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## Annex C. Prakas on the Arbitration Council

*Prakas No. 99 MOSALVY*

**Phnom Penh, 21 April 2004**

### CHAPTER 1

#### COMPOSITION OF THE ARBITRATION COUNCIL

- Clause 1** This Prakas establishes an Arbitration Council composed of at least 15 members pursuant to Article 317 of the Labour Law.  
The Ministry of Social Affairs, Labour, Vocational Training and Youth Rehabilitation shall issue a Prakas appointing members of the Arbitration Council every year. The Prakas appointing Arbitration Council members each year shall be issued at least 14 days prior to the expiration of the term.
- Clause 2** The term for members of the Arbitration Council shall be one year. Each member of the Arbitration Council shall be reappointed by Prakas each year unless:
- A. The member has died, resigned, or has otherwise become incapacitated from carrying out his or her duties as an arbitrator; or
  - B. The member has been convicted of a criminal offence or has committed an act of misconduct with the effect that the member is no longer eligible for membership of the Arbitration Council under Clause 6 of this Prakas; or
  - C. The member has assumed an office referred to in Clause 7 of this Prakas.
- In case a member of the Arbitration Council is not reappointed for a reason set out in paragraphs A, B and C above then a new member shall be nominated by the same body as nominated the outgoing member, and that person shall be appointed in accordance with the procedure set out in this Prakas.
- If at the end of a term a Prakas is not issued in accordance with Clause 1 above, each member of the Arbitration Council shall be deemed to have been reappointed for a further term of one year.
- Clause 3** The membership of the Arbitration Council shall have the following components:
- A. One third nominated by the Ministry of Social Affairs Labour and Vocational Training and Youth Rehabilitation;
  - B. One third nominated by employer associations that are full members of the Labour Advisory Committee;
  - C. One third nominated by labour unions (federations) that are full members of the Labour Advisory Committee.
- The members of the Arbitration Council shall be appointed in accordance with the above nominations.
- Clause 4** If the representatives of employer associations on the Labour Advisory Committee cannot reach consensus as to their nominations for membership of the Arbitration Council, each of the employer associations, which is fully represented in the Labour Advisory Committee, shall be entitled to submit an equal number of nominations.
- Clause 5** If the representatives of labour unions (federations) on the Labour Advisory Committee cannot reach consensus as to their nominations for membership of the Arbitration Council, each of the labour unions (federations), which is fully represented in the Labour Advisory Committee, shall be entitled to submit an equal number of nominations.
- Clause 6** The members of the Arbitration Council shall meet the following requirements:
- A. All members shall:
    - be at least 25 years old;
    - be known for their moral qualities;
    - possess relevant work experience of at least three years.
  - B. Members, appointed under Clause 3 A, above shall:
    - hold a Bachelor of Law degree or other equivalent legal qualifications;
    - have a sound knowledge of the Labour Law and its implementing regulations.

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- C. Members, appointed under Clause 3 B and C, above shall have:
- a sound knowledge of the Labour Law and its implementing regulations;
  - at least one year's experience in labour issues or conflict resolution.
- Clause 7** Persons that cannot be appointed as a member of the Arbitration Council are:
- A. civil servants of the Ministry of Social Affairs, Labour, Vocational Training and Youth Rehabilitation;
  - B. an owner or manager of an enterprise which is member of an employer organisation, or an office holder of an employer organisation, or a person who used to hold such office during the past period of 12 months; or
  - C. a labour union member, or an office holder of a labour union, or a person who used to hold such office during the past period of 12 months.
- Clause 8** A member of the Arbitration Council shall be appointed without being discriminated against because of his nationality or other reasons as provided in Clause 31, Paragraph two of the Constitution of the Kingdom of Cambodia.
- Clause 9** Notwithstanding the lapse of a member's term, that member shall continue to sit on any arbitration panel in which he or she has been chosen prior to the elapse of his or her term until an arbitral award is made or proceedings are discontinued.
- Clause 10** A member of the Arbitration Council who during his or her term dies, or becomes incapacitated or resigns his or her membership of the Arbitration Council; or who has been convicted of a criminal offence or has committed an act of misconduct with the effect that the member is no longer eligible for membership of the Arbitration Council under Clause 6 of this Prakas; or who has assumed an office referred to in Clause 7 of this Prakas, shall be replaced for the remaining period of that term. The new member shall be nominated by the same body as nominated the outgoing member, and be appointed in accordance with the procedure set out in this Prakas.
- Clause 11** The members of the Arbitration Council shall function in complete independence and within the scope of their authority as established in Article 312 of the Labour Law. No one shall give any instructions to the Arbitration Council or its members with regard to the settlement of disputes. Members of the Arbitration Council shall be impartial.

## **CHAPTER TWO**

### **Composition of Arbitration Panel**

- Clause 12** Any collective dispute submitted to the Arbitration Council under Article 309 of the Labour Law shall be settled by an arbitration panel specially constituted for the consideration of that dispute. An award made by an arbitration panel shall be considered as an award of the Arbitration Council. An arbitration panel shall be composed of three members of the Arbitration Council, as follows:
- A. One member from the category indicated in Clause 3 B, above, and chosen by the enterprise which is party to the dispute;
  - B. One member from the category indicated in Clause 3 C, above, and chosen by the union or group of employees which is party to the dispute;
  - C. One member, who shall chair the arbitration panel and chosen from the category indicated in Clause 3 A, above by agreement between the two members above. In the case that the two members cannot reach an agreement as to the third member of the panel, this member shall be chosen by lot from the category indicated in Clause 3 A.
- Clause 13** In the case that two or more enterprises are party to the dispute and they fail to reach agreement on the selection of a member, this member shall be chosen by lot. In the same way, in the case that two or more unions and/or groups of employees are party to the dispute and they fail to reach agreement on the selection of a member, this member shall be chosen by lot.
- Clause 14** In the case that an employee is required to attend a hearing of an arbitration panel during working hours, his or her employer shall allow him or her to do so without any negative effect on his or her existing work entitlements.
- Clause 15** A member of the arbitration panel shall recuse himself or herself from membership of the arbitration panel on which he or she has been chosen, if circumstances exist that give rise to justifiable doubts as to his or her impartiality or independence, including close personal or

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- professional relationship with other members of an arbitration panel or with any of the parties, or direct personal or professional interest in the outcome of the case.
- Clause 16** The fact that a member of an arbitration panel does not recuse himself or herself if required under provision of Clause 15 above, may be used as a reason for the implementation of provisions set out in Clause 47 of this Prakas relating to the non-recognition of an award.
- Clause 17** If a member of an arbitration panel becomes de jure or de facto unable to perform his or her functions, a substitute arbitrator shall be chosen in accordance with Clauses 12 and 13 above.

### **CHAPTER THREE**

#### **Arbitral Proceedings**

- Clause 18** The arbitration panel shall invite the parties to the dispute to make an oral presentation of their arguments before the arbitration panel and to submit documentation and any other useful information.
- Clause 19** A party may appear before the arbitration panel in person, be represented by a lawyer who is a member of the Bar Association of the Kingdom of Cambodia, or be represented by any other person expressly authorised in writing by that party.
- Clause 20** During the arbitration process, the parties to the dispute must abstain from any strikes or lockouts (as defined in Article 318 of the Labour Law), or any other action likely to aggravate the situation. The parties must attend all meetings to which the arbitration panel calls them.
- Clause 21** In the case that one of the parties, although duly invited, fails to appear before the arbitration panel without showing good cause, the arbitration panel may proceed in the absence of that party or may terminate the arbitral proceedings by means of an award.
- Clause 22** The office of the Arbitration Council shall be in Phnom Penh. However, the arbitration panel may meet at any other place in Cambodia it considers appropriate for consultation among its members, for hearing parties, witnesses or experts, for inspection of goods, other property or documents or for paying visits on site. In such cases, the arbitration panel shall inform the parties of the alternative location for its activities.
- Clause 23** The language to be used during the arbitral proceedings shall be Khmer. Any party who wishes to address the arbitration panel in a language other than Khmer, or who calls a witness who does not speak Khmer, must bring a professional interpreter to the arbitration proceedings.
- Clause 24** The arbitration panel has the power to obtain information on the economic situation of the enterprises and the social situation of the employees involved in the dispute. It may conduct any inquiry with respect to enterprises or professional organisations and require the parties to present any document or economic, accounting, statistical, financial or administrative information that might be useful for the accomplishment of its mission. The arbitration panel may also solicit the assistance of experts.
- Clause 25** The arbitration panel shall be free to determine the admissibility, relevance, materiality and weight of evidence as well as the allocation of the burden of proof.
- Clause 26** The arbitration panel is authorised to examine witnesses as it deems appropriate. The arbitration panel shall determine the day, time and place of the examination of witnesses. All parties to a dispute shall be entitled to question the witnesses before the arbitration panel.
- Clause 27** All statements, documents or other information supplied to the arbitration panel by one party shall be communicated to the other party. Also, any expert report or evidentiary document on which the arbitration panel may rely in making its decisions shall be communicated to the parties. The arbitration panel shall have the authority to make appropriate rulings to safeguard the confidentiality of the information.
- Clause 28** Except as provided in Clause 27 above, members of the arbitration panel must keep confidential the information and documents provided to them, as well as any facts that come to their attention while carrying out their duties.
- Clause 29** All meetings of the arbitration panel shall be held in closed session.
- Clause 30** The arbitration panel may invite the parties to the dispute one last time in order to help them to reach a settlement. This should not lead to an extension of the time limit given in

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Article 313 of the Labour Law, unless both parties agree to such an extension. Agreements made between the parties during the arbitration process may be made the subject of an arbitral award.

- Clause 31** The arbitration process shall take place in compliance with the Procedural Rules of the Arbitration Council, which form the Annex to this Prakas.
- The Arbitration Council may make guidelines to facilitate the arbitration process. Such guidelines must not be inconsistent with the Labour Law, this Prakas or the Procedural Rules. The guidelines must be approved by all the members of the Arbitration Council. Alternatively if all members do not agree, the guidelines may be approved by an absolute majority of the members in each of the three categories indicated in Clause 3 above.

## **CHAPTER FOUR**

### **Jurisdiction and Remedies**

- Clause 32** The arbitration panel shall decide on any collective labour dispute that is referred to it in accordance with Article 309 of the Labour Law.
- Clause 33** The power of an arbitration panel to consider a dispute shall be limited to addressing those issues which are contained in the non-conciliation report including issues which are the direct consequences of the dispute but which arise from events subsequent to the date of the report.
- Clause 34** In matters referred to the arbitration panel, the panel shall have the power and authority to fully remedy any violation of provisions provided in the Labour Law, implementing regulations under the Labour Law, collective bargaining agreements or other obligations arising from the professional relationship between employer and employee. Within the limitations of the Labour Law and this Prakas, it has the power and authority to provide any civil remedy or relief which it deems just and fair, including:
- A. orders to reinstate dismissed employees to their former or any other appropriate position;
  - B. orders to the immediate payment of back pay;
  - C. orders to cease immediately any industrial action which is being conducted by a party to the dispute;
  - D. orders to cease immediately any other illegal or prohibited conduct, including but not limited to retaliation;
  - E. orders to bargain;
  - F. orders following a settlement under Clause 30 of this Prakas;
  - G. the establishment of terms for a collective bargaining agreement;
  - H. such other relief as is appropriate.
- Clause 35** The Arbitration Council may give notice about the award to the Department of the Labour Inspection or to the provincial/municipal offices of Social Affairs, Labour, Vocational Training, and Youth Rehabilitation in order for these to assist in taking measures for the implementation of the award.

## **CHAPTER FIVE**

### **Arbitral Award**

- Clause 36** The arbitration panel shall attempt to reach consensus in its decisions. If consensus is not possible, the arbitration panel shall make its decisions by majority.
- Clause 37** The arbitration panel shall record its decisions in an award which shall be signed by all 3 arbitrators. If one of the arbitrators does not agree with the decision of the majority, the dissenting arbitrator may record his dissent as an annex to the award.
- Clause 38** Arbitral awards shall contain:
- A. the names of the three arbitrators;
  - B. the name, domicile and seat or actual residence of the parties;
  - C. a summary of the procedure;
  - D. a description of the claim and a description of the counterclaim, if any;

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- E. the reasons for the decisions given in the award with, where applicable, reference to relevant provisions in the Labour Law, its implementing regulations or collective bargaining agreements or individual labour contracts;
  - F. the decisions of the arbitration panel;
  - G. the date on which the award is made.
- Clause 39** Within 15 days of the date after which the case is received, the Arbitration Council shall report its award in writing to the Minister of Social Affairs, Labour, Vocational Training, and Youth Rehabilitation, who shall immediately take action to notify the parties of it by providing them with a duly certified copy of the award. In cases where proceedings are terminated without an award, the Arbitration Council shall notify the Minister of Social Affairs, Labour, Vocational Training, and Youth Rehabilitation that the proceedings have been terminated.
- Clause 40** Each of the parties may lodge an opposition to the arbitral award by informing the Minister of Social Affairs, Labour, Vocational Training, and Youth Rehabilitation by registered letter or any other reliable means, within eight calendar days of notification. If the last day of this period is not a working day for civil government officials then the period shall be extended to include the next working day.
- If either party to a dispute lodges such an opposition within the specified timeframe, the award shall be unenforceable. In this case, if the dispute is about a right relating to the application of a rule of law (for example, a provision of the Labour Law, of a collective bargaining agreement, or an arbitral award that takes the place of the collective bargaining agreement) the disputant party may bring the case before the court of competent jurisdiction for final resolution.
- Clause 41** If no opposition has been lodged within the specified timeframe as indicated in Clause 40 above, the arbitral award shall become final, and the disputant parties shall be bound to implement it.
- Clause 42** Clause 40 does not apply in case parties to the dispute have agreed in writing before the notification of the arbitral award, or they are bound to comply with a collective bargaining agreement stipulating, that no objection to the award shall be allowed. In such case the award shall become final and binding immediately after notification.

## **CHAPTER SIX**

### **Awards Regarding Interest Disputes**

- Clause 43** An arbitral award which settles an interest dispute takes the place of a collective bargaining agreement and shall remain in effect for one year from the date on which it becomes final unless the parties agree to make a new collective bargaining agreement replacing the award.
- Clause 44** Such an award shall still remain in effect after this one-year period, unless either party gives three-month advance notice to the other party that it no longer wishes to be bound by the award.
- Clause 45** When an arbitral award which takes the place of a collective bargaining agreement becomes final, it shall be filed and registered in accordance with procedures on collective bargaining agreements.



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## **CHAPTER SEVEN**

### **Enforcement**

- Clause 46** If the period for opposition has lapsed and one party refuses to abide by the award, the other party can request 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.
- Clause 47** A party can only avoid the recognition and enforcement of a final and binding award if that party provides to the court proof that the award of the Arbitration Council was unjust on the grounds that:
- 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 case;
  - B. there was non compliance with procedures indicated in the Labour Law or this Prakas 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 this Prakas.

## **CHATER EIGHT**

### **Secretariat and Expenses**

- Clause 48** The Department of Labour Inspection of the Ministry of Social Affairs, Labour, Vocational Training, and Youth Rehabilitation shall be responsible for the organisation and functioning of the secretariat of the Arbitration Council.
- Clause 49** In case of a non-Khmer speaking arbitrator, the body that nominated this arbitrator shall be responsible for the reasonable cost of translation and interpretation.

## **CHAPTER NINE**

### **Calculation of “Days”**

- Clause 50** Unless otherwise expressly stated, in clauses of this Prakas the term 'days' means working days for civil government officials.

## **CHAPTER TEN**

### **Transitional Provision**

- Clause 51** In a transitional period, during the first, second and third terms of the Arbitration Council, all members of the Arbitration Council shall be appointed by the Ministry of Social Affairs, Labour, Vocational Training and Youth Rehabilitation on the nomination of the Ministry of Social Affairs, Labour, Vocational Training and Youth Rehabilitation after consultation with the ILO Labour Dispute Resolution Project.

## **CHAPTER ELEVEN**

### **Entry into Force**

- Clause 52** The Prakas of the Ministry of Social Affairs, Labour, Vocational Training and Youth Rehabilitation No. 338 dated 11 December 2002 shall be declared null and void.
- Clause 53** This Prakas shall enter into effect on the date of the signature.

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## **Annex D. Arbitration Council procedural rules**

### **UNDER**

### **CLAUSE 31 OF THE PRAKAS ON THE ARBITRATION COUNCIL**

#### **(hereinafter, the Prakas)**

#### **Rule 1: The Secretariat of the Arbitration Council**

- 1.1 The Secretariat of the Arbitration Council (the Secretariat) is the body constituted under Chapter 8 of the Prakas to administer and to facilitate the resolution of disputes by the Arbitration Council.
- 1.2 The address of the Secretariat is:  
Secretariat of the Arbitration Council  
Phnom Penh Center (A)  
Sothearos Blvd  
Sangkat Tonle Bassac  
Khan Chamkar Morn  
Phnom Penh  
Changes of the address of the Secretariat shall be announced to the public.
- 1.3 Parties to any dispute brought before the Arbitration Council shall co-operate with the Secretariat in order to assist it in its functions and shall deal with any requests made to them by the Secretariat quickly and constructively.
- 1.4 The members of an arbitration panel and the parties shall communicate directly with each other only during a duly convened hearing of the arbitration panel. Any communication between the arbitration panel and the parties outside of a hearing shall take place through the Secretariat. The Secretariat shall take all reasonable measures to ensure that such communications reach their destination.
- 1.5 The Secretariat shall be available to assist the parties with their queries concerning procedural aspects of the dispute and assist in clarifying issues arising out of the Prakas or of these Procedural Rules.

#### **Rule 2: Initiating Arbitration**

- 2.1 Where arbitration of the dispute is required under Article 309 (c) of the Labour Law, each party shall, within 48 hours of the conclusion of the failed conciliation, advise the Secretariat, of its chosen arbitrator from the Arbitration Council to serve on the arbitration panel constituted under Clause 12 of the Prakas.
- 2.2 In satisfying the requirements of Rule 2.1, a party may advise the conciliator, at the conclusion of the failed conciliation, of its chosen arbitrator. Where a party has so advised the conciliator of its chosen arbitrator for the arbitration panel, such choice of arbitrator shall be included in the report of non-conciliation provided to the Minister of Social Affairs, Labour, Vocational Training and Youth Rehabilitation under Article 308 of the Labour Law.
- 2.3 A party to any arbitration proceedings shall ensure that the Secretariat is informed of the address at which that party will accept notices and service of any documents in the proceedings as well as, if possible, a contact telephone number. Such information shall be provided at the earliest opportunity and, where possible, provided to the conciliator at the conclusion of the failed conciliation.

#### **Rule 3: Selection of Arbitrators**

- 3.1 The Secretariat shall make every effort to have all three arbitrators constituting an arbitration panel selected within three days after receipt of the report of non-conciliation by the Secretariat. The Secretariat shall take all measures to facilitate the selection of arbitrators in accordance with these Rules.
- 3.2 When the Secretariat receives a report of non-conciliation under Article 308 of the Labour Law, the Secretariat shall immediately assign a unique file number to the dispute and enquire whether the parties have chosen arbitrators pursuant to Clause 12 of the Prakas.