



The place of contract of employment in times of difficulties in an enterprise under Cameroonian labour legislation

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Abstract

A contract of employment is a contract or agreement whereby a person called worker contract or agree to put his professional activities in an enterprise under the direction and authority of another person called employer in return for remuneration. However, during the execution of the contract, an enterprise may face some difficulties in its operation. In this direction, an enterprise in difficulty is one confronted with one or more problems which put to question the execution of the contract nor the continuity of the enterprise activity. Difficulties may also imply that the enterprise has ceased to function in a harmonious manner, either a breakdown in its continuous activities or risk of discontinuity in its operation. In other words, the enterprise is “sick.” In this light, the worry which this Article seeks to uncover is the place of contract of employment when an enterprise is in difficulties. That is, should the contract of employment be modified, be suspended, be terminated or in nitio or dismissal on economic grounds? The Article also highlighted the legal basis of these choices made by the head of an enterprise (employer). In attaining these objectives, doctrinal research methodology have been adopted. The Article sum up with some vigorous commendations which certainly, will go a long way in ensuring permanence of employment contracts and smooth functioning of enterprise in the national economy.

Keywords: contract-employment-place-difficulty-enterprise-legislation-labour-cameroon

Introduction

The notion of the employment contract is a fairly recent one, born from economic realities ^[1]. A contract of employment is defined by article 23 of the labour code as an agreement whereby a worker undertakes to put his services under the authority and management of an employer against remuneration”. In fact, economic and financial difficulties have revealed the necessity in ensuring that the business enterprise is protected and secured with the aim of fostering private sector job creation and firm growth. The failure to protect contract of employment can have adverse consequences not only on the workers and their families but also on the employer ^[2] and the entire enterprise. Cameroonian labour legislation takes into consideration this socio-economic concern during its enactment.

As a result of the reforms brought about by Law No. 92/007 of 14 August 1992 on the Labour Code of Cameroon, the legislator has reinforced the safeguard of the enterprise through regulated actions. This has also been taken into account by the OHADA legislator. The OHADA insolvency law sets out to save the life of the enterprise through legal redress which aim at avoiding cessation in its activities ^[3]. The interest of the employer will as such, include anything that can enable the latter to protect and safeguard his business or enterprise and to protect and sustain its activity ^[4]. That is, anything that can ensure the continuity and prosperity of the enterprise and enable the employer to make profit out of his investment. The protection of an enterprise as a center of production and as an economic unit whose survival is

of general interest is, therefore, very vital as a public economic policy ^[5].

An enterprise in difficulty is one confronted with one or more problems which put to question the continuity of its activity ^[6]. Difficulties imply that the enterprise has ceased to function in a harmonious manner. In other words, the enterprise is “sick” ^[4]; there is either a breakdown in its continuous activities or risk of discontinuity in its operation. It may not necessarily be facing financial difficulties, but other crises may be plaguing it ^[4]. In this case, the problems of the enterprise should be solved because its “illness” puts at stake several interests, including that of the employer and the employee. Solutions sought always depend on the gravity or the nature of the problem the enterprise is facing or the objective to be attained.

Difficulties generally refer to things or situations that cause problems ^[7]. Such difficulties which may hinder the performance of a contract of employment could be caused by the worker or by the employer. Those caused by the worker are events imputable to him which may lead to non-performance of the contract of employment. They include the illness of the worker, pregnancy and maternity leave, military obligations, exercise of political or administrative functions, education, etc. ^[8]. Meanwhile those caused by the employer may be imputable to him as a person or inherent in the enterprise. Causes of difficulties are imputable to the employer as a person where, for example, he leaves the enterprise to fulfil military obligations ^[9]. Those inherent in the enterprise include economic difficulties ^[10] as well as changes in

the legal status of the enterprise ^[11]. It is pertinent to note that in order to redress the difficulties plaguing an enterprise, and to ensure effective protection of the interest of the employer and its employee, the law provides for certain important mechanisms. This article therefore, aims at critically examining the place of contract of employment of an enterprise in difficulties. It is essential that such difficulties be managed in such a way as to protect the enterprise and ensure its continuity. This can be achieved by either adapting or modifying the Contracts of employment to the necessity of the enterprise, and where need be suspension of contracts or even dismissal or termination of the contract of employment on economic grounds as previewed by the labour legislation.

Forms of contracts of employment

Before the adoption of the 1992 code, the Cameroonian legislature retained only two types of contracts of employment: contract of specified duration and contract of an unspecified duration. To meet to the economic realities of our time, some other forms of contracts were introduced by the 1992 code.

Classical Form of Contract of Employment

These form of contract of employment may take the form of unspecified and specified duration as the case may be. These contracts are discussed in the section that follows

Contract of Employment of Unspecified Duration

Article 25(1)(b) of the 1992 labour code defines a contract of an unspecified duration as “a contract whose determination is not fixed in advance and which may be terminated at any time by the will of the worker or the employer provided that prior notice referred to in article 34 is given”. Where termination is initiated by the employer, it may be referred to as “dismissal”, when it is initiated by the worker but orchestrated by the employer, it may be termed “disguised dismissal” and when it is done by the free will of the worker, it is called “resignation”. This is the most common form of labour relation in Cameroon. The parties agree to be bound to each other for an indeterminate period which extends more or less far into the future and subject to retirement, may last for the life time of the parties. This however is far from insinuating that it is a contract of employment for life because it contains certain principles inconsistent with that presupposition. From the provision of article 25(1)(b), certain basic characteristics can be inferred.

Contract of Employment of Specified Duration

This form of contract is an exception to the contract of unspecified duration. Article 25(1)(a) defines this type of contract as “a contract whose termination is fixed in advance by both parties during its formation”. It can be concluded for a number of days, weeks, months or years. The date of termination must be clearly stated at the time of conclusion of the contract. It can't be established for a period of more than two years but can be renewed only once for a period of two years thus taking it to a maximum determined period of four years. It should be noted that this contract of specified duration can only be renewed once as concerns Cameroonian nationals with the same enterprise.

New Forms of Contract of Employment

The Cameroonian Labour Code ^[12] recognizes some forms of contracts of employment such as temporary, occasional and seasonal jobs which the employer may use depending on the circumstances of the case. These forms of employment contracts come about as a result of abrupt expansion or explosion in an industry ^[13]. The employer may, as well modify the existing contracts of employment.

Temporary Contract of Employment

A temporary job is one in replacement of an absent worker or a worker whose contract has been suspended, or the completion of a piece of work within a specific time limit and which requires additional labour force ^[14]. Article 5 (2) of the Ministerial Order No.37 governing these contracts of employment stipulates that such a contract may not be concluded for a period exceeding 15days and is renewable only once ^[15]. This form of employment contract enables the employer to get the enterprise out of difficulties caused by the absence of a worker whose contract has been suspended. It ensures continuity in the activities of the enterprise.

Occasional Contract of Employment

An occasional job is aimed at coping with an unexpected growth in the activities of the enterprise due to certain economic conditions or entailing urgent works to prevent imminent accidents, organizing emergency measures or repairing enterprise equipment, facilities or buildings which are dangerous for the workers ^[16]. As such, this provides a solution to an enterprise faced with expansionary difficulties and also prevents the enterprise from getting into more difficulties due to accidents or use of defective equipment.

Seasonal Contract of Employment

A seasonal job is a kind of employment contract which results from the cyclical or climatic nature of company activities ^[17]. It is mostly in agricultural companies and its duration cannot exceed six (6) months, but can be renewed every year with the same company or employer.

However, it is worth noting that the various contracts are intended to offer the employer an opportunity to adapt recruitment to the needs of the enterprise. In this light, the employer is free to choose the type of contract of employment which is convenient, depending on the interest of the enterprise provided he respects the conditions laid down by the law and the regulatory texts concerning such contracts of employment and that the employee consents to it.

The practical utility of temporary, occasional and seasonal contracts of employment is, therefore, undeniable. It permits the employer to manage cases where the replacement of an absent or suspended worker appears indispensable and also to redress difficulties resulting from expansion and climatic changes. This prevents paralysis in the functioning of the enterprise and ensures the smooth functioning as well as the continuity of the enterprise.

Modification of contract of employment

The conditions under which a contract of employment was initially concluded may necessitate modifications especially in

times of difficulties given that it is a contract of successive performance^[18]. All agreements of this nature usually appeal to transformations, as they can only last by adapting to new conditions of technology or economic development which may require the amendment of contracts of employment under which the activity is performed, taking into account the intrinsic dynamics of employment^[19]. As such, there could be modification of contractual clauses as well as modifications on the legal situation of the employer.

Modification of Contractual Clauses in a Contract of Employment

The working conditions are always defined and fixed by the clauses of the contract at the moment of employment. These conditions can in the course of the performance of the contract call for changes. The modification of contractual clauses is provided for by Section 42(2) of the Labour Code which states that, the contract of employment may while still in force, be amended on the initiative of either party. As such, the worker can for personal or professional reasons ask for a modification of the employment contract. However, majority of cases of modification are often initiated by the employer for reasons which may be economic, as such leading to substantial modifications in the contract of employment.

Substantial Modification of Contract of Employment

Substantial modifications are those that bring fundamental changes to the contract of employment^[18]. It is often difficult to define what constitutes substantial modification as it may vary with contract, depending on the intention of the parties and what they might have considered as substantial clauses of the contract^[20]. This difficulty stems from the fact that the Cameroonian Labour Code has not established the list of clauses whose amendment or revision will constitute substantial modification of employment contract, and as such, the contract of employment becomes the law of the parties^[18].

However, where parties do not designate clauses whose modification will be considered substantial, the task of determining such is entrusted on the courts. The courts have held that substantial modification deals with issues like transfer^[21], retrogression^[22], reduction of wages, change of employment post with loss of advantages, etc.^[21]. These are the essential elements of a contract of employment. There are other issues such as, entering in an employment superior in time to that generally known by collective agreements, displacement of the worker and the combination of tasks. Substantial modification must be negotiated.

Negotiation of Substantial Modification

Unlike non-substantial modification which can be imposed by the employer, substantial modification must be negotiated between the parties to the contract^[23]. This implies that, when the contemplated modification alters terms and conditions of employment contained in the contract, no change may be made without the mutual consent of the contracting parties. Substantial modifications as earlier mentioned could include all the measures of retrogression, displacement, as well as measures related to wages. A proposal for modification can either be accepted or rejected by the worker. When it is rejected, section 42(2) (a) of the Labour Code states that:

Where the amendment suggested by the employer is substantial and is rejected by the worker, the termination of the contract that may result therefrom shall be the responsibility of the employer. Such termination shall be wrongful only where it is not justified by the interest of the undertaking.

From the wordings of this section, termination in this case is the responsibility of the employer. As such, the employer is required to pay only indemnities to the worker^[20]. However, he can be held to pay damages if the rupture or termination is abusive, that is, where the proposal for modification is not justified by the interest of the enterprise, such as to ensure its wellbeing or remedy its difficulties^[24]. An accepted proposal for modification comes along with certain effects. According to section 40(3) of the Labour Code, modification could result to insertion of new clauses such as, reduction of working hours, shift work, part-time work, review of allowances and benefits and even wage cuts, not leaving out supplementary hours of work.

Modification on the Legal Status of the Employer

The legal situation of the employer may change through succession, sale, amalgamation, financial reorganization, transformation into partnership or company, etc. As regards these, section 42(1)(a) of the Labour Code provides that:

In the event of any change in the legal status of the employer, in particular through succession, sale, amalgamation, financial reorganization, transformation into partnership or company, all contracts of employment in force on the date of the change shall subsist between the new organization and the personnel of the undertaking. They shall be terminable only in the manner and subject to the conditions laid down in this part.

Modifications in the legal status of the employer do not, therefore, automatically entail rupture of the contracts of employment. It is the right of the workers for their contracts to be maintained. But this does not signify that the workers cannot be dismissed or that their employments cannot be modified. The new employer has the right to modify conditions of work or dismiss workers. Before the change of employer, that is, before transfer to the new employer, the former employer can still use his powers of the boss to modify the contracts of employment or to dismiss^[25]. The new employer has the fundamental right to reorganize the enterprise by separating it from personnel which he thinks are no longer needed^[25]. If dismissals prove to be a condition for the transfer of the enterprise or change of employer, such may be justified by future change in the legal situation of the employer. This is generally the case in companies facing bankruptcy.

An important aspect concerning the change in the legal situation of the employer is the cancellation of on-going contracts of employment. The law allows for such cancellation in limited and specific situations. Section 42 (1)(b) of the Labour Code provides for two situations. The first exception is where the enterprise is changing its activities. Here there should be real and total change of the object of the enterprise. Partial change does not suffice because the workers' contracts of employment must be maintained for the activities of the enterprise that have not been changed. The second exception is where the workers express clearly and unequivocally before the Labour Inspector of the area, their desire to be laid off with payment of their benefits, prior to such change.

The possibility to cancel on-going contracts of employment as seen above is important to the employer as it is an enablement to get out of difficulties created either by the change in the activities of the enterprise or the desired layoff of the concerned workers. This gives the employer the chance to employ new workers who might even be more competent and whose contracts will be concluded under conditions convenient to the new employer.

Effects of modification of contract of employment

The consequence of modification of contract of employment depends on the reaction of the party who receives a proposal or offer of modification. In this light, section 42 of the Cameroonian Labour Code provides that:

Where the amendment suggested by the employer is substantial and is rejected by the worker, the termination of the contract that may result therefrom shall be the responsibility of the employer....

Substantial modification of an employment contract is deemed to be accepted if the offeree unequivocally adheres to the new clauses of the contract. According to section 40(3) of the Labour Code, these new clauses may include reduction of working hours, shift work, part-time work, review of allowances and benefits and even wage cuts, not leaving out supplementary hours of work.

According to section 80(1) of the labour code, *statutory hours of work in all public and private non-agricultural establishments may not exceed forty hours per week. In all agricultural and allied undertakings, the hours of work shall be based on a total of two thousand four hundred hours per year, within the maximum limits of forty-eight hours per week.* In principle, the employer is obliged to respect the worker's duration of work considering its impact on his/her health and security. However, the needs of the enterprise may as well oblige the employer to carry out substantial modifications on the contract of employment in the light of either addition or reduction in the number of working hours, provided this is done in conformity with the law [26].

Reduction of working hours consists of reducing the normal duration of effective work applicable in an enterprise below the legal duration or duration fixed conventionally [27]. This measure saves the loss of workers as it permits a certain degree of sharing of working hours in the enterprise and avoids dismissal on economic grounds, thus ensuring preservation of employment.

In order to redress the difficulties faced by an enterprise, the employer can also resort to part time work. Part time work is a measure which allows for a global reduction in the number of working hours in order to adapt to the needs of the enterprise. This technic reduces mass wages without affecting the global volume of effective work nor jeopardizing the contracts of employment, provided all the workers accept the modification of their contracts.

Modification of the contract of employment can also touch on wages. *Wages refer to remuneration or earnings, however designated or calculated, capable of being evaluated in terms of money and fixed by mutual agreement or by the provisions of regulations or collective agreements which are payable by virtue of a contract of employment by an employer to a worker for work done or to be done or for services rendered or to be rendered* [28]. In this light, a distinction can be made between base wages [29] and accessories [30].

In a bit to manage the difficulties faced by an enterprise, the employer may be obliged to make recourse to wage cuts or to review the various accessories of wages. Wage cuts can be understood to mean the reduction of the wages payable to the workers of an enterprise. Meanwhile, a review of accessories could either result to the withdrawal or a simple curtail [31]. These measures can permit the enterprise to save money, thanks to the reduction of the financial burden of the enterprise towards its personnel. This financial reserve can be used to revive the enterprise.

Whatever the case, where modification of the contract of employment is accepted by the workers of an enterprise in difficulties, it innovates their contracts which are henceforth performed under new conditions, certainly those convenient to the employer. Therefore, the employer can reasonably modify the contracts of employment by updating work practices or processes for instance. This could be a great relief to the enterprise as it would enable it to save money and even increase efficiency, without a loss of workers and without the functioning of the enterprise being paralysed.

Suspension of contract of employment

After making use of the aforementioned measures in a bit to resolve the difficulties faced by an enterprise, the employer may discover that the situation of the enterprise rather requires other measures such as the suspension of the contract of employment or even dismissal on economic grounds. The performance of contract of employment may by common accord of the parties be suspended. This hypothesis does not pose any problem. However, in certain circumstances the parties may be temporarily in a situation of impossibility to perform their obligations. In this case, the contract is suspended with numerous consequences or effects.

Causes of Suspension of Contract of Employment

Suspension of contract of employment may be caused by several factors [32] one of which is the prevailing economic situation of the employer. It is one of the temporal solutions that could be adopted to rescue an enterprise in difficulties. An employer, finding itself in a temporarily difficult economic situation may, instead of dismissing his employees, lay them off temporarily [4]. The workers are then placed in a situation of redundancy [4]. Other causes include illness, pregnancy or maternity leave, political, administrative or military functions, education of the worker as well as where the employer leaves the enterprise to fulfil military obligations or as a result of changes in the legal status of the enterprise. The Cameroonian Labour Code provides for suspension of contract of employment in its Section 32. It states that:

A contract of employment shall be suspended during a period of lay-off not exceeding six months. Lay-off shall mean the collective interruption of all or part of the work by the personnel of an undertaking due to accidents or force majeure or an unfavourable economic situation.

From the above provision, lay-off is a collective measure. That is why only some workers or workshops may cease to work. The employer may decide on gradual lay-off which will progressively affect the various workshops in the enterprise [24]. Lay-off results from a situation provoked by economic circumstances

linked to the nature of the enterprise's activities; circumstances which bring about partial or general economic difficulties ^[4]. It is not a perpetual situation because it must be defined within a specified time limit, the maximum of which is six months.

Effects of Suspension of Contract of Employment

The suspension of the contract of employment has various effects. The principal aim of suspension is always to prevent automatic rupture of the contract of employment. The suspension produces effects usually limited by contractual provisions. It has effects on the worker's remuneration as well as other rights.

As a result of the reciprocal obligations of the contract of employment, suspension of the contract of employment leads to the suspension of the required services on the side of the worker and such remuneration from the employer ^[4]. This, in principle, relieves the employer of the obligation of remuneration unless legal or contractual provisions allow for maintaining wages or indemnification. The non-payment of wages is equally accompanied by the non-payment of accessories or the reduction of benefits.

Suspension of contract of employment for economic reasons has two major consequences. It conserves the jobs of workers concerned for a maximum period of six months and reduces the financial burden of the enterprise, if there are no provisions of collective agreements more favourable to the worker ^[33]. Provisions that are more favourable may be provided by the contract of employment, though the law insists on collective agreements. As such, the employer may opt to prolong the duration of suspension to maintain his workers at his disposal while maintaining the totality of their wages ^[34]. Where no such possibilities are envisaged, the employer under collective proceedings is bound to pay to the workers affected a pre-determined indemnity of suspension, whose amount diminishes progressively from the first month to the sixth month.

The payment of indemnities during suspension is governed in Cameroon by Order No. 001/CAB/MTPS of 14 February 1995 ^[35]. According to article 2(1) of the above Order the indemnity is calculated on a percentage of monthly wages as follows: fifty per cent (50 %) for the first month, forty per cent (40 %) for the second month, thirty-five per cent (35 %) for the third month, thirty per cent (30 %) for the fourth month, twenty-five per cent (25 %) for the fifth month and twenty per cent (20 %) for the sixth month ^[36]. The percentage is calculated based on the base wage but may also include accessories such as longevity allowance. However, it may happen that before lay-off, the employer had adopted measures in which all allowances were suppressed. In this case, he will deal strictly with base wage.

If the period of six months elapses when the company has not regained its rails, the employer can terminate the contract. The contract cannot be terminated before six months because the period is a period prefixed, except that the company goes into liquidation before then. However, a worker who intends to terminate his contract within this period must notify the employer. The workers who are victim of termination after expiry of lay-off have priority of re-employment in the enterprise in the same category within a period of two years.

Dismissal on economic grounds in a contract of employment

Dismissal on economic grounds is the object of section 40 of the Labour Code. In the wordings of section 40(2) of the

Cameroonian Labour Code, dismissal on economic grounds is any dismissal effected by the employer for one or more reasons not inherent in the person of the worker and resulting from an abolition or transformation of posts or an amendment to the contract of employment consequent on economic difficulties, technological changes or internal reorganisation. In principle, dismissal on economic grounds cannot be effected unless abortive attempts have been made to save the enterprise and by extension the workers' employments ^[4].

Dismissals for economic reasons may be individual or collective. Usually, collective dismissals trigger procedural requirements such as, consultation of workers' representatives and notification of public authorities ^[37]. There are various hypotheses of dismissals and guidelines laid down by the law-maker to control the procedure of dismissal for economic reasons.

The Nature of Dismissal on Economic Grounds

Despite the obligation on the employer to search for alternative measures to dismissal in order to conserve valuable workers during economic difficulties, dismissal may not be avoided in certain situations, especially when it becomes urgent or indispensable ^[4]. It is also possible that workers may refuse proposals to amend their contracts of employment as a means of redressing the situation of the enterprise ^[5]. In addition, it may be impossible for workers to resume work after the period of suspension of their contracts of employment ^[38].

Urgent or Indispensable Dismissals

Under Cameroonian employment law, it is incumbent on the employer to show that he tried such possibilities as 'reduction of working hours, shift work, part time work, lay-offs, review of allowances and even wage cuts', to no avail ^[39]. The Cameroonian Labour Code provides that where the parties fail to reach an agreement, or where notwithstanding the measures envisaged, certain dismissals are still necessary, the employer must determine an order of dismissals taking into consideration professional proficiency, seniority in the undertaking and family responsibilities of the workers ^[40].

Urgent or indispensable dismissal means that it is done only as an exceptional remedy ^[4]. Thus, as a measure of legal redress of a company in crisis ^[41]. Though the legislator has not given what determines the urgency, indispensability or necessity of such dismissal, dismissals will be urgent, indispensable or necessary where the reduction of the workforce in the enterprise is the only measure of redress.

Therefore, in violation of the obligation to maintain jobs when the company is facing difficulties, the possibility of initiating dismissal as a measure of redress is accepted only when the posts of the employees have been suppressed and there is no possibility of providing them corresponding employment or their workshops have been suppressed and there is no possibility of redeployment ^[4].

Refusal by Workers of Proposed Amendments to the Contract of Employment

Refusal of amendments to the contract of employment is a corollary of the obligation on the parties to negotiate substantial modifications. If the employer fails to convince the workers in the negotiation phase, they are at liberty to refuse the proposed modifications. In this case, the employer can adopt two attitudes;

either renounce his project of modification or continue. If he renounces it, the workers continue performing their contracts under initial conditions; if he continues, he dismisses them and pays them their dues^[5]. He cannot pay damages because the amendments are for the interest of the enterprise.

The Labour Code has adopted proposals by legal thinkers that the employer should bear the burden of termination of contract in case of refusal of modifications^[4]. This implies that a worker who refuses substantial modifications of his contract risks nothing; only the employer will be in a detriment if he opts to terminate the contract. He will pay indemnities for dismissal even if his original intention was never to dismiss^[18]. This protection offered the workers could incite them to refuse systematically modifications even if they are indispensable for the redress and survival of the enterprise. But the dismissal may be beneficial to the enterprise because the employer can recruit new workers under conditions favourable to the enterprise.

Impossibility of Resuming Work after the Period of Redundancy

Where lay-off is adopted as a means of redress, it preserves the workers' employment for its duration. This period which is usually referred to as the period of redundancy is agreed upon by the parties to a contract of employment. Under Cameroonian law, it can go for as long as six months. If after this period the situation of the enterprise is not re-established and consequently that workers will not resume work, they will be dismissed. The position is same under the OHODA law where suspension was adopted as a means of redress. The Uniform Act provides that where the receiver is authorised by the official receiver to effect dismissals, it will be done "without prejudice to the right to a notice and to compensation relating to the termination of the contract of employment"^[41].

Nevertheless, if after the six months of suspension of contract the employer still wants to preserve his workers, he may extend the period of suspension. The consequence here is that he will have to reinstate their wages. This is not easily conceivable since it will be an additional burden on the enterprise under redress. In any case, if the workers cannot resume work and there is no possibility of prolonging the suspension of their contracts, they must be dismissed. However, the dismissal may as well be beneficial to the enterprise as it can relieve the enterprise from financial burden and give room for future recruitment matching the resources of the enterprise. Dismissal on economic grounds usually goes through a defined procedure.

The Procedure for Dismissal on Economic Grounds

Section 40 of the Labour Code subjects dismissal on economic grounds to the respect of a complex procedure which includes many phases. These include negotiation, the establishment of the list of workers to be dismissed, consultation of staff representative, and arbitration by the inspector in charge of Labour and social security.

Preliminary Negotiation

This negotiation phase constitutes the search for alternative measures; measures that would avoid dismissal. Such measures notably include the reduction of the hours of work, routine work, part time work, lay-off, reduction of various allowances and benefits and even wage cuts. The negotiation is made by the

employer and the staff representative in the presence of the Inspector of Labour who sits in an advisory capacity and makes a report of the measures arrived at. Where there is no staff representative, all the workers will have to choose one person to represent them^[4].

Therefore, if the parties are able to reach an accord, a report signed by the parties and the Inspector of Labour specifies the measures retained and the duration of their validity, for they must be temporal^[4]. However, if a worker refuses the proposed measures, he/she is dismissed with payment of indemnity if the conditions are fulfilled. If no accord is reached, the actual procedure for dismissal on economic grounds is opened with the establishment of the list of Workers to be dismissed.

Establishment of the List of Workers to be Dismiss

In case the parties fail to reach an agreement after the negotiations, or where notwithstanding the measures envisaged certain dismissals are still necessary, the employer is required to establish an order of dismissal taking into consideration professional proficiency, seniority in the undertaking and the family responsibility of the workers^[42].

The above provision is aimed at avoiding arbitrariness in the choice of those to be dismissed in the face of the employer's economic difficulties. Technically, it ensures that the enterprise is left with highly qualified and experienced workers capable of redressing its situation^[4]. Moreover, the Cameroonian Labour Code goes beyond the protection of the enterprise and ensures the protection of the families of workers. Besides professional proficiency on which the law emphasises and seniority as criteria for selecting workers to be dismissed, it adds "*the family responsibilities of workers*"^[43]. However, what is necessary is that, the enterprise at the end of the dismissals cannot be worse off, because the enterprise must be left with qualified and experienced staff.

Consultation of Staff Representative

The employer is required to seek the opinion of the staff representatives. In order to obtain this opinion as well as the suggestions of the staff representatives, the employer is expected to establish a list of workers he intends to dismiss and communicate it to the latter, explaining the criteria of selection^[44]. The staff representative is bound to forward his/her response to the employer within not more than eight clear days^[45]. Under the Uniform Act, in a situation where the company is under legal redress such as preventive settlement, the competent court always appoints a receiver responsible for supervising the execution of the preventive composition agreement^[41].

The receiver shall, in order to have their opinions and suggestions, inform, in writing, staff representatives of the measures which he intends to take by providing them the list of workers he intends to dismiss and the criteria he adopted. The staff representatives shall reply, in writing, within a period of eight days^[46]. This stage is obligatory for the continuation of the procedure since the response of the staff representative is transmitted to the Inspector of Labour and Social Insurance.

Arbitration by the Inspector in Charge of Labour and Social Insurance

As mentioned earlier, the staff representatives are bound to forward their response to the employer within not more than eight

clear days. However, where there are no staff representatives the employer seizes the Inspector of Labour within eight days, who designates an ad hoc staff representative^[47].

Generally, where there are staff representatives and where their response is furnished as required or not, the employer shall forward to the Labour Inspectorate his letter of consultation of the staff representatives and the written reply of the latter or state that the staff representatives have not replied within the specified period of eight days^[41]. The Labour Inspector then verifies in conformity with legal prescriptions, gives his opinion on the motives and proposes appropriate measures.

It is also important to note that staff representatives have a particular protection and as such they are not treated like ordinary workers and thus, cannot be dismissed without the authorisation of the Inspector of Labour. In this light, the law provides^[48] that staff representatives may only be dismissed if their posts have been abolished and with the consent of the Inspector of Labour of the area. This prevents arbitrary dismissals which could result to the loss of devoted workers, as even common sense will show that only a qualified and devoted worker is capable of handling the position of staff representative.

The priority of Re-employment of Workers Dismissed on Economic Grounds

According to the Labour Code^[49],

“A dismissed worker shall have prior claim, with equal professional proficiency, to employment in the same establishment for a period of two years.”

In this regard, the worker is required to leave his/her address with the ex-employer and should always communicate any change of address to the ex-employer for a period of two (2) years.

This provision of the law is most welcome not only for the sake of the worker's employment but also in the interest of the enterprise. This is because with the pride of place given to workers dismissed on economic grounds, the enterprise can be able to reabsorb competent and qualified workers who could have been lost.

Conclusion and the way-forward

The employer by virtue of his activities may face difficulties or even hostile relationship, at times managerial as well as financial. However, this employer has a firm interest regarding its opportunity for participating in the local economy, in order to achieve mutual prosperity through the economic benefits of doing business.

As such, the protection of an enterprise in difficulties is of undeniable importance because it contributes in the protection not only of the employer's interest but also the protection of workers' fundamental rights such as the right to work. It is also vital because it contributes in achieving the social policy of the state and guarantees economic stability and progress. That is why labour legislation needs as much efforts as possible to guarantee and protect the enterprise even in vicissitudes.

To this end, we therefore, recommend that the legislators should make complete provisions on the rules governing the bodies responsible for the resolution of labour disputes to shun the confusion of applying the provisions of ordinary laws to disputes resolutions in employment contract.

Furthermore, the labour inspectors and the National Social Insurance roles should be reinforced. They should have the

authority to regular visit, surprise inspection in order to verify various labour etiquettes in all enterprises within their respective jurisdiction, ensuring that they confirm to the prescriptions of the contract terms as well as applicable laws. This could also limit the rates of conflicts between employers and their employees.

We also recommend that the labour code should be revisited in ensuring that the employer and employees representatives draw up the work rule in order to avoid disputes in their employment contracts.

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8. See Section 32 of the Labour Code.
9. See Section 32(a) ibid.
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11. See Section 42 ibid.
12. See Section 25(4) ibid.
13. These are regulated by Decree No. 93/572/PM of 15 July 1993 on temporal job enterprises.
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28. See Section 61 of the Labour Code.
29. Remuneration for work done or to be done or for services rendered or to be rendered.
30. Accessories can either be in cash such as allowances or in kind such as housing, nutrition etc.
31. Some of these so-called accessories impute heavy social burden on the enterprise, thus calling for a review.
32. Section 32(a-j) of the Labour Code enumerate other reasons for the suspension of contract of employment such as closure of the establishment by employer for reasons of military service, workers military service, worker’s illness, maternity leave, disciplinary suspension, worker’s leave, industrial accident or occupational disease, mutual consent for exercise of political or administrative duties, worker’s police custody, and worker’s absence to follow his spouse changing the usual place of residence.
33. See Article 29 of national collective agreement on maritime transport and article 34 of the national collective agreement of hotels, restaurants, bars, etc, which provides for maintenance of the totality of wages during the period of economic crisis, See also Anazetpou Z. (1997), “Le Droit Camerounais du Travail en Chiffres”, *Annales de la FSJP-UDs*, Tome 1, vol. 2, p. 114.
34. This last hypothesis may only be envisaged if the suspension of contract was for reasons other than economic crises.
35. Arrêté n°. 001/CAB/MTPS du 14 Février 1995, fixant les Taux d’Indemnisation Pendant la Période de Suspension du Contrat de Travail pour Cause de Chômage Technique.
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37. Muller A. *Labour Law Reforms at the crossroads of ILO Standards and OECD and World Bank’s Indexes: A Global Review of Regulation on Collective Redundancies*”, Comparative Labour Lawyer, Industrial and Employment Relations Department, International Labour Office (ILO), Geneva, 2012, 6.
38. That is a period of six months if the company cannot regain it rails.
39. See Section 40 of the Labour Code.
40. See Section 40 of the Labour Code; See also article 2 of Arrêté No. 021/MTPS/SG/CJ of 26 May 1993 setting the terms for termination of employment on economic grounds.
41. UACP, S. 110.
42. See Section 40 (6) of the Labour Code.
43. See Section 40(6) (a) of the Labour Code.
44. See Section 40(6) (b) *ibid*.
45. See Section 40(6) (c) *ibid*.
46. See Section. 110(4) *ibid*.
47. See Article 3(3) of arête No. 021/MTPS of 26 May 1993.
48. Section 40 (7) of the Labour Code.
49. Section 40 (9) of the Labour Code.