

# LEGAL POINTER

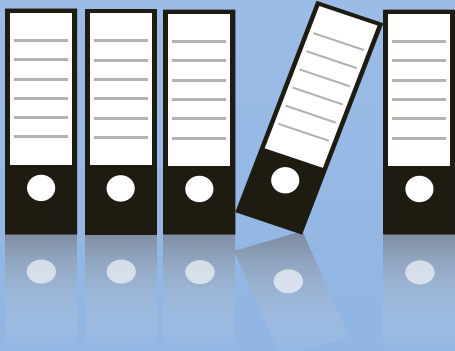



## Obligation of Employers to Hire Workers/Employees with Disabilities



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## REFERENCE

- Law on Protection and Promotion of Rights of Persons with Disabilities dated 03 July 2009
- Sub-decree 108 dated 30 August 2010 on Rate and Formalities for Disability Recruitment
- Sub-decree 54 dated 24 March 2011 on Organization and Functioning of the Ministry of Social Affairs, Veterans and Youth Rehabilitation
- Inter-ministerial Prakas 2492 dated 22 November 2011 on Criteria for Disability Type and Level
- Inter-ministerial Circular 005 dated 20 September 2012 on Facilitation for Work of People with Disabilities
- Prakas 255 dated 30 May 2018 on Contribution Payment for Ministries, Public Institutions and Legal Entities Failing to Fulfill Obligations to Recruit People with Disabilities
- Notification 076 dated 12 June 2018 on Contribution Payment for Ministries, Public Institutions and Legal Entities Failing to Fulfill Obligations to Recruit People with Disabilities
- Guideline Document on Procedure for Inspection of Disability Sector of the Kingdom of Cambodia 2017

## 1. Introduction

Cambodia is remarkably developing every day, ensuring the stability of its macro economy leading to GDP growth, increased family income and subsequent decrease in poverty, especially in line with the national development and development of other sectors as well as the sector of welfare of citizens which have been paid attention to by the government in each mandate and has improved it endlessly. However, Cambodia previously went through a war era and many explosives, unexploded ordnance (UXO), mines have been left throughout the country. In addition, the increasing number of vehicles on roads has caused traffic accidents sharply. These factors have caused many consequences for the nation and people, meaning that around 524,000 out of the total population are living with disabilities, according to the 2014 economic survey of the National Institute of Statistics.

People with disabilities are people who have been paid attention to and enjoy all rights including the right to work like people without disabilities. People with disabilities should be included in development activities without being left behind because it will make change to social behavior towards people with disabilities in accepting the activities and voice of people with disabilities which lead to promoting social development. In economic context, three basic resources which are production factors are land, labour and capital. Thus, the inclusion of people with disabilities in all sectors based on the principle of equal rights will make them become an extra labour force for the labour sector and especially will make their life and family better. In addition, disabled people and children have been observed that they have other abilities to replace their disability which make them have enough ability to overcome obstacles on their own. These factors make them have abilities and enough qualification to be an extra workforce for the labour sector to increase productivity and competitiveness in international markets.

Based on these reasons, the Royal Government of Cambodia has paid attention to the well-being of people with disabilities by making a law on protection and promotion of rights of persons with disabilities and sub-decree on rate and formalities for recruitment of disabled people at ministries, public institutions and legal entities in order to make them have equal opportunities and strength to become active in economic activities like other people.

This legal pointer will discuss competent authorities in the disability sector as well as obligations and facilitation and inspection and fines to be imposed on any ministries, public institutions and legal entities that violate the laws and disability-related regulations.

## 2. Competent Institution in Disability Sector

In the sake of protection and promotion of rights of people with disabilities, the Royal Government of the Kingdom of Cambodia has created its aides which are technical institutions in disability sector through laws, sub-decree, Prakas and some regulations to ensure the implementation of the task and to improve the well-being of people with disabilities.

### A. Disability Action Council (DAC)

The Disability Action Council (DAC) is a national facilitation and consultation mechanism on disability issues created by Royal Code dated 30 July 2009 in the law on protection and promotion of rights of persons with disabilities.

Initially, the Disability Action Council (DAC) was set up on 26 October 1999 by the Prakas of the Ministry of Social Affairs, Labour, Vocational Training and Youth Rehabilitation (MOSALVY) and Inter-ministries as well as 5 national and international NGOs including Cambodia Trust (CT), Handicap International (HI), National Center for Disabled Person (NCDP), Jesuit Relief (JR), Cambodia Disable People Organization (CDPO) through Prakas 308 MOSALVY of the Ministry of Social Affairs, Labour, Vocational Training and Youth Rehabilitation.

The Disability Action Council originates from a task force set up in 1995-1997 comprised of representatives from the Ministry of Social Affairs, Vocational Training and Youth Rehabilitation (MOSALVY), International Labour Organization working on disability sector. This task force has been transformed into Disability Action Committee.

In 1999 to 2009, the Disability Action Council was a permanent semi-government and NGO institution to replace the Disability Action Committee whose term ended.

The Disability Action Council has a main duty to provide consultation on policies related to the development and support for services for people with disabilities<sup>1</sup>.

After the law on protection and promotion of rights of people disabilities took effect on 30 July 2009, the Disability Action Council has the following duties<sup>2</sup>:

- Provide technical consultation on disability issues and restoration of labour capacity.
- Help ministries, institutions and relevant organizations formulate policies, national and strategic plans related to disability and restoration of labour capacity.
- Promote the implementation of policies, laws and related regulations and disability issues and restoration of labour capacity.
- Propose further modification and amendment to legal policies and regulations related to disability issues.
- Monitor the assessment of the implementation of policies, national plans, laws and regulations related to disability issues.
- Communicate with national and international communities to exchange experience, mobilize resources inside and outside the countries.

Seeing that the disability sector is growing and has a broad scope which has to be paid attention to in order to serve the interests of people with disabilities, the Royal Government of Cambodia has modified Sub-decree 59, OrNKr.BK into a new Sub-decree 216, OrNKr.BK dated 02 May 2013, adding more roles and duties of DAC as stated in the National Strategic Plan and Action Plan related disability etc.

## **B. Department of Disability Welfare**

The Department of Disability Welfare was initially named Department of Labour Capacity Restoration under the Ministry of Social Affairs, Veterans and Youth Rehabilitation through 54 dated 24 March

<sup>1</sup> Website of Disability Action Council (<http://dac.org.kh/kh/article/about/ប្រវត្តិវិបស៍-កិ.ស.ជំ.អ្នក>)

<sup>2</sup> Article 6 of Law on Protection and Promotion of Rights of People with Disabilities 2009

2011 on Organization and Functioning of the Ministry of Social Affairs, Veterans and Youth Rehabilitation.

The Department of Disability Welfare has the following duties<sup>3</sup>:

- Manage, lead and arrange tasks of disability welfare for the Ministry
- Formulate legal principles and regulations related to disability welfare
- Promote the implementation of the protection and promotion of rights of people with disabilities
- Implement international conventions related to rights of people with disabilities
- Carry out inspections of the implementation of the law on protection and promotion of rights of people with disabilities
- Prepare activities and carry out other duties as assigned by the Ministry.

### **C. Disability Rights Administration**

Disability Rights Administration is formed by the law on protection and promotion of rights of persons with disabilities, Article 8, placing it under the supervision of the Department of Labour Capacity Restoration which currently is the Department of Disability Welfare and Prakas 056 dated 28 January 2010 on Formation of Disability Rights Administration.

Disability Rights Administration has the following roles and duties:

- Disseminate, inspect, monitor and promote the implementation of the law on protection and promotion of rights of persons with disabilities and related regulations.
- Carry out inspection of ministries, public institutions and legal entities in accordance with the law on protection and promotion of rights of persons with disabilities.
- Take measures to impose interim fines according to Article 54 of the law on protection and promotion of rights of persons with disabilities on ministries, public institutions, private establishments that fail to fulfill the obligations to protect and promote the rights of people with disabilities.
- Prepare cases to be filed to court against those violating the provisions of the law on protection and promotion of rights of persons with disabilities.

### **D. Disability Foundation**

Resulting from the law on protection and promotion of rights of persons with disabilities, Disability Foundation is formed by Sub-decree 118 OrNKR.BK dated 13 September 2010 on Organization and Functioning of Disability Foundation and Appointment of members of Governing Board of Disability Foundation initially in March 2011.

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<sup>3</sup> Page 2, Basic Documents on Procedures for Inspection of Disability Sector of the Kingdom of Cambodia

Disability Foundation is a public administrative institution under technical supervision of the Ministry of Social Affairs, Veterans and Youth Rehabilitation and under financial supervision of the Ministry of Economy and Finance and has the following duties<sup>4</sup>:

- Provide labour capacity restoration service for people with disabilities free of charge
- Manage labour capacity restoration center for people with disability
- Provide fund for implementing various programs helping people with disabilities and support for institutions that provide assistance for people with disabilities in health, labour capacity restoration, education, technical and vocational education and training and job seeking
- Promote and increase disability welfare
- Integrate people with disabilities in communities
- Manage budget received from the government's support, financial source, cooperation from development partners, NGOs and donation from charitable people and income from investment and legal business
- Contribution collection, interim fines and other fines from directors of public institutions and legal entities that fail to fulfill their obligations as stipulated in the Law on Protection and Promotion of Rights of Persons with Disabilities
- Promote and encourage citizens and charitable people in the private sector and civil society organizations to help support people with disabilities
- Formulate policies to support people with disabilities
- Set up charitable contribution boxes for people with disabilities
- Set up foundations for various services for the benefits of people with disabilities
- Arrange and manage the investment in the foundation of people with disabilities
- Carry out a technical research and vocational training in providing rehabilitation services for people with disabilities
- Make cooperation under instruction from the Ministry of Social Affairs, Veterans and Youth Rehabilitation.

### **3. Recruitment and Facilitation Obligations**

After the Law on Protection and Promotion of Persons with Disabilities has been promulgated, the Royal Government of Kingdom of Cambodia drafted regulations and guidelines on protection of rights of people with disabilities subsequently in order to oblige ministries, public institutions, private enterprises/establishments, legal entities to recruit and provide facilitation for the work of people with disabilities.

#### **A. Rate of Disability Recruitment**

Sub-decree 108 OrN.Kr.BK dated 30 August 2010 has been promulgated by the Royal Government of Cambodia to set the rate of disability recruitment that owners of institutions and employers have to recruit and hire people with disabilities to work in their institution or enterprise.

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<sup>4</sup> Facebook of Disability Foundation (Disability Foundation – PWDF)

At ministries and public institutions with 50 or more civil servants, the Minister of the Ministry or head of the public institution shall recruit people with disabilities who are qualified and have enough ability to fill positions, duties and responsibilities as per types of jobs to be employed in the framework of civil service with a rate of 2 percent of the total civil servants of the ministry or institution.<sup>5</sup>

Meanwhile, employers or owners of legal entities covered by the laws of the Kingdom of Cambodia are also required to recruit people with disabilities who are qualified and have enough ability to fill the position, role and responsibility of each type of job at their enterprises, meaning that any legal entity employing 100 or more workers/employees shall recruit people with disabilities at a rate of 1 percent of its total workers/employees<sup>6</sup>.

### **Comparison Table:**

| Type of Institution             | Number of Staff or Workers/Employees | Rate (%) of Recruitment |
|---------------------------------|--------------------------------------|-------------------------|
| Ministries, public institutions | From 50                              | 2 percent (%)           |
| Private legal entities          | From 100                             | 1 percent (%)           |

## **B. Recruitment Formalities and Criteria**

Together with rates set for recruitment of people with disabilities at ministries, public institutions, establishments, private legal entities, Sub-decree 108 OrNkr.BK dated 30 August 2010 also formulates formalities and criteria for recruiting people with disabilities as assistance to ministers, heads of institutions, establishments and employers.

Formalities and criteria for recruiting people with disabilities shall be notified in writing to the Ministry of Social Affairs, Veterans and Youth Rehabilitation and the state secretariat of civil service in every January as follows:

- Total number of civil servants, except armed forces
- Number of people with disabilities to be recruited as per the rate
- Number of civil servants with mild and moderate physical disabilities
- Number of civil servants with severe physical disabilities
- Number of civil servants with mild and moderate mental disabilities
- Number of civil servants with severe mental disabilities

In case ministries and public institutions receive the approval from the Royal Government to recruit civil servants, the ministries and public institutions shall make a plan for recruitment as per the rate as stated in Section 3, Point A above, and then send it to the Ministry of Social Affairs and Youth

<sup>5</sup> Article 5 of Sub-decree 108 OrNkr.BK dated 30 August 2010

<sup>6</sup> Article 6 of Sub-decree 108 OrNkr.BK dated 30 August 2010

Rehabilitations and the state secretariat of civil service no later than one month after receiving the approval<sup>7</sup>.

Legal entities employing 100 or more workers/employees shall give notice in writing regularly every year to the Ministry of Social Affairs, Veterans and Youth Rehabilitation and Ministry of Labour and Vocational Training in every January about:

- Total workers/employees working full time
- Number of workers/employees with disabilities to be recruited as per the rate
- Number of workers/employees with mild and moderate physical disabilities working full time
- Number of workers/employees with severe physical disabilities working full time
- Number of workers/employees with mild and moderate mental disabilities working full time
- Number of workers/employees with severe mental disabilities working full time
- Number of workers/employees with mild and moderate physical disabilities working part time
- Number of workers/employees with severe physical disabilities working part time
- Number of workers/employees with mild and moderate mental disabilities working part time
- Number of workers/employees with severe mental disabilities working part time

In case legal entities cannot recruit workers/employees with physical or mental disabilities as per the rate as stipulated in section 3, point A, the legal entities shall re-make a recruitment plan and send it to the Ministry of Social Affairs, Veterans and Youth Rehabilitation and the Ministry of Labour and Vocational Training by the end of each December<sup>8</sup>.

The Inter-ministerial Prakas of the Ministry of Social Affairs, Veterans and Youth Rehabilitation and Ministry of Health 2492 dated 22 November 2011 on Criteria for Disability Type and Level states that people with disabilities refer to those who miss, lose, have damage to their physical or mental body part which disrupts their livelihood or daily activities such as physically disabled people, people with eye disability, people with hearing impairment, mental impairment, impaired consciousness and other types of disabilities which lead to irregularity<sup>9</sup>.

Criteria for disabilities are classified into four such as physical disability, mental disability, psychological disability and other disabilities. For details about criteria for disabilities, please see Article 6, Annex 1 and 2 of Inter-ministerial Prakas 2492 dated 22 November 2011 on Criteria for Disability Type and Level.

How to calculate people with disabilities as per disability criteria and types as stipulated in Annex 1 and 2 of Inter-ministerial Prakas 2492 dated 22 November 2011 on Criteria for Disability Type and Level shall be implemented as follows<sup>10</sup>:

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<sup>7</sup> Article 9 of Sub-decree 108 OrNkr.BK dated 30 August 2010

<sup>8</sup> Article 10 of Sub-decree 108 OrNkr.BK dated 30 August 2010

<sup>9</sup> Article 4 of Inter-ministerial Prakas 2492 dated 22 November 2011

<sup>10</sup> Article 8 of Sub-decree 108 OrNkr.BK dated 30 August 2010



| Type of Work                                  | Type of Disability                            | Level of Disability | Calculation                              |
|---|---|---------------------|--|
| <b>Full-time civil servants and employees</b> | Physically disabled                           | Severe              | One disabled person equals two           |
|   | Mentally disabled that has been rehabilitated |                     |  |
|   | Physically disabled                           | Mild, Moderate      | One disabled person equals one           |
|   | Mentally disabled that has been rehabilitated |                     |  |
| <b>Part-time employees</b>                    | Physically disabled                           | Severe              | One disabled person equals one           |
|   | Mentally disabled that has been rehabilitated |                     |  |
|   | Physically disabled                           | Mild, Moderate      | One disabled person equals half a person |
|   | Mentally disabled that has been rehabilitated |                     |  |

### C. Facilitation for Disability Work

Ministries, public institutions and legal entities shall have an obligation to provide facilitation for disabled civil servants, workers/employees or interns such as facilitation for type of job and conditions of work and training, working environment, workplace, means, materials and equipment except any facilitation that is a serious burden.

This facilitation refers to proper and necessary changes and adjustment to the responsibility or work of disabled people to ensure that they can carry out and enjoy human rights and freedoms on an equal basis the same as other people<sup>11</sup>.

When recruiting workers/employees, ministries, public institutions and legal entities that have an obligation to recruit disabled people shall prepare a simplified application form with facilitation for disabled people and facilitate the application of disabled people<sup>12</sup>.

Ministries, public institutions and legal entities must indicate and consult with disabled people with regard to job recruitment, focusing on working environment, workplace, work programs, training and personal support.

In addition, there must be changes and adjustment to equipment and environment in the workplace, making it mobile and easily accessible such as building ramps, wide exits and entrances, proper hygienic rest rooms, holding grab bars, disabled handrails, elevator equipped with disabled letters and proper aids for people with disabilities<sup>13</sup>.

In case there is a need for health checkup and assessment of skills and capacity of civil servants and workers/employees, the ministries, public institutions and legal entities shall ensure that there is no bias and discrimination against disabilities and especially the ministries, public institutions and legal entities must carry out performance review as an encouragement in a transparent and unbiased manner<sup>14</sup>.

<sup>11</sup> Point 1 of Inter-ministerial Circular 005 S.Or.Y/SRNN dated 20 September 2010

<sup>12</sup> Point 2 of Inter-ministerial Circular 005 S.Or.Y/SRNN dated 20 September 2010

<sup>13</sup> Point 3 and 4 of Inter-ministerial Circular 005 S.Or.Y/SRNN dated 20 September 2010

<sup>14</sup> Point 5 and 6 of Inter-ministerial Circular 005 S.Or.Y/SRNN dated 20 September 2010

## D. Registration and Inspection

After the Law on Protection and Promotion of Rights of Persons with Disabilities as well as Sub-decree 108 and subsequent related regulations have been introduced, the Ministry of Social Affairs, Veterans and Youth Rehabilitation has issued notice of implementation of the obligations to recruit people with disabilities and ministries, public institutions and legal entities must register with the Disability Rights Administration or municipal/provincial departments of social affairs to report on the implementation of obligations, on declaration of recruitment of disable people and on failure to fulfill obligations.

Ministries, public institutions and legal entities employing 801 or more workers/employees must prepare and complete formalities (see Annex 1) in accordance with the requirement of the Disability Rights Administration located in the Ministry of Social Affairs, Veterans and Youth Rehabilitation. In addition, ministries, public institutions and legal entities must attach the following documents:

- Letter to the Ministry or Municipal/Provincial Department of Social Affairs, Veterans and Youth Rehabilitation
- Application form
- Implementation plan
- Declaration of notice of number of disabled workers/employees
- Declaration of minimum wage of workers (recognized by the Ministry of Labour)
- Policy/principle on respect for rights of disabled people in the institution
- Accessible catalogue for disabled people
- Application form for paying contribution fee
- Profile of disabled people

| Type of Institution                                | Number of Workers/Employees     | Institution in Authority  | Attached Documents  |
|--|---------------------------------|---|---|
| Ministries, public institutions and legal entities | From 0 to 800 workers/employees | Municipal/Provincial Department of Social Affairs, Veterans and Youth Rehabilitation                          | - Letter to the ministry or municipal/provincial department of social affairs, veterans and youth rehabilitation<br>- Application form for registration   |
|  | From 801 workers/employees      | Disability Rights Administration located in the Ministry of Social Affairs, Veterans and Youth Rehabilitation | - Implementation plan<br>- Declaration of notice of number of disabled workers/employees<br>- Declaration of minimum wage of workers (recognized by the ministry of labour)<br>- Policy/principle on respect for the rights of disabled people in the institution<br>- Accessible catalog<br>- Application form for paying contribution fee<br>- Profile of disabled people |

After the ministries, public institutions and legal entities have prepared and completed formalities and sent the above formalities to the Disability Rights Administration or municipal/provincial departments of social affairs, the Disability Rights Administration or municipal/provincial departments of social

affairs will review and send them to the Department of Disability Welfare so that they can carry out an inspection visit before a letter confirming the registration is issued.

After receiving all the registration documents of the ministries, public institutions and legal entities from the Disability Rights Administration or municipal/provincial department of social affairs, the Department of Disability Welfare will send a team to carry out an inspection and assessment before issuing a letter on registration as follows:

1. **Gold Certificate:** is provided to ministries, public institutions and legal entities who have met the conditions required by the disability inspection team as follows:
  - Declaration of notice of total workers/employees and disabled workers/employees
  - Declaration of notice of annual disabled worker/employee recruitment plan
  - Ramps or handrails for disabled people
  - Desks and technical assistance for disabled workers/employees
  - Parking lot for disabled workers/employees
  - Hygienic toilet/room for disabled workers/employees

Or have recruited disabled people more than 2% for ministries and public institutions and more than 1% for legal entities as well as other conditions that the inspection team has required.

2. **Silver Certificate:** is provided to ministries, public institutions and legal entities who have recruited disabled people 1.2% to 1.4% for ministries and public institutions and 0.6% to 0.7% for legal entities or paid full contribution fees as stipulated in Sub-decree 108 or implemented more than 60% of the conditions that the inspection team has required.
3. **General Certificate:** is provided to ministries, public institutions and legal entities that have recruited disabled people 0.8% for ministries and public institutions and 0.4% for legal entities or implemented more than 60% of the conditions that the inspection team has required.

#### **4. Payment of Contribution Fees and Fines**

##### **A. Procedures for Payment of Contribution Fees**

Ministries, public institutions and legal entities who have not fulfilled the obligations in accordance with the law on protection and promotion of rights of people with disabilities and Sub-decree 108 must have an obligation to pay contribution fees as follows<sup>15</sup>:

- Ministries and public institutions that have paid 50 percent of the monthly basic minimum wage of civil servants of framework C.10 for one disabled civil servant.
- Legal entities that have paid 40 percent of the monthly basic minimum wage of workers/employees for one disabled worker/employee.

The payment of contribution fees as stipulated in Prakas 255 MoSAVY dated 30 May 2018 (please see Annex 2) and it must be calculated in Cambodian currency in accordance with the exchange rate of the National Bank of Cambodia and must be made every month no later than one week of the following month, calculating it as per the number of civil servants and workers/employees based on

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<sup>15</sup> Article 5 of Prakas 255 MoSAVY dated 30 May 2018

the monthly payroll. In addition, ministries, public institutions and legal entities must pay the contribution fees directly to the Disability Foundation or into the bank account of the Disability Foundation in the bank that is approved by the Ministry of Economy and Finance in accordance with the announcement of the Disability Foundation<sup>16</sup>.

After paying the contribution fees at the bank, the ministries, public institutions and legal entities must send the receipt indicating the identity of the ministry, public institute and legal entity as well as date of payment issued by the bank to the Disability Foundation. After receiving the receipt, the Disability Foundation must issue a letter confirming the receipt of the contribution fee to the ministry, public institution and legal entity and make a copy to the Disability Rights Administration at the end of every month<sup>17</sup>.

## **B. Interim Fines**

If ministries, public institutions and legal entities fail to pay the contribution fee later than one week of the following month calculated as per the number of civil servants and workers/employees based the payroll of that month, they must pay an extra 5 percent of the contribute fees. In addition, any failure to pay the contribution fees later than 30 days must receive an interim fine as per the measures on fines of the Disability Rights Administration as stipulated in Article 54 of the Law on Protection and Promotion of Disability Rights in addition to the contribution fees that the ministry, public institution and legal entities failed to pay.

In addition, in case the ministry, public institution and legal entity fails to fulfill an obligation as stipulated in Article 35 and Article 37 of the Law on Protection and Promotion of Rights of Persons with Disabilities without valid reason, the ministry, public institution and legal entity will receive an interim fine from 100,000 Riels to 1,000,000 Riels.

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<sup>16</sup> Article 6 and 7 of Prakas 255 MoSAVY dated 30 May 2018

<sup>17</sup> Article 8 of Prakas 255 MoSAVY dated 30 May 2018

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