

## ANNEX 1

### **Procedures for Complaints and Opposition to Labour Dispute Resolution Work of Arbitration Council as Provided in the Laws and Regulations of Cambodia**

This is an outline of the lawful procedures and rights for complaint and opposition to the labour dispute resolution work of the Arbitration Council.

Note: This is for informational purposes only. It is not intended to provide legal advice and it does not represent an official interpretation of the law by the Arbitration Council Foundation.

#### **The Arbitration Council**

The Arbitration Council is provided for in the Labour Law (1997) and related *Prakas* No. 99 of 2004 issued by the Ministry in charge of Labour (Ministry). 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 (DLD). These disputes are either 'rights disputes', related to existing rights under the law, contract or collective bargaining agreement 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.

#### **Arbitration Process**

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 will attempt to conciliate the dispute. If the Ministry's conciliator is unsuccessful in assisting the parties to resolve the dispute, the conciliator prepares a Non-Conciliation Report, which is forwarded to the Arbitration Council via the Secretariat of the Arbitration Council (SAC).

The Arbitration Council process takes place in accordance with the Labour Law and *Prakas* No. 99 of 2004.

#### **Arbitration Process**

<b>I.</b>	<b>Referral of dispute, appointment of arbitral panel, scheduling and procedural matters</b>	A labour dispute case is referred to the SAC from the DLD. The SAC then registers the case; facilitates the parties' selection of the arbitration panel members. Each party to a dispute has the right to select the arbitrator who will be seated on the panel to hear their case; the two selected arbitrators in turn select a third (chair) arbitrator to complete the panel. Parties are also notified of the arbitral hearing date; and provided with information on procedural matters.
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II.	<b>Preliminary discussions and interim orders</b>	If any industrial action (such as a labour strike or lock-out) is in effect at that time, the arbitration panel can invite the parties to attend an informal meeting to inform them of the Arbitration Council process and encourage them to use the process 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.
III.	<b>Mediation and arbitration</b>	On the hearing date, the panel members are introduced to the parties. Either party may raise opposition to the seating of a panel member for consideration of recusal. 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, parties have an opportunity to make a full presentation of their case. The arbitrators assess the parties' claims and arguments and examine any witnesses or documentary (or other) evidence related to the case.
IV.	<b>Issuance of arbitral award</b>	After the hearing, and within fifteen (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.
V.	<b>Parties' recourse under binding vs. non-binding awards, enforceability</b>	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 (8) calendar days to examine the award and, if they so choose, to file an opposition via the SAC. If either party files an opposition (also known as an objection), 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 opposition is filed within the eight-day period, the award automatically becomes binding and enforceable.

### **Lawful Procedures and Rights for Complaint and Opposition**

As outlined above, and consistent with the Labour Law and *Prakas* No. 99 of 2004, either party to a dispute may have a right to raise a complaint and file an opposition to an award of the Arbitration Council.

Standard forms of opposition are available from the Secretariat of the Arbitration Council. Parties may state the reasons for their opposition, describing their complaint in detail, but are not obligated to do so for purposes of filing such opposition.

If an opposition is lawfully filed within eight (8) days of the date of the award issuance, the award is unenforceable. Parties may exercise their legal rights to take industrial action. A disputant party may bring a case involving rights disputes before the court of competent jurisdiction for final resolution. In such cases, parties must follow the appropriate legal procedural rules for judicial resolution.

If no opposition has been lodged within the specified time frame, the arbitral award is final and the parties are bound to implement it. The Ministry can assist in the implementation. The right to file an opposition does not arise in case parties to the dispute have agreed in writing before the notification of the award, or they are bound to comply with a collective bargaining agreement stipulating, that no opposition to award is allowed. In such case, the award is final and binding immediately after notification.

If the period for opposition has lapsed and one party refuses to abide by the award, the other party can submit a complaint to the competent court to recognise and enforce the award. The party requesting recognition and enforcement of the award shall provide to the court a duly certified copy of the award.

The following are the grounds upon which a party filing a complaint to a competent court that an award of the Arbitration Council was unjust must show proof to avoid recognition and enforcement of a final and binding award:

- A. that party was not properly involved in the selection of arbitrators or was not given proper notice of the arbitral proceedings or was unfairly prevented from making a full presentation of his/her case;
- B. there was non-compliance with procedures indicated in the Labour Law or the *Prakas* No. 99 of 2004 in connection with the making of the award; or
- C. the Arbitration Council rendered an award which went beyond the power given to it by the Labour Law and the *Prakas*.

### **Further Information**

For further information regarding the lawful procedures and rights for complaint and opposition to the labour dispute resolution work of the Arbitration Council, as well as the role and responsibilities of the Arbitration Council in the arbitral process, please see the Labour Law (1997) and *Prakas* No. 99 of 2004.

Copies of these and other materials are also available from the Arbitration Council for review.