

**PROPOSED CLARIFICATIONS ON FDC PROVISIONS
AND POTENTIAL IMPACTS ON EMPLOYERS AND
BUSINESSES IN CAMBODIA**

CAMFEBA CEO Lunch

Phnom Penh Hotel

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AGENDA

- 1. Introduction**
- 2. Current Provisions vs. Proposed Provisions**
- 3. Also in the Pipeline**
- 4. Recommendations**

Introduction

Current vs.
Proposal

Also in the
Pipeline

Recommendations

1. INTRODUCTION

Introduction

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Proposed clarifications on FDC is part of the dynamic development of labor and employment law and policy over recent years:

Why?

- Cambodia's continued commitments to international labor standards
- Political economy
- Drive of the garment sector
- Strength of industrial relations actors (employers, unions, government)

What We See Today

- Rapid growth in level of minimum wages for the garment sector over recent years
- Increasing stability of industrial relations
- Adoption of a number of labor and social regulations coupled with greater enforcement, causing mixed impacts on businesses

Proposed clarifications on FDCs:

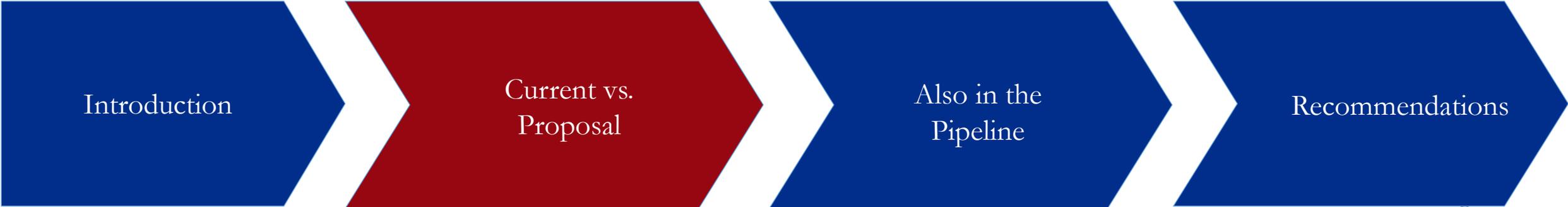
Why?

- Intend to bring to uniformity the diverging and contradictory interpretations of FDCs.
- Intend to regulate the use or improper use of short FDCs.
- Intend to instill clarity on rules on hiring and firing overall

Who Initiates the Proposal?

- Three parties have been part of the discussion for many years.
- Government in driver seat
- PM's new programs of visiting factories workers – and the making of labor and employment policies

2. CURRENT PROVISIONS VS. PROVISIONS UNDER PROPOSAL

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Current Provisions

1. FDC can be for a period of up to two (2) years. Thereafter, it can be renewed multiple times, provided that each FDC period respects the two-year cap.

Ministry of Labor re Articles 67 and 73 of Labor Law (Employers and employer associations have thrown in their support)

2. FDC can be for a period of up to two (2) years. Beyond this initial two-year limit, the entire employment is deemed made under UDC.

Arbitration Council ruling re Articles 67 and 73 of Labor Law in 10/03-Jacqsintex and subsequent decisions. (unions, ILO, etc. have thrown in their support)

Consequences from the diverging, contradictory interpretations: Labor tension, conflicts, and strikes, particularly in labor intensive sectors.

Provisions Under the Proposal

FDC Definition:

- Initial duration: not less than six (6) months and can be up to two (2) years.
- Can be renewed one or more times on the condition that
 - the period of renewal stay within the two-year cap
 - Total period of employment does not exceed four (4) years

Potential implications:

- **Positive:** potential clarity re period of FDC, reduction of resulting labor/employment tension, conflicts
- **Negative:** potential increased rigidity in hiring, constraints on employers, given the proposed minimum threshold period of 6 months

Current Provisions**Short-Term FDC:**

- Treated as normal FDC.
- Contracting parties are free to enter in the contract. No separate regulation from government.

Provisions Under the Proposal**Short Term FDC:**

- In principle, contracting parties cannot enter into less than six-month FDC.
- If less than six months, the contract would require 'prior written permission from labor inspectors'.

FDC for less than six months may be made for:

- Replacing a worker temporarily absent,
- Seasonal work
- Occasional period of extra work or a non-customary activity of the enterprise

Potential implications: potential new transaction costs and time required of businesses to obtain written permission from labor inspectors.

Current Provisions**Severance Pay:**

- Severance pay required to be made, but at the end of the last FDC. Normally 5% of the total contract value.
- Severance pay not required to be made at the end of each FDC when renewed.

Provisions Under the Proposal**Severance Pay:**

- Severance pay shall be made at the end of each FDC, even if it is renewed.

(Art. 4 of the Draft Prakas)

Potential implications: Payment of severance pay at the end of each FDC require adjustment to cash flow planning, accounting by employers.

Current Provisions

Gap period between FDCs:

- Based on the labor law, no specific provision on gap period is specified.
- Arbitration Council ruling: gap period may be one week or two weeks. The base for this standards is not broad, cemented yet.

Provisions Under the Proposal

Gap period between FDCs:

- After the four-year limit, there shall be **a gap period of four (4) months** between the expiration of the last FDC and the new FDC that the parties wish to enter into (provided both parties are the same, and the nature of the job offered is similar to the previous employment of the worker/employee).
(Article 5 of the draft Prakas).

Note: Mixed practice among ASEAN members. One-month gap period generally required or encouraged in countries like Malaysia, Indonesia, and Singapore.

Current Provisions

Switching Back from Undetermined Duration Contract (UDC) to FDC

- Under Labor Law, no specific provision on this item.
- Arbitration Council Ruling: in principle, switching back from UDC to FDC not allowed.

Provisions Under the Proposal

Switching Back from UDC to FDC

- Contracting parties may switch from UDC on the condition that (*Article 7 of Draft Prakas*):
 - Initiated by the employee;
 - Express agreement from the employer; and
 - With written permission from the labor inspector

Note: Unions are advocating to drop this provision from the draft regulation, with the argument that it defeats the purpose of clarifying the FDC and UDC rules.

Current Provisions

Continuity of 'Seniority Gratuities'

- Seniority gratuities requirement is limited to the textile, garment, footwear industries. Other industries are not subject to the requirement.
- When ending his/her employment, an employee does not carry along the seniority to another employer.

Provisions Under the Proposal

Continuity of the 'Seniority Gratuities'

- Seniority gratuities are required to be given to the employees in accordance with the previous length of employment (with previous employers)
- The use of employment card to track seniority (*Article 6 of Draft Prakas*)

Potential implications:

- Disincentive to employers to hire employees with seniority; constraint on employment
- No legally-required seniority gratuities in non-garment sector → impractical to them.

NEXT STEPS:

- Consultation meeting, to be determined, organized by Ministry of Labor; CAMFEBA participates and convey further input
- Timing for adoption of the draft Prakas: unclear, but Ministry of Labor has signaled that it will be adopted in the very near future.



3. ALSO IN THE PIPELINE

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Draft Law on Minimum Wage

- **Purpose:** establish a framework for minimum wage fixing for economic sectors beyond the garment industry.
- Two rounds of public consultation thus far.
- Ministry of Labor aims to send the draft law to Council of Ministers by the end of 2017

- **New scheme of national social security:**
 - Pension scheme: 2019 as announced by Prime Minister
- **Amendments to various provisions of Labor Law 1997**, as identified in the Industrial Development Policy 2015 – 2025
 - Presently, under internal review by Ministry of Labor

4. RECOMMENDATIONS

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- Recognized as progressive employer
- Commitment to nurturing staff and talent
- Strong workplace governance, fair treatment of employees
- Stable, productive employment
- Proven dedication to corporate social responsibility and social sustainability
- Guard against disruptions and reputational risks



- **STAY UP TO DATE ABOUT THE DEVELOPMENT OF THE DRAFT PRAKAS ON FDC.**
- **COMPLY WITH LAWS AND REGULATIONS**
- **ESTABLISH, STRENGTHEN WORKPLACE MANAGEMENT SYSTEMS AND TOOLS**
 - Internal Work Rules, internal regulations can be updated to reflect changes in law, HR practices, technological developments, etc.
 - Workplace cooperation/consultation mechanisms
 - Performance management tools, grievance mechanisms
 - Systematic documentation, record keeping
- **MANAGE RELATIONS WITH EMPLOYEES, TRADE UNIONS**



➤ **STRENGTHEN DISPUTE PREVENTION AND RESOLUTION**

- Risk controls, monitoring systems
- Systemic dispute settlement through documentation, negotiation, mediation and arbitration

➤ **OBTAIN PROFESSIONAL ADVICE AND SUPPORT**

- CAMFEBA or legal and industrial relations professionals for strategic legal and labor relations advice and representation



ADVOCACY ON LABOR LAW AND POLICY

- share your voice, concerns, and challenges directly with CAMFEBA for coordinated advocacy positions through various law-making mechanisms

FORTHCOMING THREE-PARTY NATIONAL WAGE COUNCIL

- Participate in it or endorse your representative(s) to participate in it in order to represent your voice.



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