and the judicial authority.</li> </ol>	RGC (MOLVT), AC/F, social partners	<ul style="list-style-type: none"> <li>• N/A (Labour Court not yet implemented; law and regulations for Labour Court not yet drafted)</li> </ul>	<ul style="list-style-type: none"> <li>• Activities to be carried out when Labour Court regulations start to be drafted</li> </ul>
Disbursement delays, financial mismanagement and misprocurement, especially risk of undue delays in processing reimbursement applications and disbursement of funds.	Unreasonable delays in the processing or disbursement of funds by MEF or WB jeopardize AC activities. Leakage of funds from DFGG to other uses. Inappropriate selection of personnel or contractors yielding problems for the project during implementation.	Consequence: 5 Likelihood: 1 Risk Score: 5 L	<ol style="list-style-type: none"> <li>1. ACF to ensure that all financial management paperwork, including requests for reimbursement, is prepared correctly and delivered to MEF and WB at once, to reduce the time required for processing and approval</li> <li>2. ACF to track processing times and delays, and will, as appropriate, raise the issue of any unreasonable delays or slow processing times to the WB and/or the MEF</li> <li>3. ACF to recruit an additional officer to handle procurement in the Project.</li> <li>4. Financial Management Manual has been revised to include requirements for externally funded projects as approved by the MEF.</li> <li>5. Establishment of a DFGG Project-wide internal audit team by the Project Coordination Office of MOI.</li> </ol>	ACF, TWG	<ul style="list-style-type: none"> <li>• Financial Management Manual revised to comply with WB/RGC requirements</li> </ul>	<ul style="list-style-type: none"> <li>• Procurement officer to be recruited</li> <li>• Separate internal audit function to be established</li> </ul>



## Good Governance Framework

As set out in Sections 10 and 13, the Arbitration Council and ACF have robust protective measures already in place to mitigate against any potential corruption.

For the Arbitration Council itself, in its capacity as a tribunal for the resolution of collective labour disputes, the primary corruption risk is the possibility that a party to a dispute brought before the Council might try to influence the proceedings improperly, either by offering financial incentives or by attempting to exploit close relationships. To combat this eventuality, the Arbitration Council has incorporated several features into its proceedings which serve an anti-corruption function:

- *Tripartite panels, with each party selecting their own arbitrator.* Each party to a dispute selects an arbitrator (with the two party-selected arbitrators then choosing the third arbitrator), which minimises the likelihood that a party can influence the process improperly. This may be contrasted with the judicial system, where judges are assigned to cases and the parties must follow that judge's instructions.
- *Disclosure of potential conflict of interest.* According to established procedure, arbitrators must disclose any relationships they may have with parties and which may constitute a conflict of interest. In such a case, parties may be asked if they waive any objection, or if they wish to object on that basis. (Even without disclosure, parties are free to object to the presence of an arbitrator on the basis of conflict of interest.) The arbitration panel will take any such objection into consideration and will decide on the issue; a detailed explanation of the panel's final decision is included in the published decision. Arbitrators are also encouraged to recuse themselves from cases where they believe a conflict of interest may arise.
- *Non-binding arbitration by default.* As proceedings before the Arbitration Council are by default non-binding (absent any agreement to the contrary by both parties), any attempt at corruption or influence is thereby dissuaded, as there would be little incentive for a party to attempt to bribe an arbitrator when the resulting decision is non-binding.
- *All arbitral decisions are carefully reasoned, explained, signed and published widely.* While the primary purpose of this feature is to promote consistent jurisprudence and a broader understanding of the labour law – and thus, to contribute to better industrial relations – the clear, published explanations also make it more difficult for any arbitrator to attempt to decide a case on an improper basis.
- *Arbitral guideline on established jurisprudence.* In the Arbitration Council's first guideline (issued under the grant of authority provided in the *Prakas on the Arbitration Council*<sup>\*</sup>), the arbitrators have agreed to follow established jurisprudence; where they choose not to do so, they have agreed to explain carefully

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<sup>\*</sup> Art. 31, Prakas #99 MOSALVY - 2004.

their reasons for deviating from the established jurisprudence. This impedes any attempt at improper influence, as the arbitrators are bound to decide consistently on similar issues.

The success of the above features, as well as the high levels of integrity and professional conduct of the arbitrators, has given rise to praise from external observers. In a 2005 report, UNDP noted that none of those surveyed had made allegations of any corruption at the Arbitration Council.<sup>†</sup> However, notwithstanding its reputation for integrity, the arbitrators decided in late 2006 to draft a code of ethical conduct for arbitrators. This code, titled the *Professional Guidelines for Arbitrators*, was subject to debate and revision during 2007, and was finalised and approved by the arbitrators in the first half of 2008. The *Professional Guidelines for Arbitrators* will be publicised and disseminated to stakeholders and parties.

For the ACF, as the supporting body which manages the finances of the Arbitration Council, the main corruption risks relate to potential manipulation and mismanagement of the procurement, payments and financial management systems. To combat any such problems, the ACF has a financial system in place with robust internal controls and regular oversight by the Board of Directors, who receive quarterly and annual reports. According to the ACF Statute, the Board selects a qualified external auditor to conduct a yearly audit of ACF finances; the selection of the auditor is done through a competitive tender process. In 2007, the firm KPMG was selected to conduct the first financial audit of ACF (covering the period 1 July 2005 through 31 December 2006), and gave an unqualified (positive) audit report.

The Board has also approved the ACF Financial Manual, which incorporates a number of safeguards against misuse of funds, improper authorisation and misprocurement. This Financial Manual has been reviewed by the DFGG Financial Management Specialist, who has recommended a few changes, primarily regarding procurement and the use of cash transactions. The manual has been revised accordingly.

According to the revised manual, the ACF will segregate its procurement, goods receipt and payment activities; to this end, the ACF will hire a dedicated procurement officer prior to the start of project implementation, and will publish and disseminate procurement requirements, RFPs and other bidding documents. ACF will also establish and publicise during project implementation a mechanism to receive and handle any complaints regarding the procurement process. ACF has mitigated any remaining risk of misappropriation and/or misuse of project funds, by further restricting the use of cash transactions.

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<sup>†</sup> UNDP, *Pathways to Justice* (Phnom Penh, 2005) at 13.

## Good Governance Framework for Arbitration Council Foundation<sup>151</sup>

Elements 1-8 apply to all Project components except where modified under Element 9.

	Issue	Action to Mitigate Risk	Responsibility	Target/Monitoring
<b>1</b>	<b>Element 1: Procurement</b>			
1a	Reduce potential irregularities.	<p>Unless otherwise agreed between the RGC and the IDA, the RGC shall use the services of an International Procurement Agent (IPA) engaged by MEF under TOR satisfactory to IDA for all procurement under all components of the Project, with the following exceptions, which shall be carried out by the respective component IA:</p> <p>1. procurement under all components (i) through direct contracting, (ii) from UN agencies, (iii) by single source, and (iv) by sole source selection; and</p> <p>2. procurement financed by sources other than IDA, including RGC and all bilateral donors.</p> <p>For procurement undertaken by the IPA, each component IA shall prepare technical specifications for goods and works and TOR for consultants and hand over to the IPA, who shall prepare bidding documents and RFPs, call and evaluate bids and recommend award, all in accordance with the WB's Procurement and Consultant Guidelines and the Procurement Provisions of the Financing Agreement, including the use under NCB and Shopping methods of the RGC's Externally Assisted Procurement Manual for Goods, Works and</p>	<p>MEF – IPA commenced work. in December 2007.</p> <p>Component IAs.</p> <p>Component IAs.</p> <p>Component IAs.</p> <p>Included in IPA's TOR.</p>	<p>All component IAs to agree IPA's role by negotiations. To be reflected in the Grant Agreement.</p> <p>IDA to monitor through supervision missions and prior and post reviews.</p> <p>IDA to monitor through supervision missions and prior and post reviews.</p> <p>IDA to monitor through supervision missions and prior and post reviews.</p> <p>Supervision of IPA by the RGC's Inter-Ministerial Procurement Committee (IPC). IDA monitoring of IPA's work through quarterly review meetings and prior and post reviews.</p>

<sup>151</sup> All abbreviations used in the GGF are recorded at the end of the matrix.

	Issue	Action to Mitigate Risk	Responsibility	Target/Monitoring
		Services (SOP/PM), mandated by MEF Sub-Decree No. 14 dated February 26, 2007.		
1b	Ensure adequate procurement capacity of each component IA.	IDA has reviewed the procurement capacity of each IA and action plans are developed to address capacity issues.	Component IAs with IDA NOL (see IA-specific GGFs).	Agree action plans at appraisal. Implementation of action plans including recruitment of staff by advance action, with staff in place at project commencement.
1c	Avoid risk of inadequate or delayed Procurement Plans.	Each IA to prepare realistic annual Procurement Plan based on its Annual Work Plan and Budget. Procurement Plans for the first eighteen months of project implementation have already been developed.	Component IAs with IDA NOL (see IA-specific GGFs). PCO to coordinate.	Agree first 18-month Plan at appraisal. PCO to submit preliminary updated estimates to MEF and IDA annually in June (for MEF budget estimates), preliminary updated plans by September, and final updated plan by December.
1d	Informal payments by contractors, suppliers and consultants.	<p>All contractors, suppliers and consultants – firms or individuals, national and international – bidding for contracts under the project shall sign the Declaration on Ethical Conduct and Fraud and Corruption in the SOP/PM. Amend item 5 of the Declaration to read:</p> <p>“In connection with this procurement exercise and any contract that is awarded to us as a result thereof, no payments have been made or will be made by us, our associates, agents, shareholders, partners or their relatives or associates to any of the staff, associates, consultants, employees or relatives of such who are involved with the procurement process, contract implementation, and the issuance of progress payments on behalf of the purchaser, client or employer.”</p> <p>Amended Declaration to be included in all bidding documents, requests for proposals (RFPs), and contracts.</p>	IPA through MEF instruction.	PCO to monitor. IDA to verify through prior and post reviews.
<b>2</b>	<b>Element 2: Financial Management</b>			

	<b>Issue</b>	<b>Action to Mitigate Risk</b>	<b>Responsibility</b>	<b>Target/Monitoring</b>
2a	Strengthen internal controls.	All component IAs to follow SOP/FMM procedures, mandated by Sub-Decree No. 14 dated February 26, 2007, supplemented by a project-specific Financial Management and Disbursement Manual (FMDM) currently at draft stage.	PCO to complete FMDM acceptable to DFGG Project Coordinator and obtain IDA NOL.  Each component IA Chief Financial Officers to ensure compliance.	Draft FMDM agreed by negotiations and final version to be completed during DFGG pre-implementation stage. <sup>152</sup> Reflect use of SOP/FMM and FMDM in Grant agreement. IDA to verify compliance during supervision missions.  PCO Internal Audit Unit to carry out spot checks on compliance.
2b	Strengthen financial management capacity.	PCO will recruit a qualified accountant as Financial Management Adviser for the whole Project, and a Project Accountant and two accounting officers for duties within the PCO, all under TOR acceptable to the IDA.  Each IA to implement the detailed action plans (including training and recruitment of staff) which have been developed to address issues identified through the financial management capacity assessment carried out during project preparation.	PCO with IDA NOL.  See component specific GGFs.	Agree TOR at appraisal. Recruit by October 2008.
2c	Ensure uniform Project accounting and readiness of proprietary software.	PCO will ensure that each component IA establishes a uniform Project accounting system with a common chart of accounts, using a proprietary software package satisfactory to the IDA.	PCO with IDA NOL.	Agree proprietary package by October 2008. PCO to install by effectiveness. IDA to monitor correct use during FM supervision missions.

<sup>152</sup> The DFGG pre-implementation stage is currently scheduled to run from May to December 2008.

	<b>Issue</b>	<b>Action to Mitigate Risk</b>	<b>Responsibility</b>	<b>Target/Monitoring</b>
2d	Ensure comprehensive FM reporting.	All component IAs will utilize a template for interim FM reporting which has been developed and will be agreed.  Reports to be submitted to IDA quarterly not more than 45 days after the end of the reporting period.	PCO and all component IAs.	Agree template by negotiations.  PCO to monitor FM reports by component IAs for compliance with agreed template and submission deadlines..
2e	Ensure effective internal audit in all component IAs.	An Internal Audit Unit comprising an experienced internal auditor and two assistants will be established in the PCO and be responsible for internal audit of all Project components , including the provincial activities of component IAs.	PCO will prepare TOR for Internal Audit Unit with IDA NOL. PCO will recruit auditors.	TOR to be agreed by October 2008. Auditors in place by January 2009.
2f	Annual external audit of whole Project.	An independent auditor acceptable to IDA will be appointed to carry out an annual audit of project financial statements and effectiveness of internal controls, in accordance with TOR satisfactory to IDA.	PCO to prepare TOR and obtain IDA NOL. IPA to recruit external auditor.	Agree TOR by June 2009. Appointment in time for first annual audit, first quarter 2010.
2g	Minimize cash transactions.	All progress payments to contractors, suppliers and consultants – firms, individuals, national and international – to be made by check or transfer to bank accounts. Retain evidence for audit and IDA supervision missions. Petty cash transactions to be limited to amounts less than US\$500 equivalent.	Each component IA Chief Financial Officer.	PCO to monitor all other component agencies and report quarterly to MOI. IDA to monitor during supervision missions.
2h	Avoid inconsistency in allowances paid to Government staff attending training, workshops and study tours	Adopt MEF Decision Letter No. 2000 of April 23, 2007, for DSA rates for in-country travel. For international travel, some of the DSA rates specified in Anukret 10 of April 12, 2004 are position-based and/or higher than UN norms and are not acceptable to IDA for application on IDA-financed projects.	MEF/IDA to discuss and agree standard DSA for international travel, after which MEF to advise MOI. PCO to ensure compliance of all component IAs.	International DSA rates to be agreed by October 2008. Until then, IAs may use IDA rates for overseas travel. IDA to monitor SOEs with withdrawal applications.
2i	Planning of training, workshops and study tours.	Each component IA will establish an Annual Training and Workshop Plan in accordance with its approved Project Proposal. The Plan should include:  1. Detailed costs estimates.	The PCO will coordinate component IA Plans and submit to IDA for NOL.  PCO and project agencies to follow Working Group	NOL in March and submission to MEF in June (for MEF initial round of budget submissions).  IDA to verify through its membership of Working Group.



	Issue	Action to Mitigate Risk	Responsibility	Target/Monitoring
		<p>translator, stationery and handouts, use of photocopying facilities.</p> <p>Reimburse against receipts except where covered by fixed allowances in MEF's letter No. 2000. Evidence of payment to be kept for attendees' per diem and allowances.</p>	Each component IA Chief Financial Officer.	PCO to monitor compliance. IDA to monitor SOEs with withdrawal applications and verify during supervision missions.
2j	Avoid delayed or non-existent reconciliation of advances for operating costs and expenses.	Each component IA will maintain an advance register, vehicle logbook and fuel register. Advances for operating costs and expenses to offices, individuals or groups involved in project activities to be reconciled within two weeks of the end of each month. No further advance to be paid to an office, individual or group until its previous advance is reconciled and cleared against documentary evidence.	Each component IA Chief Financial Officer.	PCO to monitor compliance. IDA to verify during supervision missions.
2k	Adoption of the MBPI for State implemented components.	MEF and MOI agree that the State component IAs will adopt the MBPI of the Government's Public Financial Management Reform Program. The MBPI will be implemented strictly according to an MBPI Manual to be prepared for the Project.	PCO to complete the MBPI Manual, including cost sharing basis, for MEF and IDA approval.	Manual and cost sharing to be approved during negotiations. PCO to monitor application.
<b>3</b>	<b>Element 3 : Disclosure</b>			
3a	Minimize conflict of interest among project staff.	Project staff to disclose private and public affiliations or personal interest before becoming involved in any project-related transaction or contract award decision.	Project managers of all component IAs to ask for and retain written disclosure.	PCO to monitor. IDA to verify during supervision missions.
3b	Enhance transparency through greater public disclosure of project information.	<p>Component IAs to disclose information on their individual websites in accordance with guidelines set forth in their Communications Plans, with hard copies available at component IA offices for public inspection on request. As a minimum, disclosed information is expected to include:</p> <ul style="list-style-type: none"> <li>• project name, objectives, original and revised amount, sources of funding, effectiveness date, original closing date, revised closing date, number of extensions, name</li> </ul>	<p>PCO to coordinate lists of information to be disclosed by each component IA and agree with IDA.</p> <p>Each component IA responsible for disclosure of information concerning its</p>	<p>By Negotiations.</p> <p>PCO to monitor progress during reviews.</p> <p>Biannually. PCO to monitor compliance and IDA to verify during supervision missions.</p>

	Issue	Action to Mitigate Risk	Responsibility	Target/Monitoring
		<p>and address of implementing agency, name of Project Director with contact information, name of WB TTL and contact information in the MEF-WB unit and WB Office in Cambodia</p> <ul style="list-style-type: none"> <li>• IA project proposals agreed at appraisal</li> <li>• Annual Work Program and Procurement Plan, identifying contracts to be procured in next 12 months, nature of each contract, location, method of procurement, means of advertisement, bidding period, location where bidding documents and RFPs can be inspected, expected date of availability, and cost of bidding documents</li> <li>• consultant long and short lists</li> <li>• bidding documents and RFP's to be available for inspection</li> <li>• bid closing dates, names of bidders and their bid prices at opening</li> <li>• list and details of contracts awarded, names of losing bidders and, if their bid prices were lower than the winning bidder, the reason for their rejection</li> <li>• project progress reports, detailing project components, percentage completion, data on performance indicators, and planned and actual disbursements by sub-component</li> <li>• annual financial statements and audit opinion</li> <li>• other specific reports prepared by the project</li> <li>• complaints and remedies and mechanism</li> <li>• code of ethical conduct</li> </ul>	component. IPA will disclose procurement information.	
3c	Enhance Project visibility through the media.	<p>PCO will establish the Learning and Communications Working Group to advise on learning, dissemination and communication activities for the Project.</p> <p>Component IAs and the PCO to implement the project's</p>	<p>PCO.</p> <p>Component IAs and the</p>	<p>Learning and Communications Working Group established during DFGG pre-implementation stage.</p> <p>Continuously after Project</p>

	Issue	Action to Mitigate Risk	Responsibility	Target/Monitoring
		Communications Strategy so as to raise public awareness on governance issues, report on Project activities, help protect reform leaders and their civil society partners from reprisals and backlash, and manage negative publicity and scandals.	PCO.	commencement. PCO to monitor progress. IDA to verify implementation during supervision missions.
<b>4</b>	<b>Element 4: Civil Society Role</b>			
4a	Greater involvement with CSOs.	All component IAs to implement their Partnership Plans included in the PIM, which will include the involvement of CSO(s) in selected aspects of project implementation and invitation to observe selected events.  All major CSO involvement to be recorded in Project progress reports.	PIM to be cleared by MOI and subject to NOL from IDA.  PCO to coordinate with all State component IAs on reporting.	Agree PIM during DFGG pre-implementation stage.  PCO to monitor CSO involvement in State components. IDA to verify during supervision missions.
<b>5</b>	<b>Element 5: Complaints (Grievances) and Remedies Mechanism</b>			
5a	Introduce a formal complaints/grievances and remedies mechanism covering all components of the project.	The PIM will include a project-wide complaints and remedies mechanism for all components, including sub-procedures specific to particular components as necessary.  Complaints procedures regarding procurement to follow process set out in SOP/PM.	PCO with IDA NOL to PIM.  IPA/PCO.	Agree PIM during DFGG pre-implementation stage. PCO to monitor adoption of complaints and remedies mechanism. IDA to verify during supervision missions.  IDA to monitor during prior or post reviews.
5b	Support the formal complaints mechanism with establishment of help lines and feedback channels.	PCO will establish informal advice- and information-giving mechanisms, as well as consultative meetings, dialogues and workshops, allowing for informal feedback to be provided, in a format and manner appropriate to the needs of the broad stakeholder of Project initiatives (especially those potentially affected by the project's initiatives).	PCO in consultation with component IAs to prepare mechanisms and include in the PIM.	Agree PIM during DFGG pre-implementation stage. PCO to monitor usage of help line and feedback channels. IDA to verify adoption during supervision missions.
<b>6</b>	<b>Element 6: Code of Ethical Conduct</b>			
6a	No overall Code of Conduct	<b>Each component IA to design Code for its project</b>	Each component IA to	Design and furnish copies to IDA

	<b>Issue</b>	<b>Action to Mitigate Risk</b>	<b>Responsibility</b>	<b>Target/Monitoring</b>
	for civil servants. <sup>153</sup>	<b>staff, including contracted staff, to sign individually. Government agencies may incorporate material from the Civil Service Statute of 1994.</b>	design its Code.	during DFGG pre-implementation stage. PCO to monitor adoption. IDA to verify adoption during supervision missions.
<b>7</b>	<b>Element 7: Sanctions</b>			
7a	Reinforce Code of Conduct with sanctions for fraudulent and corrupt activity by staff of project agencies, contractors, suppliers and consultants.	Each component IA to identify and apply to project staff sanctions available under current law of Cambodia and its own regulations. Sanctions against contractors, suppliers and consultants will be those defined in Section 3 of the SOP/PM.  IDA to apply sanctions available in its general and project-specific legal agreements, including the WB Group's Anti-Corruption Guidelines (ACG) and Sanctions Regime introduced in October 2006 and as may be updated subsequently.	Each component IA to identify and disseminate with Code of Ethical Conduct.  IDA to provide copies of its ACG and Sanctions Regime to PCO and all IAs.	Define and furnish copy to IDA during DFGG pre-implementation stage. PCO to monitor application and IDA to verify during supervision missions.  Copy of ACG and Sanctions Regime provided to PCO during appraisal. IDA may apply sanctions whenever evidence is found.
<b>8</b>	<b>Element 8: Project Specific Elements</b>			
8a	Verification and technical audit to prevent capture of Project resources for non-intended recipients or for personal benefit of individuals or groups with vested interests.	The PCO will recruit a team of independent technical audit consultants, both international and national, to carry out intermittent audit of all activities of the Project. The focus will be on due diligence to verify that goods, works and services being financed by the IDA Grant are in place in the specified quantity and acceptable quality, counterpart resources are in place, and that outputs of all activities are in line with Project design.	PCO will prepare TOR and obtain IDA NOL.  IPA will recruit the technical audit consultants with IDA NOL during recruitment process.	During DFGG pre-implementation stage.  Consultants in place by June 2009.

<sup>153</sup> See draft generic Code of Conduct as Attachment A to this Annex.

	<b>Issue</b>	<b>Action to Mitigate Risk</b>	<b>Responsibility</b>	<b>Target/Monitoring</b>
8b	Use the GGF as a management tool with regular reviews and updates by mutual agreement.	<p>PCO with senior management of component IAs to conduct quarterly reviews of the GGF and any other fiduciary risks, identify early warning signs and mitigation measures, and propose updates of the GGF as necessary for the IDA's consideration, to ensure that effective and adequate controls are in place.</p> <p>The PCO, with assistance from the Project Preparation Team will design and deliver training in risk management and anti-corruption, through workshops for all Project staff of all levels in component IAs financed under the supplemental PPF.</p>	<p>PCO and all IAs.</p> <p>PCO and Project Preparation Team with IDA guidance and overview.</p>	<p>PCO to report to the Government's ACWG and IDA within two weeks of each quarterly review.</p> <p>Training workshops to take place during DFGG pre-implementation stage when IA implementation teams are in place.</p>
8c	Promote synergy, cross-learning and constructive competition among components of the Project.	PCO to arrange quarterly workshops among component IAs to share experience of problems encountered by them, and effectiveness of solutions applied. The workshops would also enhance healthy competition among IAs in promoting effective project management and innovation in good governance.	PCO and all component IAs.	Quarterly. PCO to report on workshops to MOI and all component IAs, with copy to IDA, not later than two weeks after each workshop.
8d	Strengthen oversight, monitoring and feedback on Project initiatives through demand-side social accountability.	Supplement the enhanced CSO role (item 4a) by engaging citizens and the media to monitor and provide feedback on the outputs and outcomes of project activities and organizing internships, dialogue, training workshops and focus events to reach out to NGOs, CSOs and other civic groups to publicize the Project's work. An example would be to organize a high profile nation-wide essay contest and art competition for youths on International Anti-Corruption Day (December 9) to solicit vision and ideas for the future.	All IAs to organize working groups and design activity plans, with PCO coordination.	IAs to draft plans during DFGG pre-implementation stage. PCO to furnish copies to IDA. PCO to monitor implementation.
<b>9</b>	<b>Element 9: ACF Specific Issues</b>			
9a	<u>Procurement</u> Responsibilities of ACF	Unless otherwise agreed between the RGC and the IDA, ACF will be responsible for the complete procurement cycle for: (1) vehicles under component 4 of its Project Proposal to be procured from UNOPS; (2) consultants	ACF with PCO oversight. ACF will continue to recruit and hire staff, emergency consultants and independent	IDA to monitor through prior or post reviews.

	Issue	Action to Mitigate Risk	Responsibility	Target/Monitoring
		<p>for components 3 and 4 of its Project Proposal recruited through single source selection (SSS) procedures; and (3) any direct contracting that has received prior approval of the IDA. In such cases, procurement shall be undertaken in accordance with the Bank's Guidelines and the procedures specified with SOP/PM, as mandated by MEF Sub-Decree No. 14 dated February 26, 2007.</p> <p>The ongoing recruitment and hiring of ACF regular staff (including legal, administrative, finance and procurement), short-term emergency labour arbitration experts and independent external financial auditors selected by ACF Board of Directors are not subject to IPA or other procurement guidelines or procedures.</p> <p>For expenditures (including those in the approved Project budget) that are not financed with IDA funds, ACF need not undertake procurement via the IPA or other procurement guidelines or procedures.</p>	ACF Board-selected external auditors according to its approved guidelines and procedures.	
9b	<u>Procurement</u> Need to strengthen procurement capacity.	ACF shall hire one qualified procurement staff to coordinate ACF's procurement activities with the IPA, MEF and WB and carry out the procurement specified in item 9a.	ACF with PCO oversight.	ACF to hire staff to be in place two weeks after effectiveness.
9c	<u>Financial Management</u> Responsibilities of ACF	<p>ACF will be responsible for its FM function, accounting and management of fund flows, designating a Project Accountant and one accounting officer to support project accounting work.</p> <p>ACF is not required to install the accounting software package referenced in item 2c; ACF will continue to utilize its existing accounting system and software package.</p> <p>ACF will continue its own practice of an annual external</p>	ACF with PCO oversight.	Existing ACF staff to be designated by negotiations, or new staff (if required) to be in place two weeks after effectiveness.

	<b>Issue</b>	<b>Action to Mitigate Risk</b>	<b>Responsibility</b>	<b>Target/Monitoring</b>
		audit conducted by independent auditors selected by the ACF Board of Directors, as mandated by the ACF Statute.		
9d	<u>Financial Management</u> Financial independence and sustainability.	ACF will prepare an Action Plan for its progressive financial independence and sustainability.	ACF	ACF to draft strategy by DFGG Mid-term Review, Action Plan to be finalized and adopted by end of year 3 of DFGG. PCO to monitor progress. IDA to review during Mid-term Review and end year 3.
9e	<u>Financial Management</u> Clarification of items 2g and 2h	Petty cash transactions during overseas travel which cannot be carried out by check or transfer to bank accounts shall not be limited to US\$500; ACF will continue to retain evidence of any such transactions for audit and IDA supervision missions.  Subject to confirmation by MEF that ACF is not bound by Anukret 10 of April 2004 and Decision Letter 2000 of April 2007, ACF may pay DSA to its project staff in accordance with its established rates and procedures.	MEF to confirm ACF exemption from Anukret 10 and Decision Letter 2000.	MEF and IDA to confirm during negotiations which DSA rates shall be applied by ACF.
9f	<u>Disclosure</u> Lack of transparency of information on AC procedures and decisions	In addition to disclosure requirements under item 3b, ACF will continue to disclose on its website and by dissemination of hard copies, including new formats such as CD-ROM, full information on the arbitration process and procedures and all arbitral decisions.	ACF – disclosure of arbitration process and procedures commenced in 2003. Full disclosure of Project information under item 3b to commence in mid-2009 when ACF website upgrading is completed.	Regular updating of website to continue during Project implementation. PCO to monitor and IDA to verify during supervision missions.
9g	<u>Civil Society Role</u> Low turnout of civil society representatives at relevant ACF activities and meetings.	In addition to implementing its Partnership Plans described in the PIM (item 4a), ACF will establish a tripartite Stakeholder Advisory Group (SAG) as an important platform for stakeholder consultation.	ACF Executive Director and Deputy Executive Director in accordance with the TOR given in the approved Project Proposal.	SAG established and functional by 12 months after effectiveness.
9h	<u>Complaints and Remedies Mechanism</u> Complaints relating to	The Complaints and Remedies Mechanism does not apply to the labour dispute activities of the	ACF to provide copy of arbitral complaints mechanism to PCO.	During DFGG pre-implementation stage. PCO and IDA to agree final complaints and remedies

	Issue	Action to Mitigate Risk	Responsibility	Target/Monitoring
	arbitral decisions.	Arbitration Council; in particular, any complaint or related question regarding a labour dispute case registered with the Arbitration Council will be handled by the standard procedures and guidelines of the Arbitration Council, the Secretariat of the Arbitration Council and/or ACF, including via the procedures provided in the Labour Law (1997), Prakas 99 MOSALVY, dated 21 April 2004, on the Arbitration Council, and related laws and regulations.		mechanism with provision for ACF to deal with complaints on arbitral decisions.
9i	<u>Professional Guidelines</u> Need to raise awareness of Professional Guidelines for Arbitrators	See item 6a. ACF will facilitate completion and agreement on the Professional Guidelines for Arbitrators, which ACF will display publicly at the AC chambers and on the website, and furnish a copy to the PCO and IDA..	ACF will publish on its website when agreed	Complete, adopt, publish and furnish copies to IDA during DFGG pre-implementation stage. PCO to monitor adoption. IDA to verify adoption during supervision missions.

### Abbreviations Used

ACF	Arbitration Council Foundation	MOI	Ministry of Interior
ACG	Anti-Corruption Guidelines (of the WB Group)	NOL	No Objection Letter
ACWG	Anti-Corruption Working Group (of RGC)	PCG	Project Coordination Group
CSO	Civil Society Organization	PCO	Project Coordination Office
DFGG	Demand for Good Governance	PIM	Procurement Implementation Manual
EA	Executing Agency	PMT	Project Management Team
FMDM	Financial Management and Disbursement Manual	QPPR	Quarterly Portfolio Performance Review
GGF	Good Governance Framework	RAMP	Risk Assessment and Mitigation Plan
IA	Implementing Agency	RGC	Royal Government of Cambodia

IDA	International Development Association	SOE	Statement of Expenditure
IPA	International Procurement Agent	SOP	Standard Operating Procedures
IPC	Inter-Ministerial Procurement Committee	TGGP	Transparency and Good Governance Plan
MBPI	Merit Based Pay Initiative	TOR	Terms of Reference
MEF	Ministry of Economy and Finance	TTL	Task Team Leader
NGO	Non-Governmental Organization	WB	World Bank

### Review of Good Governance Matrix

This Good Governance Matrix is to be reviewed and signed off by senior management on a regular basis. The following review system is recommended with the Good Governance Matrix:

- All risk factors pertaining to fraud and corruption require constant vigilance in instituting and implementing the preventive and control measures.
- Senior Management and project team to review the risk areas, red flags and mitigation measures regularly (every 3 months) to ensure that effective controls are in place.
- The emergence or presence of red flags should trigger a review of the situation to see if existing controls are adequate and if investigative action and additional controls are required. The matter is to be brought to the attention of senior management if evidence or suspicion of corruption is found.

**This Good Governance Matrix for the Arbitration Council has been reviewed and updated by:**

Name: \_\_\_\_\_ Designation: \_\_\_\_\_ Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Name: \_\_\_\_\_ Designation: \_\_\_\_\_ Signature: \_\_\_\_\_ Date: \_\_\_\_\_

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