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ARBITRATION COUNCIL FOUNDATION

## **RULES AND MECHANISM FOR HANDLING A CONFLICT OF INTEREST**

- With reference to the Code of Civil Procedure dated 6 July 2006 (Article 27)
- With reference to *Prakas* No. 099 SKBY dated 21 April 2004 on the Arbitration Council (Clauses 7 and 15)
- With reference to the Professional Guideline of the Arbitration Council dated 16 February 2008
- With reference to the Lexicon of legal terms of the Civil Code and the Code of Civil Procedure issued in 2007 (page 6)

### **BACKGROUND**

- Professional life in society requires one to have relationships with others in different fields of work. As such, a conflict of interest (COI) may be unavoidable, particularly those which arise in professional contexts. The Arbitration Council is a legally established institution in which its arbitrators have a duty and role to resolve labour disputes in an independent, impartial, and professional manner. A COI relates to private work activities, personal relationships, community work place and/or spousal and family interests etc. As a COI can lead to biased decisions in the arbitrators' exercise of their role and duties, the Arbitration Council aspires to manage COI situations with these rules and mechanism for handling them.

- The Arbitration Council adopted its Professional Guideline in 2008; however, there has been no COI mechanism in place since then. As such, in September 2010, the Arbitration Council Foundation initiated the establishment of these rules and COI mechanism and it was submitted to all the arbitrators for comment to be incorporated in this final document.

**Clause 1:** The purpose of the Rules and Mechanism for Handling a Conflict of Interest is to provide the Arbitration Council with a sound approach to managing current and future COI so that each arbitrator can maintain his or her integrity and effectiveness in resolving labour disputes between employers and workers in as an independent, neutral, and credible manner, in order to increase productivity and contribute to economic growth in an equitable manner.

**Clause 2:** A COI arises where an arbitrator's private or collective interests negatively influence or is reasonably perceived to negatively influence the exercise of the arbitrator's duties and responsibilities.

**Clause 3: Activities or relationships deemed as a conflict of interest**

The activities or relationships which will be deemed as a COI in the exercise of the arbitrator's duties and responsibilities where the concerned arbitrator must consider recusing himself or herself from his or her panel are as follows:

**3.1. An employment relationship with the disputant parties<sup>1</sup>**

- A relationship in which a member of the arbitral panel is the employer of a disputant party at the Arbitration Council or vice versa.

**3.2. A professional or consultative relationship with disputant parties<sup>2</sup>**

- The arbitrator is a member of the law firm or other organisation which provides consultation services or other advisory services to a disputant party.

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<sup>1</sup> Clause 15 of *Prakas* 099 states "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 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."

<sup>2</sup> Article 27 of the Code of Civil Procedure, Point (f) on the exclusion of a judge state: "A judge shall be excluded from performing his/her duties in the situation where the judge is or was the attorney or assistant for a party in the case."

- The arbitrator is a lawyer or a consultant for a disputant party.
- The arbitrator was a lawyer or a consultant for a disputant party in a period of 12 months prior to the receipt of the case, and the service provided by that arbitrator included checking and advising on internal work rules of a disputant party's company, employment contract, accounting or health provisions, and training on the labour law etc.

### **3.3. A personal relationship with disputant parties<sup>3</sup>**

- Spousal relationship: when a spouse or a former spouse is an advisor to a disputant party or is a disputant party.
- A relative by blood within three degrees of separation or a relative by affinity within three degrees of separation or a former relative within two degrees of separation.
- A guardian relationship with a disputant party.
- The arbitrators are or were in a legal dispute (during a period of 12 months prior to the receipt of the case) with a disputant party at the Arbitration Council on behalf of themselves or as the legal representative of a disputant party at court.

### **3.4. Financial relationship**

- The arbitrator held or is holding stocks (in a period of 12 months prior to the receipt of the case) in a company related to a disputant party.
- The arbitrator was or is indebted to or loaned money to (in a period of 12 months prior to the receipt of the case) a disputant party.

### **3.5 Other relationships**

- Apart from the relationships mentioned in clause 3 (**3.1 to 3.4**), the disputant parties may raise other COI relationships if they have reasonable grounds and sufficient evidence to compel the arbitrator in question to recuse himself or herself.

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<sup>3</sup> Article 27 of the Code of Civil Procedure, Point (a) on exclusion of a judge states: "A judge shall be excluded from performing his/her duties in the situation where the judge or the judge's current or former spouse is a party."

## **Clause 4: Rules for dealing with a conflict of interest**

### **4.1 Before the hearing**

- The Secretariat of the Arbitration Council must state the arbitrators' names for the case they sit on in the notice to attend the hearing.
- After having been selected to sit in the panel, an arbitrator must declare any interest in or relationship with a disputant party that he or she knows of or is doubtful about to fellow members of the arbitral panel and disputant parties.
- An arbitrator must consider recusing himself or herself from membership of the arbitral panel in case he or she believes or is found to have a COI.
- If he or she does not do so, then the COI Commission will encourage him/her and suggest that the arbitrator recuse himself or herself from membership of the arbitral panel.
- If the arbitrator in question resists sitting in the panel, then he or she must disclose the interest/relationship and explain it to the disputant parties that he/she believes there will be no COI or negative influence on his or her decision, and ask them whether or not they object to his or her membership on the arbitral panel of their case.
- If the disputant parties object to his or her membership of the arbitral panel, then the arbitrator must recuse himself or herself from the case.
- If disputant parties object to his or her membership of the arbitral panel and the arbitrator refuses to recuse himself or herself, then he or she must explain the reasons for believing that there is no COI or negative influence on his or her decision in the annex of the Arbitral Award.

## **4.2 During the hearing**

### **4.2.1 The arbitrator is aware of the COI**

- The arbitrator who is aware of having a COI must declare the COI to disputant parties during the hearing and consider recusing himself or herself from the membership of the arbitral panel.
- If disputant parties object to his or her membership, then the arbitrator must recuse himself or herself from the membership of the arbitral panel.
- If disputant parties object to his or her membership and the arbitrator refuses to recuse himself or herself, then he or she must explain the reasons for believing that there is no COI or negative influence on his or her decision in the annex of the Arbitral Award.
- The explanation outlining the reasons for believing that there is no COI or negative influence on the arbitrator's decision in the annex of the Arbitral Award can be written by the arbitrator in question or on behalf of the arbitral panel depending on the circumstances regarding the arbitrator's refusal to recuse himself or herself, and of either having or not having support from the other members of the panel.

## **Clause 5: Mechanism of handling COI**

### **5.1. Composition of the COI Commission**

- Members of the arbitral panel of the particular case in question;
- Director of the Legal Services Department; and
- Chief of the Secretariat of the Arbitration Council.

### **5.2. Role of the COI Commission**

- Monitoring and receipt of COI complaints
- Investigation and reporting on COI complaints
- Advising an arbitrator to recuse himself or herself from a case if he or she is deemed or found to have a COI.

**Clause 6:** This Rule and Mechanism for Handling a Conflict of Interest shall take effect from 29 June 2012 onwards.

**Arbitrators from the Ministry list**

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|-----------------------|-----------------|
| 1. Sok Mathoeung      | Signature:_____ |
| 2. Kong Phallack      | Signature:_____ |
| 3. Pen Bunchhea       | Signature:_____ |
| 4. Ang Eng Thong      | Signature:_____ |
| 5. Nhean So Munin     | Signature:_____ |
| 6. Men Nimmith        | Signature:_____ |
| 7. Koy Neam           | Signature:_____ |
| 8. Tan Try            | Signature:_____ |
| 9. Run Saray          | Signature:_____ |
| 10. Kim-Yeat Dararith | Signature:_____ |

**Arbitrators from the employer list**

- |                    |                 |
|--------------------|-----------------|
| 1. Mar Samborana   | Signature:_____ |
| 2. Ouk Ry          | Signature:_____ |
| 3. You Suonty      | Signature:_____ |
| 4. Hem Hour Naryth | Signature:_____ |
| 5. Kao Thach       | Signature:_____ |
| 6. Ly Tayseng      | Signature:_____ |
| 7. Kol Vathana     | Signature:_____ |

8. Ing Sothy Signature: \_\_\_\_\_

9. Seng Vuoch Hun Signature: \_\_\_\_\_

10. Chhiv Phyrum Signature: \_\_\_\_\_

**Arbitrators from the employee list**

1. Tuon Siphann Signature: \_\_\_\_\_

2. An Nan Signature: \_\_\_\_\_

3. Vong Vanna Signature: \_\_\_\_\_

4. Song Vansinn Signature: \_\_\_\_\_

5. Ven Pov Signature: \_\_\_\_\_

6. Sin Kim Sean Signature: \_\_\_\_\_

7. Huon Chundy Signature: \_\_\_\_\_

8. Suong Sophal Signature: \_\_\_\_\_

9. Liv Sovanna Signature: \_\_\_\_\_

10. Ann Vireak Signature: \_\_\_\_\_