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# **INVESTMENT GUIDE**

## **CAMBODIA | 2019**

**11<sup>th</sup> Edition**

# **CAMBODIA**

## **LEGAL, TAX & INVESTMENT GUIDE**

### **2019**

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DFDL  
No 30, Preah Norodom Boulevard  
BRED Bank Building, 4<sup>th</sup> floor  
Khan Daun Penh, Phnom Penh, Cambodia

Tel: +855 23210400  
Fax: +855 23214053  
Email: [cambodia@dfdl.com](mailto:cambodia@dfdl.com)

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# Preface

## Welcome to Cambodia

In this guide we aim to help you reap the vast benefits of doing business in Cambodia with its motivated, energetic and entrepreneurial people. Our role is not merely to advise on projects and transactions, but also to act as a conduit between the economic and business practices of the developed modern world and those of a country making fervent strides towards a better future. We aim to assist you in making the most of the vast opportunities that Cambodia has to offer, while ensuring that you establish lasting cultural and commercial ties with your local counterparts in the private and public sectors.

As a testament to DFDL's dedication and longevity in Cambodia, our regional headquarters has been based here since 1995. With over 24 years of solid local experience, working with businesses, large corporations, major economic stakeholders and in cooperation with Sarin & Associates, we continue to provide a comprehensive range of integrated tax and consulting services to investors in Cambodia. DFDL's dedicated professionals, with their collective wealth of experience developed in numerous jurisdictions, pride themselves on providing cost effective, innovative and practical services to you, our clients.

Our diversity is something we pride ourselves on, and we aim to speak to our clients in language they understand. In addition to Khmer and English, we have experts who can communicate fluently in Mandarin, Cantonese, Malay, Vietnamese, Japanese, Thai, and French.

In addition to DFDL's broad commercial practice covering all aspects of the investment process, we also have dedicated industry specialists. Our expertise includes:

- structured financing (including projects and trade);
- secured lending (with an emphasis on natural resources, power generation, water, and renewable energy);
- major infrastructure and infrastructure financing; mergers and acquisitions;
- corporate and commercial matters (including employment and intellectual property);
- real estate and construction (including land and property development);
- hospitality;
- land concessions and agricultural projects;
- telecommunications and information technology (IT);
- mining (both minerals and hydrocarbons); and
- capital markets and securities.

Our dedicated Tax & Accounting Services Practice Group consists of experienced foreign and local consultants exclusively engaged in tax and customs assignments, tax optimization advisory, tax due diligence, structuring of investment projects, tax compliance, accounting services and advisory, and disputes all of which feature among frequently requested services.<sup>1</sup>

Through our full-service dedicated offices in Bangladesh, the Lao PDR, Myanmar, Thailand, Vietnam, Singapore and our collaborating firms in Cambodia, Indonesia and the Philippines, we provide personalized and seamlessly integrated quality services to international, regional, and local clients looking to invest in these and other ASEAN countries.

**Guillaume Massin**

Partner

Managing Director, Cambodia

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<sup>1</sup>The tax compliance and tax audit services will be provided by Mekong Tax Services Co., Ltd, a member of DFDL and licensed as a Cambodian tax agent under license number – TA201701018.

# What's New in the 2020 Edition

## New Laws and Regulations

This edition incorporates descriptions of a number of new laws, regulations, institutions, and practices that have come into force since our 2018 edition was published. The government and legislature has enacted several key laws and implemented regulations that are having a major impact on business in Cambodia. We highlight some of the key changes below:

### Online Business Registration

Online Re-registration Filing Deadline Extended Again to 31 December 2019

According to a previous notice by the Ministry of Commerce ("**MOC**") dated 22 December 2017, all corporate entities were required to complete their online re-registration with the MOC by 31 December 2018.

Recently, the MOC issued another notice, No. 0384, dated 30 January 2019, regarding further extension of the online re-registration deadline to 31 December 2019 giving more time for companies to comply with this requirement.

As the MOC continues to move towards stricter enforcement, we urge all entities that have not yet processed their online re-registration to take advantage of this new deadline.

In order to complete re-registration, existing entities must submit their 2015, 2016, 2017, and 2018 annual declarations of commercial enterprise ("**ADCEs**") together with certain other required documents and upload them through the MOC online system. Note that there is a fine of KHR 2 million (approximately USD 500) for each ADCE late submission, in addition to a filing fee of USD 20 per ADCE.

### Seniority Payment

With the 2018 amendment of the Labor Law and Prakas No. 443 of the Ministry of Labor and Vocational Training ("**MLVT**"), introduced seniority payments for all existing unlimited duration contracts. This requires employers to begin making seniority payments this year. Further information on these ongoing payments were provided by the MLVT in its information declaration on seniority payments dated 28 December 2018. However, questions remain regarding the required retroactive seniority payments (payments made to eligible employees for work prior to 2019). On 22 March 2019, the MLVT issued Ministerial Instructions No. 042/19, which addresses retroactive seniority payments by employers other than those in the textile, garment, and footwear industries.

The instructions provide as follows:

- the implementation of retroactive seniority payments will be delayed until 2021 ("**Implementation Date**").
- the retroactive seniority payment amount due must be paid in installments of six days per year (half paid in June and the remainder in December). There is no clear indication as to the basis of this six-day calculation.
- before the Implementation Date, all employees who are terminated for reasons other than serious misconduct, retirement, or death are entitled to a one-off, lump-sum payment of the full amount of the retroactive seniority payment due.
- employees who resign or are terminated for serious misconduct are not entitled to any retroactive seniority payment.
- employers must follow MLVT Prakas No. 443 and other relevant regulations, under which ongoing seniority payments (from 2019 onward) of 15 days per year must be paid in two installments per year.

## Interest Free Loans

Following the introduction of Prakas 986 (transfer pricing regulations), Instruction Letter 151, which permitted interest-free loans between related parties, was withdrawn, and under Instruction 11946, such loans are required to bear interest on an arms-length basis.

On 18 March 2019 the GDT issued Instruction Letter 4909, which states that taxpayers with loans from related parties must have the following documentation:

- A loan agreement in which the terms of the loan are clearly stated;
- A business plan describing the needs for the loan and intended uses of the funds;
- A document explaining the basis used to determine the interest rate; and
- A Board of Directors' resolution approving the taking of the loan.

The Instruction Letter also provides that the loan must be properly supported by transfer pricing documentation even if the interest applied is lower than the annual market rate issued by the tax authority.

We understand that in certain circumstances interest free shareholder loans may still be permissible provided that the criteria outlined above are followed and that the loan is used for capital expenditure in Cambodia and not profit extraction.

## Withholding Tax on Dividends

On 5 April 2019, the Ministry of Economy and Finance issued Prakas 372 to introduce new rules on dividend withholding taxes ("**WHT**"). This replaces Prakas 518 which was issued on 5 May 2017, and expands the definition of what is considered to be a deemed dividend distribution (for taxation purposes), and thus subject to WHT when the recipient of the deemed dividend is a non-resident shareholder.

Prior to Prakas 518 and Prakas 372 coming into effect, the transfer of shares in a Cambodian entity by a non-resident shareholder was only subject to 0.1% Stamp Duty, payable by the purchaser of the shares, calculated on the market value of the shares being transferred.

Following the introduction of Prakas 372 in April 2019, the transfer of shares in a Cambodian entity by a non-resident shareholder would also attract WHT obligations in the following circumstances:

- If a Cambodian entity whose shares are being transferred had retained earnings at the time of the share transfer, those retained earnings relating to the shares being transferred would be treated as a deemed dividend. For example, if a non-resident shareholder owning 100% of Cambodian Company A transferred 60% of its shareholding to a third party and at the time of the share transfer, Cambodian Company A had USD 1,000 of retained earnings, USD 600 of the retained earnings would then be treated as a deemed dividend at the time of the transfer and subject to 14% WHT; and
- If a non-resident shareholder transfers shares in a Cambodian entity where all or some of the shares being transferred came about due to an earlier conversion of retained earnings into registered equity in the Cambodian entity, those affected shares would also be treated as a deemed dividend and subject to 14% WHT.

Under both scenarios above, the Cambodian entity in which the shares are being transferred must act as the agent to withhold the 14% WHT as part of the share transfer approval process with the MOC and the General Department of Taxation ("**GDT**").

It should be noted that WHT will only apply once to the retained earnings affected by the share transfer. This means that if a new shareholder in the Cambodian entity has retained earnings already subjected to WHT following the share transfer, it would not be required to withhold tax again were it to distribute dividends from such retained earnings.

We also note the deemed dividend scenario contemplated under Prakas 372 also applies to situations where a non-resident shareholder reduces capital in a Cambodian entity if that capital has arisen from an

earlier conversion of retained earnings or if the Cambodian entity has retained earnings on hand at the time of the capital reduction.

### **New Tax incentives for Entities Seeking to List on the Cambodian Stock Exchange (CSX)**

A Sub-Decree issued on 4 January 2019 introduced a new package of tax incentives for those entities in Cambodia looking to list on the CSX. The 2019 tax incentives provided to listing entities on the CSX are much more comprehensive and concessional than those initially offered in 2011 when the CSX was first established, and those offered in 2015.

The Sub-Decree reflects the desire of the Cambodian regulators to increase the existing number of listed entities on the CSX. At the time of writing, there are five listed entities on the Main Board of the CSX, and the Sub-Decree has been introduced to encourage new applicants, particularly SMEs, to list.

## Chapter 1

# ECONOMIC CLIMATE





# Chapter 1

## Economic Climate

Located between Thailand and Vietnam, Cambodia is an attractive investment destination for businesses looking to expand in ASEAN. The country has recovered from a troubled and violent history during the 20th century and now aims to pursue a peaceful and prosperous future by securing its place on the global economic playing field.

With steady economic growth of around 7% in recent years, forecasted to continue through 2019, Cambodia is on a steady path of economic improvement. The growth rate is the highest amongst the fast-growing ASEAN nations. Nonetheless, large-scale reforms are needed to support this growth and to render the country competitive on a global and sustainable level.

In the second quarter of 2018, foreign direct investment (“**FDI**”) inflow increased for the fifth consecutive time in the last two years to USD 832 million. Constant growth over the last decade has sustained the economy despite being somewhat overshadowed by the more advanced economies of neighboring Thailand and Vietnam.

In 2018, the garment industry and tourism sector were the primary linchpins supporting the economic performance of the country.

The tourism industry grew steadily with an 11% increase of international tourists arriving into the country. The garment industry expanded in 2018 owing to the relocation of companies to Cambodia due to rising wages in China and several factory incidents in Bangladesh. In the first half of 2018, garment exports increased by 11%.

### Investment Climate

The Cambodian investment climate is driven by the country’s attractiveness for FDI. The country has very open investment laws and offers a range of incentives to investors. This combined with its close proximity to production facilities in Thailand and Vietnam along with the Chinese market, makes Cambodia a lucrative market in which to invest.

The country’s special economic zones (“**SEZs**”) offer a perfect setting for foreign investments especially in border areas and for the export-based manufacturing sector. Corporate tax exemptions of up to eight years and further exemptions on profits, if reinvested in the country, are among the most attractive incentives available to investors. Exemptions from customs duty and taxes on imports and exports for most industries can also be applied for.

100% foreign ownership of companies is allowed in most sectors. The country’s investment law also provides regulations governing the protection of investments from regulated prices and nationalization. Nevertheless, lingering concerns over the lack of rule of law and the perception of corruption may partially weaken those provisions.

At the beginning of 2018, an agreement with the European Patent Organization came into force providing validation of EU patents in Cambodia. This allows one single patent registration to cover the EU, Cambodia and other signatory states. With this agreement, EU companies can easily protect their innovations being produced in Cambodia.

## 2019 Economic Outlook

This year, the Cambodian economy is expected to grow at around 7% as in preceding years. While not immune to global economic changes and shocks, the ongoing US-China trade war is indirectly lending support to the local export-based economy due to the relocation of certain manufacturing facilities from China to Cambodia in 2019.

In spite of emerging challenges such as energy supply issues and the potential suspension of the country from the “Everything but Arms” initiative of the EU, the garment sector will remain an important driver of the economy in 2019. Other manufacturing industries (including travel goods) also see Cambodia as an attractive location to base parts of their supply chains. Tourism, agriculture and the resources sector offer major potential but are in need of further investments to become competitive on the global market.

### Manufacturing, Garments and the EU

Cambodia, with its liberal investment law and strategic location presents itself as an ideal place to establish manufacturing bases, able to supply the accelerating economies of Thailand and Vietnam. Current manufacturing companies are largely centered on food and beverages, chemicals, rubber, plastic and paper processing.

The country’s SEZs can easily supply industries in Thailand and Vietnam along with exports to other countries. With the US-China trade war showing no signs of abating, the country readily lends itself to being a cheaper, more viable alternative for manufacturing activities.

2019 will be dominated by the garment sector. It already accounts for 16% of the GDP and 80% of total exports. The sector offers significant potential given the country’s strategic location, low cost labor force, supportive government initiatives and preferential access to major markets such as the EU and US. Nonetheless, the garment sector faces major challenges in 2019 that need to be carefully addressed.

### Notably, the EU launched a withdrawal procedure for Cambodia from the “Everything but Arms” scheme.

This scheme provides Cambodia with exclusive access to the EU common market without paying duties or tariffs. During the now triggered 18-month withdrawal period, human rights issues in Cambodia will be investigated by the EU. The EU is the largest importer of Cambodian garment products taking in around 40% percent of the total. Despite the setbacks that may arise from the removal of duty and tariff free access to the EU market, the US market with a share of 30% and rising Chinese demand are still important export destinations for the local garment industry.

### Energy Supply in Cambodia

Furthermore, the high cost of energy supply represents an ongoing impediment to further economic growth. Energy production depends on oil, coal and hydropower generation. However, these sectors are largely import dependent or may have major environmental implications, leading to high energy prices in Cambodia. Backed by the national plan to connect all 24 provinces to the national grid by 2020, decentralized energy supply may become crucial to solving the problem. Biogas, solar and wind power generation could add further diversity to domestic power production helping to reduce prices while increasing the reliability of energy supply.

## **The Untapped Resources of Cambodia**

Currently, the country depends on many imports for its resource needs such as oil, gas and coal. Still, Cambodia offers vast opportunities for the domestic exploitation of resources. Due to regional disputes with Thailand, offshore oil resources remain largely untapped. In 2018, the government began to facilitate exploration agreements with the aim of exploiting local oil resources.

Ongoing liberalization of the resources sector offers huge potential to investors. The infrastructure sector is similarly in need of significant capital inflows. At this stage however, local refinery production facilities remain unable to handle large-scale exploitation operations. Reforms of the legal framework governing the resources sector are nonetheless making headway.

## **Agriculture – The Backbone of the Country**

With around 40% of the workforce employed in the agriculture sector, it remains at the core of the Cambodian economy. Global demand for agricultural products – in particular from China, representing 27% of total exports in 2018 – continues to drive local production. Recent agreements on the promotion of organic food and rising demand for such products across ASEAN is expected to fuel further development of the local food industry.

However, the local agricultural industry faces several problems and remains less than competitive on a global level. Lack of infrastructure continues to be an obstacle, especially for export-based agricultural activities.

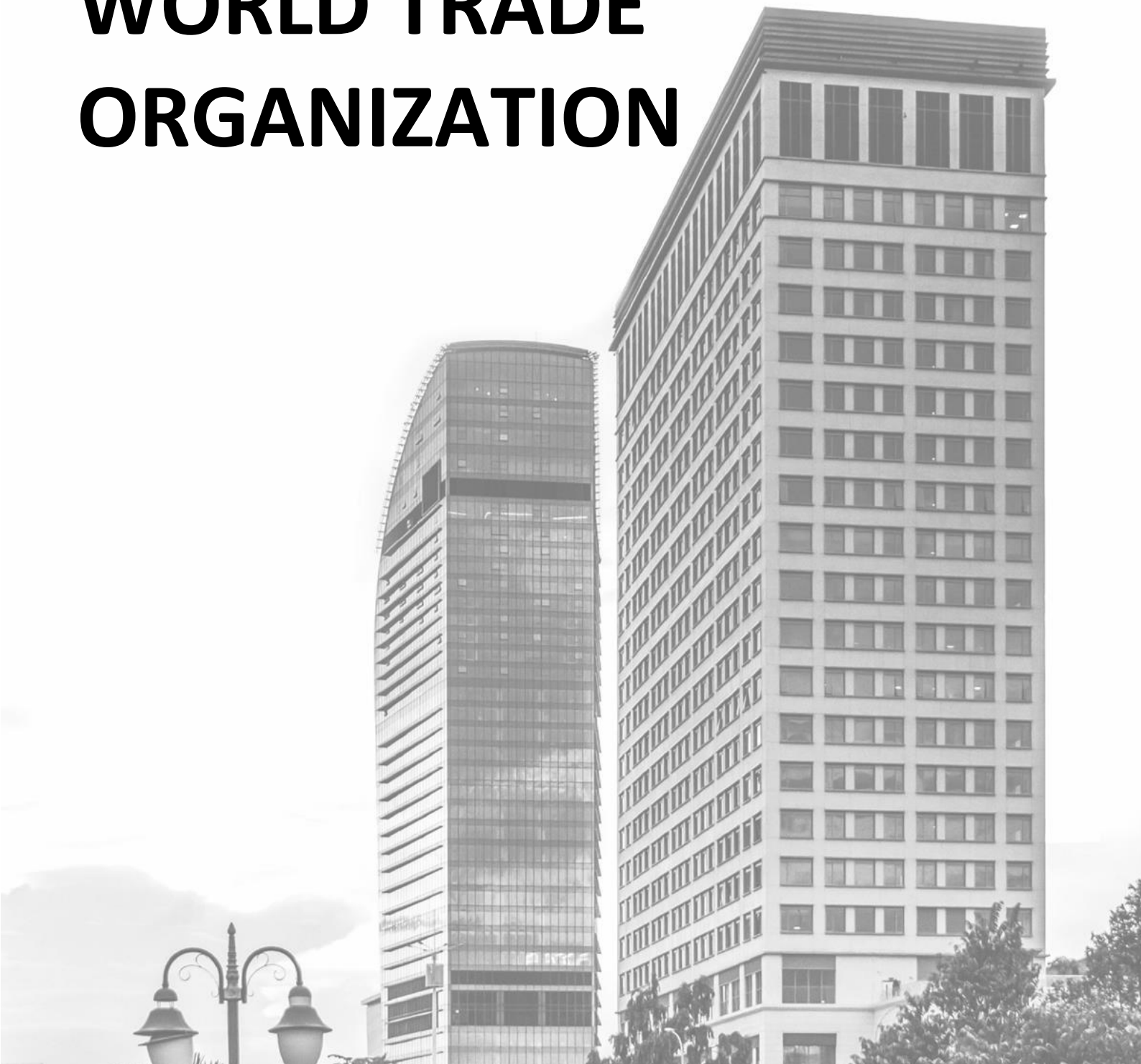
## **Investing in Cambodia in 2019?**

Cambodia offers several opportunities for new investors to involve themselves in. An open investment environment, cheap labor and proximity to some of the world's largest markets supported by the government's investment incentives. EU patent protection and the increasing reliability of the country's infrastructure – especially in SEZs – make Cambodia an appealing location to conduct manufacturing activities beyond just garments. The lowering of production costs through the domestic exploitation of resources will provide greater support to resource-intensive industries in the country over the coming years.

Reference: Asian briefing (<https://www.aseanbriefing.com/news/2019/03/01/cambodias-investment-outlook-for-2019.html>)

## Chapter 2

# **CAMBODIA'S MEMBERSHIP OF THE WORLD TRADE ORGANIZATION**



## Chapter 2

# Cambodia's Membership of the World Trade Organization

Cambodia is a member state of the World Trade Organization (“WTO”) having ratified the WTO agreements in 2004 and acceded to the constitutive WTO Agreement and covered agreements on trade, services, intellectual property, and various other topics.

Accession to the WTO has had a major impact on all sectors of business in Cambodia. The most significant effects of WTO accession relate to:

- the adoption of a broader legal framework;
- WTO agreements superseding national law;
- Cambodia's commitment to the liberalization of services and tariffs;
- the improvement of judicial and quasi-judicial processes; and
- the supra-national jurisdiction of the WTO Court.

Each of these areas is in a process of transformation following Cambodia's accession to the WTO.

### Adoption of a Broader Legal Framework

Since Cambodia's accession to the WTO, the Cambodian government has committed to the adoption of more than 50 new laws to ensure full compliance with WTO standards. Numerous laws have been enacted by the National Assembly, while others are still being drafted and expected to come into force in the coming years. There are several pending laws that will change the framework in which foreign and domestic investors currently manage and operate their businesses. A detailed list of the laws to be adopted is available, including laws still in draft form. Among others, these include draft laws on Commercial Contracts, E-Commerce, Establishment of the Commercial Court, Anti-dumping Measures and Countervailing Measures, Merchant Shipping, Commercial Agency, Competition, and Safeguard Measures.

### Commercial Code

A new Commercial Code has been designed due to the combined adoption of the Law on Commercial Enterprises, the Law on Negotiable Instruments and Payment Transactions, the Secured Transactions Law, the Commercial Arbitration Law, and the Securities Law. Additionally, several other laws with a commercial focus are being discussed and prepared, including:

- Commercial Contract Law;
- Competition Law;
- Consumer Protection Law; and
- E-Commerce Law.

These laws will affect all established and future businesses, and as a result, foreign and domestic investors must ensure that their commercial structures and contractual arrangements are in conformity with these new laws.

## Customs Procedures

Commercial trade and international commerce are fundamental concerns of several WTO agreements. To implement these agreements, Cambodia will have to revise its existing laws and regulations and adopt new legislation. A Law on Customs and its implementing regulations, including sub-decrees, ministerial regulations, and Prakas are already in force, having been adopted by the National Assembly on 22 June 2007. See Chapter 14 (“**Trade, Commerce, and Customs Procedures**”) for more details.

## Sectoral Laws

New legal frameworks will be established in several sectors, involving the introduction of independent regulators in the following areas; banking, water, tourism, civil aviation, mining, oil and gas and fisheries. However, some have been passed in 2015, notably, the Law on Telecommunications – see Chapter 11.

## Intellectual Property

An important aspect of Cambodia’s intellectual property rights (“**IPR**”) regime is its compliance with WTO member commitments. The WTO negotiations prompted the National Assembly to adopt a full set of laws on intellectual property to conform to the WTO Agreement on Trade Related Aspects of Intellectual Property Rights (“**TRIPS**”). These include the trademarks law, governed by the Law Concerning Marks, Trade Names, and Acts of Unfair Competition, enacted in 2002; the Law on Patents, Utility Models, and Industrial Designs, enacted in 2003; the Law on Copyright and Related Rights, enacted in 2003; and the Law on Geographical Indications of Goods, enacted in 2014.

Cambodia deposited the instrument of accession to the Madrid Protocol for International Registration of Mark at the World Intellectual Property Organization (“**WIPO**”), in Geneva, Switzerland on 5 March 2015 and which entered into force on 5 June 2015. Summaries of these laws can be found in Chapter 17 (“**Intellectual Property**”). For a number of years, Cambodia was expected to pass a number of important laws concerning intellectual property protection, including: (1) a Law on Trade Secrets and Undisclosed Information; (2) a Sub-Decree Implementing Special Border Measures in the Trademark Law; and (3) a Sub-Decree Implementing the Copyright Law.

In addition to these laws, several other laws and regulations will be adopted to complete the legal framework on intellectual property, including a Law on Integrated Circuit Protection. However, as of today, no progress on the above has been publicly disclosed.

Cambodia has yet to make significant progress on enacting required legislation regarding encrypted satellite signals, even though the WIPO model law on encrypted satellite signals and semi-conductor layout designs was adopted in March 1999. Given that the country’s trademark system is at a relatively nascent stage, there has been a low level of judicial activity on these matters.

## World Trade Organization Agreements Superseding National Law

Cambodia has accepted the basic principle that, in the event of a conflict or inconsistency between WTO agreements and national laws, provisions of the WTO agreements will prevail. If an investor can prove the non-conformity of a national law with WTO commitments, the provisions of the relevant WTO agreement should, in principle, be applied by the courts to remedy this inconsistency.

Furthermore, in the absence of laws or regulations in Cambodia concerning areas otherwise covered by the WTO agreements, provisions of these agreements should also apply. Several WTO agreements will apply to the day-to-day business of enterprises, including:

- the Textiles Agreement;
- the Services Agreement;
- Intellectual Property Agreements; and



- the Customs Valuation Agreement.

## Liberalization of Services and Tariffs

As part of its ratification of WTO accession agreements, Cambodia has committed to the eventual liberalization of its trade and services sectors. This has been achieved most effectively through tariff reduction and had the greatest impact by far on businesses operating there.

Commitments on tariff reduction for goods are detailed in the Tariff Schedule. Commercial enterprises, particularly those involved in importing goods, should carefully investigate the effect that these tariff reductions may have on their current and future business activities. Cambodia applies the ‘most favored nation’ (“**MFN**”) tariff rates to imports from WTO member states, but lower tariff rates apply to imports from states with which Cambodia has concluded regional free trade agreements.

Under Cambodia’s Schedule of Specific Commitments on Services, the country agreed to liberalize practically all services sectors in Cambodia. Most notable of these sectors are accounting, tourism, and telecommunications. The Services Schedule also provides guidelines outlining the conditions and structures through which foreign investors and businesses may operate in each particular sector.

## Judicial and Quasi-Judicial Processes

The WTO agreements oblige Cambodia to establish a dispute resolution system with the following characteristics:

- contracting parties will maintain, or institute as soon as practicable, judicial, arbitral, or administrative tribunals or procedures for the purpose of prompt review and correction of administrative actions related to customs matters; and
- contracting parties will administer all laws, regulations, decisions, and rulings in a uniform, impartial, and reasonable manner.

On this basis, the Cambodian government has been implementing necessary legal and judicial reforms, notably the establishment of the Royal School for Judges and Prosecutors, which in 2013 celebrated a decade of operations.

## Supra-National Jurisdiction – The World Trade Organization Dispute Settlement Body (“WTO DSB”)

The WTO agreements establish dispute resolution procedures which a WTO member state may utilize, in the event that another member state breaches any of its WTO commitments. The WTO DSB is composed of all members of the WTO, empowered to resolve disputes arising from WTO Agreements and authorized to pursue retaliatory measures against offending states. If the WTO DSB finds a member state to have adopted laws, policies or measures at variance with its WTO commitments, it will first require such a member state to bring the offending laws, policies or measures into line with WTO Agreements. Failure to do so within a reasonable period may empower the complainant to adopt retaliatory trade measures sanctioned by the WTO DSB.

Only a member state is authorized to lodge a complaint with the WTO DSB. If the complaining member state requests so, the WTO DSB will convene an ad-hoc panel to conduct a dispute settlement process under the Working Procedures adopted in the WTO Dispute Settlement Understanding. Cases heard and decided by the panel may be elevated to an Appellate Body which will then review the panel’s findings and recommendations. Note that decisions of the ad-hoc panels and the Appellate Body are not binding. They are advisory in nature and become enforceable only upon adoption by the WTO DSB.



Any member state may lodge a dispute with the WTO DSB and Appellate Body. Individual enterprises domiciled in member countries cannot directly lodge a complaint with the WTO DSB. Instead, they must initiate a claim through their home country. Foreign enterprises may address this issue by lobbying through their national government or embassy.

## **Conclusion**

Investors must harbor realistic expectations when assessing the actual impact of Cambodia's accession to the WTO, especially with respect to the pace of reforms and their practical effect. One may consider that it may take additional years before these reforms have a meaningful impact on businesses in Cambodia. That being said, Cambodia's accession to the WTO has been an important catalyst in motivating these reforms, fundamental to international trade and economic liberalization, to further the nation on its path toward continued economic growth and prosperity.

## Chapter 3

# LEGAL SYSTEM IN TRANSITION



## Chapter 3

# Legal System in Transition

Cambodia's legal system and legal institutions can present a complex labyrinth for foreign investors to navigate. Nonetheless, the situation has become less confusing following the accession of Cambodia to the WTO and the passing of several key commercial laws.

Cambodia's ongoing transformation into a democratic and capitalist free market system has resulted in many new laws and regulations being passed, new policies being implemented, and the remodeling of judicial institutions. This chapter will give investors basic guidelines to assist them in working through these difficulties with greater ease. While the legal complexities have started to lessen considerably, and while such improvements should gain pace over the next five years, due care must be taken in the short term.

### History and Sources of Law in Cambodia

An understanding of Cambodia's recent history is an absolute necessity for any business operating here – from a political, human resources, tax and legal perspective. One of the major legal difficulties facing an investor is identifying the applicable law. Cambodia's present legal framework combines laws and principles from the various legal systems implemented since Cambodia's independence from France in 1953.

Although a new, democratically-elected government came into power in 1993, according to Cambodia's 1993 constitution, all laws passed by previous governments remain in force to the extent that they do not contradict new laws or are not expressly annulled. One interpretation of the constitution is that only laws adopted after 1979 remain in force if not superseded. In practice however, the current government's policy is not to apply or enforce certain provisions of some of these laws on the grounds of incompatibility with Cambodia's free market economy and other policies.

As a general rule, laws passed before 1989 are not fully applied in practice, while those passed between 1989 and 1993 are more widely followed. Laws passed since the inception of the Royal Government in 1993 are implemented and enforced unless specifically overturned or annulled.

Cambodia's recent legal history can be divided into eight distinct periods. Each phase has contributed significantly to the current make-up of Cambodia's legal infrastructure.

### 1953-1975: French-Based Civil Code and Judiciary

Before 1975, Cambodia's legal system was modeled after the French legal system, including a French-style judiciary. A comprehensive legal framework governing commercial, civil, and family relationships regulated day-to-day life. Disputes were adjudicated by a commercial tribunal, civil court, criminal court, and various forms of appeal courts.

### 1975-1979: Khmer Rouge Period

In 1975, the Khmer Rouge took over the country and obliterated Cambodia's entire legal system. All laws, treaties, and law-related materials were wiped out. The judiciary was abolished, and most judges, lawyers, and other legal professionals were killed, fled the country or died. According to some accounts, fewer than ten legally-trained persons remained in Cambodia after 1979.

## 1979-1989: Vietnamese-Based Communist System

The Vietnam-backed People's Republic of Kampuchea ("PRK") government pushed the Khmer Rouge to the Thai border in 1979 and assumed control over most of the country. The legal system that emerged during these years was heavily influenced by the Vietnamese system, as Vietnamese advisors helped draft Cambodian laws. During the State of Cambodia ("SOC") period, from 1979 to 1993, there was no separation of powers between the executive, the judiciary and the legislature.

## 1989-1993: Liberalizing Communist System

In 1989, the renamed State of Cambodia government embarked on a liberalization program resulting in the promulgation of laws aimed at liberalizing ownership of property, and granting greater economic freedoms. Many of Cambodia's currently applicable laws and regulations were enacted between 1989 and 1993, although some have been significantly amended.

## 1991-1993: UNTAC/SNC Intervention

Under a United Nations-brokered peace agreement signed in 1991, certain agencies and ministries of the SOC government came under the supervisory control of the United Nations Transitional Authority in Cambodia ("UNTAC"). A new law and policy-making body was created called the Supreme National Council ("SNC"). This enacted a number of laws, including criminal and judiciary law, as well as press laws. The SNC was comprised of representatives of UNTAC and the four political factions recognized by the Paris Peace Agreement.

## 1993-Present: Constitutional Monarchy

The Kingdom of Cambodia and the Royal Government of Cambodia came into being in 1993 in the form of a constitutional monarchy. The constitution, adopted on 21 September 1993 as the supreme law of the land, established an independent judiciary separate from the executive and legislative branches of government. The executive branch, called the Royal Government of Cambodia, is comprised of a prime minister, the Council of Ministers, the ministries, provincial and municipal authorities, and various other government agencies. The legislative branch is comprised of a 123-member National Assembly and a 61-member Senate created under 1999 amendments to the constitution. The judicial branch is composed of municipal and provincial courts, a Court of Appeal and the Supreme Court. The constitution requires elections for National Assembly members at least once every five years. The National Assembly then chooses the prime minister by a two-thirds majority vote.

In the 1993 national election, no party won an outright majority, though the royalist FUNCINPEC party won the largest share of votes. Resultingly, FUNCINPEC formed a coalition with the Cambodian People's Party (CPP). HRH Samdech Krom Preah Norodom Ranariddh of FUNCINPEC became First Prime Minister and HE Samdech Hun Sen of the CPP became Second Prime Minister. The ministries and other government appointments were allocated to the parties according to this power-sharing arrangement. This newly appointed royal government announced its strong commitment to achieving a fully-fledged market economy and to fundamentally changing the role of government.

## 1998-2003: The Economic Government

National elections were held in July 1998. The CPP won a majority of votes and a majority of seats in the National Assembly. However, since a two-thirds majority of Assembly members is required to form a new government, CPP and FUNCINPEC again entered into a governing coalition. Under this coalition, Hun Sen became the sole prime minister. HRH Norodom Ranariddh became president of the National Assembly, and HE Chea Sim, CPP president and former president of the National Assembly, became president of the newly created Senate. The ministries and other government positions were divided between the CPP and FUNCINPEC.

Under the 1993 constitution, the legislative branch took the form of the unicameral body called the National Assembly. Amendments to the constitution, approved in March 1999, created the second legislative body, called the Senate. Currently, the 61 members of the Senate are selected by the King and by the political parties represented in the National Assembly. In the future, senators will be elected by the people.

The Senate has the right to review all laws passed by the National Assembly and to propose its own legislation, though it cannot veto laws passed by the National Assembly. The Senate may, however, return any law to the National Assembly for reconsideration. If the National Assembly approves the law a second time, it will come into effect between 10 and 20 days after being signed by the King, without further review by the Senate.

### **2003-Present: The WTO Government**

In the 2013 elections the Cambodian People's Party ("CPP") won 68 seats while the Cambodia National Rescue Party ("CNRP") won 55 out of 123 seats in the National Assembly. Despite controversy between the two main political parties over the results of the elections, the final results recognized the CPP as the winner of the 2013 elections and Hun Sen was again sworn into office as Prime Minister on 23 September 2013. Although mass protests were held and the opposition party boycotted parliament for a period of time, the political situation in Cambodia is expected to remain stable and the election process has, for the most part, been peaceful and democratic.

Following the election, Hun Sen remains the Prime Minister. The president of the National Assembly is HE Heng Samrin, former CPP vice-president of the National Assembly, and HE Say Chhum, was appointed president of the Senate to replace HE Chea Sim (formerly the CPP president and president of the Senate).

### **Current Status of Legal Reform and Future Trends**

With the impetus of WTO accession, the government intends to prepare and submit various laws to the National Assembly that will rewrite Cambodia's legislative and regulatory instruments. The new laws and regulations combine aspects of the pre-1975 French Civil Code system with legal principles from common law systems.

Cambodia is particularly keen to ensure that its legal system integrates successfully with those of other ASEAN member states.

The National Assembly has adopted dozens of laws since its formation in 1993. The Law on Commercial Enterprises (equivalent to a "companies law" or "corporations law"), as well as the Law on Negotiable Instruments and Payment Transactions, the Secured Transactions Law, the Customs Law, the Law on Standards, the Insolvency Law, and the Law on Anti-Money Laundering and Combating the Financing of Terrorism have all been adopted recently.

The main components of the Cambodian legal and judicial reform process are being implemented through the recent adoption of new civil and criminal codes. The new Civil Code was promulgated on 8 December 2007 and came into force in December 2011. The new Criminal Code came into force in December 2010. Other important laws enacted recently include; the Foreign Ownership Law, Expropriation Law, Financial Leasing, and the Anti-corruption Law. Further laws are expected soon, including; the Notary Public Law, Consumer Protection Law, Competition Law, and the new Commercial Contract Law, along with many others affecting nearly all aspects of business activity. These are being drafted by various ministries with the technical assistance of various donor countries.

In an effort to further improve the country's investment environment, the Cambodian government has taken steps to revise the country's current investment law and regulations, including the enactment of a law on special economic zones.

The review will include the following:

## **a. Investment Law**

The investment law adopted in 1994 is being reviewed with the aim of revising it to accommodate regional commitments Cambodia has made and to make Cambodia a more attractive investment destination in terms of: (a) providing additional incentives for investment projects that contribute to skills training, research and development, and innovation; (b) nurturing the growth of small to medium sized enterprises (“SMEs”) by providing support to SMEs via skills training, staff incentives and investment in machinery or production equipment; (c) establishing large industrial parks and commercial hubs; and (d) promoting more active participation by private sector in the realm of physical infrastructure development.

## **b. Public Private Partnerships**

A sub-decree to implement the Law on Concessions is being prepared to involve more private sector participants in economic development through public private partnerships (“PPPs”).

## **c. Industrial Development Policy**

Cambodia officially launched its Industrial Development Policy (“IDP”) 2015-2025 in August 2015. The launch represented a major milestone on the implementation of the IDP geared towards deeper integration with the AEC. The IDP addressed five priority industrial sectors as follows:

- New industries or manufacturing with high value-added, creative and competitive products that focus not only on consumer markets but also on production equipment;
- SMEs in all sectors, particularly those involved in the production of pharmaceuticals, medical equipment, construction materials, export packaging, furniture and industrial equipment;
- Agro-industrial products for export and domestic markets;
- Support industries for the agricultural, tourism and textile sectors as well as industries linking global and regional supply chains such as garments, spare parts and other semi-finished products; and
- Industries that serve regional production lines such as information technology and telecommunications, energy, heavy industries, green technology and cultural/historical/traditional handicrafts.

The IDP sets key policy measures and action plans for two main objectives, which are the promotion of investment and the development of SEZs. To achieve these aims, the CDC is mandated to carry out policy reform including; amendments to current investment laws and regulations, and the adoption of a new law on SEZs by 2016.

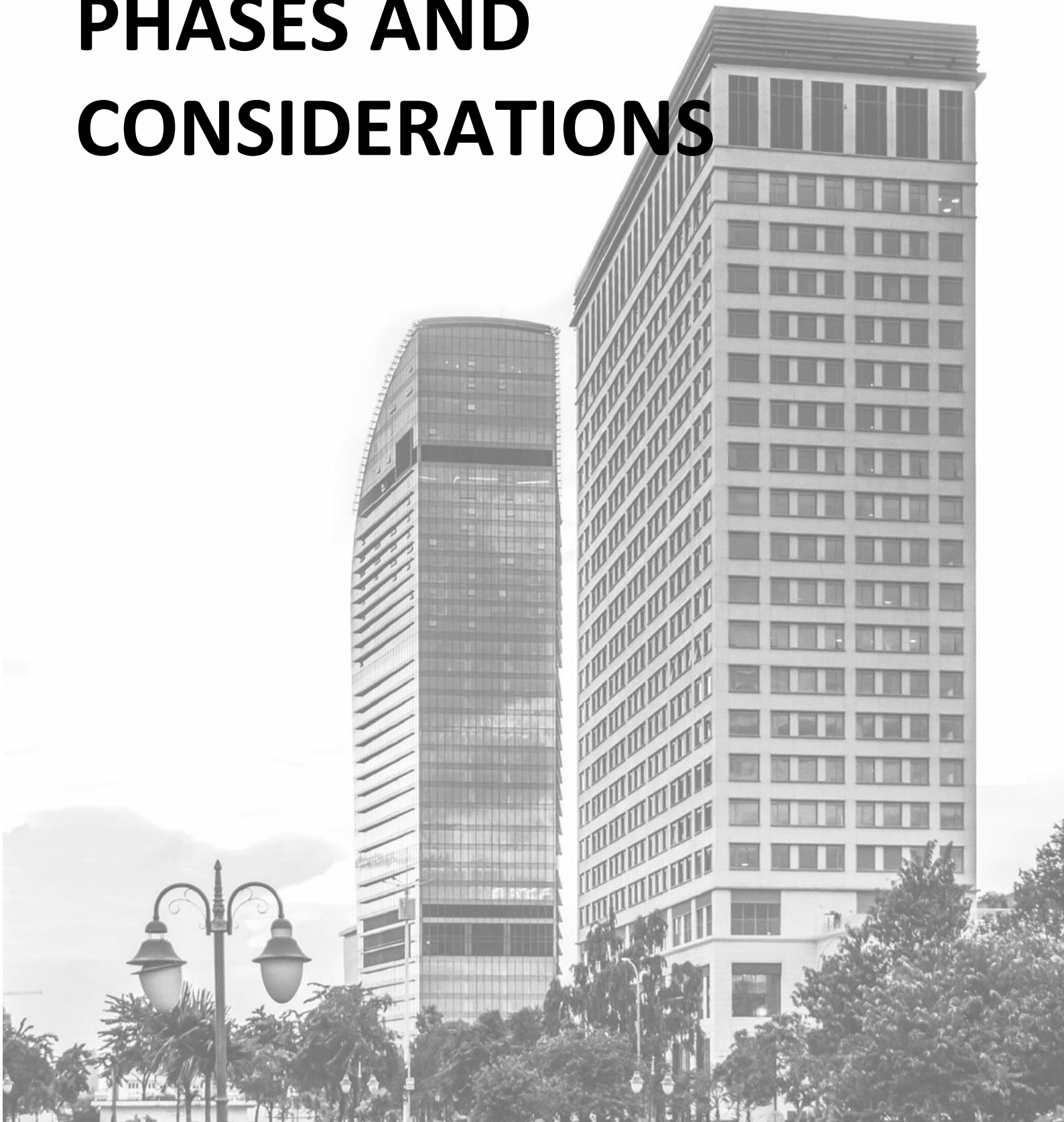
A new law on SEZs is being drafted with the intention of continuing the development of SEZs in provinces, promoting hubs for SMEs, developing industrial corridors and encouraging competition among SEZs. The aim is to make such zones more functional and effective in the socio-economic development in the country, as well as contributing to new development on a regional basis.

Policy making and amendments to investment laws will be geared towards reviewing the criteria for selecting qualified investment projects (“QIPs”), the promotion of a favorable investment environment, the consideration of additional investment incentives and the reinforcement of institutional capacity, among other things.



## Chapter 4

# KEY INVESTMENT PHASES AND CONSIDERATIONS





# Chapter 4

## Key Investment Phases and Considerations

Investment in Cambodia is, in most cases, a straightforward, direct, and open process. It can be as simple as forming a company through registration of the corporate documents at the MOC, which can now be performed via an online platform. In most cases, however, additional operating licenses will be required. For investment projects eligible for investment incentives – which include profit tax exemptions or special depreciation and import duty exemptions – registration with the Council for the Development of Cambodia (“CDC”) and the Cambodian Special Economic Zones Board (“CSEZB”) or the Provincial/Municipal Investment Sub-Committee (“PMIS”) is also required.

As in many other countries in the region, investment in Cambodia can be divided into five phases:

### 4.1 Evaluation of Business Potential and Scope of Investment

During this phase, the potential investor will investigate the business climate, meet and assess potential partners, evaluate the micro and macro-economic conditions, calculate costs, assess the legal and employment environment, determine the presence of necessary infrastructure, and analyze other relevant considerations to determine whether a direct investment in Cambodia is desirable.

In many cases, the goals of the investor can be realized through an indirect investment vehicle such as the establishment of an agency or by creating licensing or distribution relationships with existing businesses operating in Cambodia. Chapter 14 (“Trade, Commerce, and Customs Procedures”) addresses the various forms of indirect investment available.

As part of this evaluation process, investors will weigh the relative advantages and disadvantages of investing in Cambodia, which include:

#### Advantages

- the market is very open to foreign investment, with 100% foreign-owned investment permitted in almost every sector;
- a business-friendly government;
- a foreigner-friendly population;
- a burgeoning local middle class and growing ex-pat community;
- widespread use and acceptance of US dollars;
- favorable investment incentives and tax regime;
- abundant natural resources (land, water, minerals, and, potentially, oil and gas);
- world-class tourist sites including Angkor Wat, as well as islands and beaches;
- a low-cost, young and energetic workforce; and
- easy access to larger economies nearby including Thailand, Vietnam, and China.

#### Disadvantages

- a legal framework that is still developing and lacks some key commercial laws;
- unpredictable legal implementation and enforcement;
- high cost of business inputs;

- lack of investment financing;
- a small (but growing) domestic market;
- relatively low purchasing power of the population; and
- comparatively low level of education and inexperience in the workforce.

## 4.2 Registration for Investment Incentives

Once the fundamental decision is made to invest directly in Cambodia, the investor should determine whether the project is eligible for investment incentives, and whether obtaining such an investment license is beneficial for the business. Most investors will want to enjoy the benefits of tax incentives and investment guarantees available under an investment license. The investment licensing regime is governed primarily by the Law on Investment – promulgated in August 1994, and substantially amended in 2003 by the Law on Amendment to the Law on Investment to make licensing procedures simpler, more transparent, predictable, automatic, and non-discretionary. A number of sub-decrees have been subsequently issued which further refine the Investment Law. An investment license, involving registration as a qualified investment project/QIP, is obtained from the CDC and CSEZB or the PMIS. Only eligible projects have the right to receive such a license. This does not include investment projects that fall under the Negative List, defined by sub-decrees, or investment projects with capital levels below the thresholds set in the Negative List. Chapter 5 (“Investment Incentives and Procedures: Overview”) addresses the incentives and guarantees available, registration process and eligibility requirements for a QIP.

## 4.3 Incorporation or Commercial Registration

Commercial registration must be made with the MOC to incorporate a business entity in Cambodia. The entity will have legal personality only after registration with the MOC, which may be done before or after registration with the CDC/CSEZB or the PMIS. The forms of permitted business entities and the process of commercial registration with the MOC are addressed in detail in Chapter 6 (“Company Law and Commercial Registration”). In January 2016, the MOC launched an online platform for the registration of business entities. It is anticipated that this will reduce the time required to establish businesses.

## 4.4 Routine Licenses

There are a number of standard approvals, permits, and licenses that must be obtained in addition to commercial registration with the MOC, and, in the case of QIPs, registration with the CDC/CSEZB or the PMIS. Additionally, certain businesses – for instance banking, construction and real estate, financial leasing, insurance, medical, mining, oil and gas, telecommunications, and investment activities (amongst others) – require special licenses from other government institutions or agencies before registering with the MOC. These routine downstream licenses include; tax registration, labor registration, and local authority approvals.

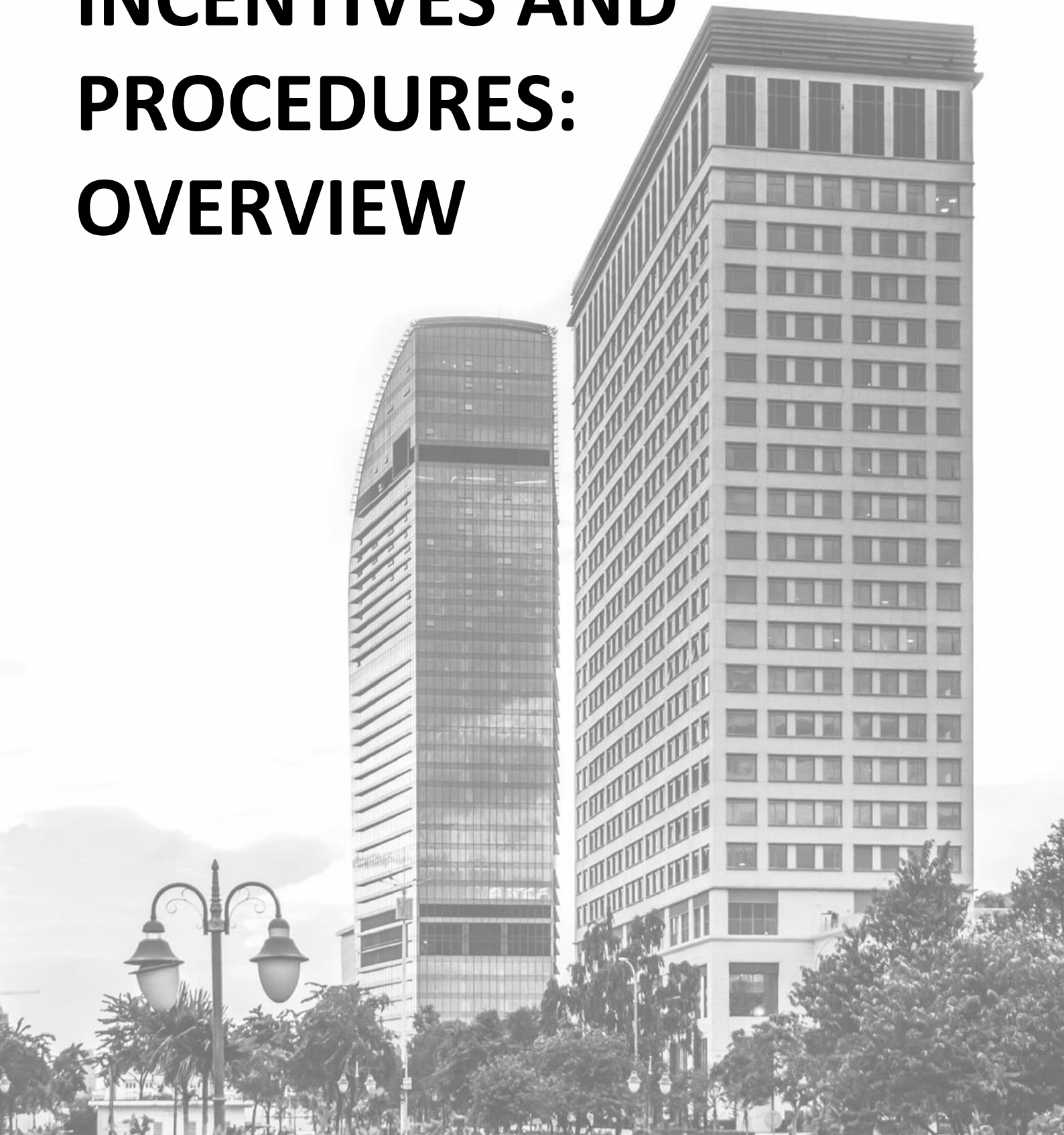
## 4.5 Operating Licenses

In addition to the above-mentioned registrations and licenses, there are general and sector-specific operating licenses and approvals that must be obtained depending on the business activities of an enterprise. Some examples of industry specific licenses include factory operating licenses from the Ministry of Industry and Handicrafts (“MIH”); mining licenses from the Ministry of Mines and Energy (“MME”); agricultural licenses and concessions from the Ministry of Agriculture, Forestry & Fisheries (“MAFF”); environmental approval from the Ministry of Environment (“MOE”); major construction permits from the Ministry of Land Management, Urban Planning and Construction (“MLMUPC”) and licenses from the Ministry of Tourism (“MOT”) for tourism-sector investment.

Note that, in practice, the sequence of licensing varies greatly depending on the investment project. In many cases, certain operating licenses are obtained before or during the investment licensing and incorporation phase. In some cases, they are obtained after investment licensing and incorporation.

## Chapter 5

# INVESTMENT INCENTIVES AND PROCEDURES: OVERVIEW



## Chapter 5

# Investment Incentives and Procedures: Overview

The CDC/ Cambodian Investment Board (“**CIB**”) is the main authority for the government on all strategic and regulatory aspects of QIPs and the development of SEZs in Cambodia.

Investment incentives are available for QIPs. Notably, investors who are given final registration certificates (“**FRCs**”) will be entitled to various incentives. To be entitled to these, QIPs must undergo an investment registration process with the CDC or the Provincial/Municipal Investment Sub-Committee (“**PMIS**”) depending on the type of investment project. The CDC/ CIB reviews investment applications and grants concessions to investors and investment projects that meet the requirements stipulated in the Investment Law. The application for investment registration can be made either before or after incorporation or registration with the MOC.

In addition, the government has improved investment services. For instance, in 2005, the government established the Cambodian Special Economic Zones Board/CSEZB under the auspices of the CDC to promote the SEZ scheme. Administered by the CSEZB, the Special Economic Zones Administration (“**SEZA**”) has established authorized SEZs and provides a one-stop service to investors for the registration of investment projects to the obtaining of routine export-import approvals (detailed in the section on SEZs, Chapter 10).

This chapter will primarily help investors understand investment incentives available and the procedures to obtain them.

### 5.1 Investment Incentives

Generally, QIPs may choose either an income tax exemption (“**tax holiday**”) or special depreciation. In addition, QIPs also enjoy customs duty exemptions on the import of production equipment, construction materials, and production inputs. Import duty on production inputs is, however, only granted to inputs used in the production of exported goods.

### 5.2 Income Tax Exemption

QIPs that choose a tax holiday will enjoy an income tax exemption during the “trigger period,” the three-year period following the trigger period, and the “priority period.” QIPs are not required to make a monthly pre-payment of income tax with the GDT during the tax exemption period. The 1% annual minimum tax exemption is no longer provided to QIP under the amended LOT.

The “trigger period” is the period starting from the date the QIP is registered and ends the last day of the tax year immediately preceding the earlier of: (1) the tax year in which taxable income is first made; or (2) the third year after the tax year in which revenue is first made.

The three-year period commences from the tax year immediately following the trigger period. The “priority period” commences from the tax year immediately after the third year of the three-year period. The duration of the priority period will be determined with recourse to the Financial Management Law.

### 5.3 Expansion of a QIP’s activities

The amendment on Article 15 of Sub-decree 111 dated 13 February 2019 provides that the existing QIPs can expand their investment activities with the additional tax on profit exemption. To qualify for the expansion of a QIP’s activities and additional tax exemption, an existing QIP must meet the conditions of production and project requirements and minimum investment capital expansion. The amendment provides the formula for additional tax on profit exemption for the expansion of a QIP’s activities.

## 5.4 Special Depreciation

QIPs that do not avail of the income tax exemption are entitled to a special depreciation allowance of 40% of the value of new or used tangible properties used in production or processing. The special depreciation allowance is deductible during the first year of purchase of the tangible property or the first year using such property.

## 5.5 Customs Duty Exemption

Export-oriented and supporting-industry QIPs enjoy customs duty exemptions for imports of production equipment, construction materials, and production inputs. Domestically-oriented QIPs generally receive customs duty exemptions for the import of production equipment and construction materials only. Import duty exemptions on production inputs are granted to domestically-oriented QIPs only when they supply their products to export-oriented industries or when they export their goods. Only the inputs used to produce those goods are exempted from import duty.

Additionally, export duty exemptions are provided to all QIPs except for certain exports as specifically listed in Cambodian law as being subject to export duties.

## 5.6 Limitation

The exemptions described above apply only to income tax and customs duties. Tax exemptions are not available for withholding tax, additional profit tax on dividend distributions, salary tax, value-added tax (“VAT”) – (except for investors who operate in an SEZ), specific tax on goods and services, or any other taxes imposed under relevant laws.

Companies with QIPs may however qualify for refunds of VAT inputs paid in relation to their investment projects during the setting up of their business, for a period of up to two years, if their QIP-related business has no taxable output. To qualify for such VAT refunds, the investor must register with the tax authority.

## 5.7 Supporting Industry QIPs and Subcontractors

Supporting Industry QIPs and Subcontractors can avail of VAT incentives if they are involved in:

- the production of packaging;
- the production of threads, cloth, buttons, zippers, coat hangers, clothes zippers and components to be attached to clothes, shoes, bags or hats; and
- laundry, dyeing, printing on cloth or clothes, sewing or knitting.

Supporting Industry QIPs that directly supply the above-mentioned goods and services to export-oriented companies in the garments industry, textile industry, shoe manufacturing industry or bag, hand bag and hat manufacturing are entitled to VAT-free importations and zero-rated sales to exporters. Domestic purchases of goods and services are subject to 10% VAT. These QIPs must ensure that all the goods and services provided by them are exported.

Subcontractors directly supply more than 80% of these goods and services to export-oriented industries in the garment, textile, footwear or millinery industries are subject to zero-rated VAT on their supplies. However, 10% VAT still applies on goods importation and domestic purchases. Supporting Industry QIPs and subcontractors have to apply in writing to the GDT in order to obtain incentives.

## 5.8 Investment Guarantees

In addition to the above incentives, both foreign and Cambodian QIPs enjoy the following investment guarantees:

- equal treatment of all investors regardless of nationality (except for land ownership and some investment activities);

- no nationalization adversely affecting investors' property;
- no price controls on investors' products or services; and
- overseas remittance of foreign currencies.

## 5.9 Special Economic Zones

For investors investing in SEZs, similar tax incentives and guarantees exist. Notable among them is a temporary tax exemption for income taxes and customs duties. Additionally, the investor in an SEZ is exempt from VAT on imports, but only in relation to goods it exports.

## 5.10 Investment Projects Eligible for Investment Incentives

Only certain investment projects are eligible for tax incentives. Annex 1 of the relevant Sub-Decree (provided in Annex A of this guide) contains a list of investment activities and projects ineligible for incentives ("**Negative List**"). Investment sectors not listed, or investment with a capital amount exceeding the thresholds set by the Negative List, may be eligible for incentives.

## 5.11 Restricted Investment Sectors

Some sectors are restricted or prohibited for reasons of national security, social safety, or necessity of the national economy. Investment in certain highly "sensitive" sectors is prohibited for all investors, such as:

- the production or processing of psychotropic and narcotic substances;
- the production of poisonous chemicals;
- the production and processing of electricity power using any waste imported from a foreign country; and
- forestry.

Certain other sectors like cigarette manufacturing, alcohol production, movie production, gems, publishing, printing, radio and television, land ownership, pawn broking and pharmaceutical imports and exports require some equity participation or investment by a Cambodian national or require special approvals from government entities.

## 5.12 Restrictions and Requirements

Investors should be aware of the following:

### Use of Land

Ownership of land by investors for the purpose of carrying on a QIP is only permitted for individuals and entities with Cambodian nationality. However, land concessions and long-term leases are permitted for all investors.

During the concession or lease period, investors may, subject to the terms of each specific concession or lease agreement, mortgage or sub-lease any movable or immovable property on the land. The transfer or mortgage of concession land, not being used for the purposes under which the concession was granted, is prohibited.



## Use of Foreign Employees

Investors are only allowed to employ expatriates with qualifications, skills, and expertise not available among the Cambodian workforce. To employ expatriates, the investors must obtain approval on foreign employee quotas from the Ministry of Labor and Vocational Training by 30 November of each year, in order to employ such persons in the following year. The investors must submit work permit applications on their behalf (detailed in the section on Foreign Employees, Chapter 16). For companies with approved QIPs, the CDC will provide assistance in obtaining visas, stay and work permits for these expatriates. The CDC also assists investors in obtaining visas, rights to stay, and travel permits for their spouses.

### 5.13 QIP Registration Procedures

Anyone seeking investment incentives and/or guarantees must submit an investment proposal to the CDC or PMIS and pay a one-time application fee. This application fee covers tax registration, administration fees for securing the approvals, authorizations, licenses, and registrations from all relevant ministries and government departments. An investor must submit separate investment proposals for each proposed activity.

The CDC and PMIS are responsible for registering investment proposals and providing one-stop services to investors. The CDC, currently chaired by the Prime Minister, regulates investment projects with investment capital exceeding USD 2 million, investment projects located in two or more provinces or municipalities and investment projects located in SEZs. Other investment projects must register with the relevant PMIS, as chaired by the relevant provincial or municipality governor.

The CDC or PMIS will grant a conditional registration certificate (“**CRC**”) to the applicant within three working days of lodging an investment proposal unless:

- the investment proposal does not contain all the required information;
- the investment proposal falls under the Negative List; or
- the proposed investment is merely an extension or expansion of a previous or current QIP.

The CRC is tasked with specifying the necessary approvals, authorizations, clearances, licenses, permits, and registrations required to qualify as a QIP.

The CDC or PMIS will issue a final registration certificate (“**FRC**”) to the applicant within 28 working days of CRC issuance whether or not all the approvals, authorizations, clearances, licenses, permits, and registrations have been obtained.

The CDC or PMIS is required to obtain these approvals and authorizations on behalf of the applicant. A QIP commences from the issue date of the FRC. Applicants are generally not required to pay any deposit to guarantee their investment, other than specific cases (such as concessions).

### 5.14 Process and Timeframe from Submitting an Investment Proposal

The following table outlines the process and timeframe for obtaining the FRC:

Conditions / Requirements		Timeframe
Investment proposal submission to the CDC or PMIS	Payment of application fee (KHR 15 million)	N/A
Obtaining a CRC from the CDC or PMIS	The proposal contains all the required information and is not made in respect of an activity included on the Negative List, or which previously has been, or is currently, carried on by the investor or any other person, and which has received investment incentives.	Within three working days of submitting the investment proposal.
Ministries/Authorities	Meet the conditions/requirements of the approvals, authorizations, clearances, licenses, permits, or registration.	Within 28 working days of obtaining the CRC.
CDC or PMIS	Obtaining all the approvals, authorizations, clearances, licenses, permits, or registrations from the relevant ministries/authorities.	28 working days after obtaining the CRC.

### 5.15 Revocation or Cancellation of an FRC

An FRC will be revoked from the date it was issued by the CDC or PMIS if an investor:

- obtained the FRC or compliance certificate through fraud or misrepresentation; or
- failed to commence an investment activity within six months of receipt of all required approvals, except in the case of concession contracts where a different period is specifically provided.

The CDC or PMIS will immediately notify the investor in writing of the revocation. An investor whose FRC is revoked by the CDC or PMIS may appeal in writing to the co-chairmen of the CDC within 20 working days from the date the revocation notice is received. A QIP whose FRC is revoked or cancelled cannot claim any incentives as set out in the FRC.

### 5.16 Certificate of Compliance

Only QIPs issued with an annual certificate of compliance (“COC”) are entitled to investment incentives. A COC will be issued to a QIP by the CDC within 90 working days of the end of each financial year. If the CDC fails to issue a COC within this period, a COC is deemed to have been issued.

The CDC may revoke a QIP’s COC if the CDC considers the QIP not to have lodged all required documentation. The QIP will then lose all incentive entitlements from the date of COC revocation.

### 5.17 Reporting Obligations

QIPs must submit to the tax authority monthly and annual tax declarations, together with the COC, for the tax year, and pay all applicable taxes. QIPs also must submit certified copies of customs clearance documents and valuation documents (issued by a government-appointed agent) to the CDC and tax authority, within 30 working days of importation.

In addition, QIPs must submit annual audited financial statements by independent auditors, registered on the list of certified public accountants, and auditors of the Institute of Khmer Certified Public Accountants and Auditors.

QIPs must also submit: a quarterly report on the effective import of materials and equipment for production; a quarterly report on the effective export of the QIP's finished products; an annual inventory list of immovable property; and an investment information sheet in the required format, notably the Investment Information for Survey form.

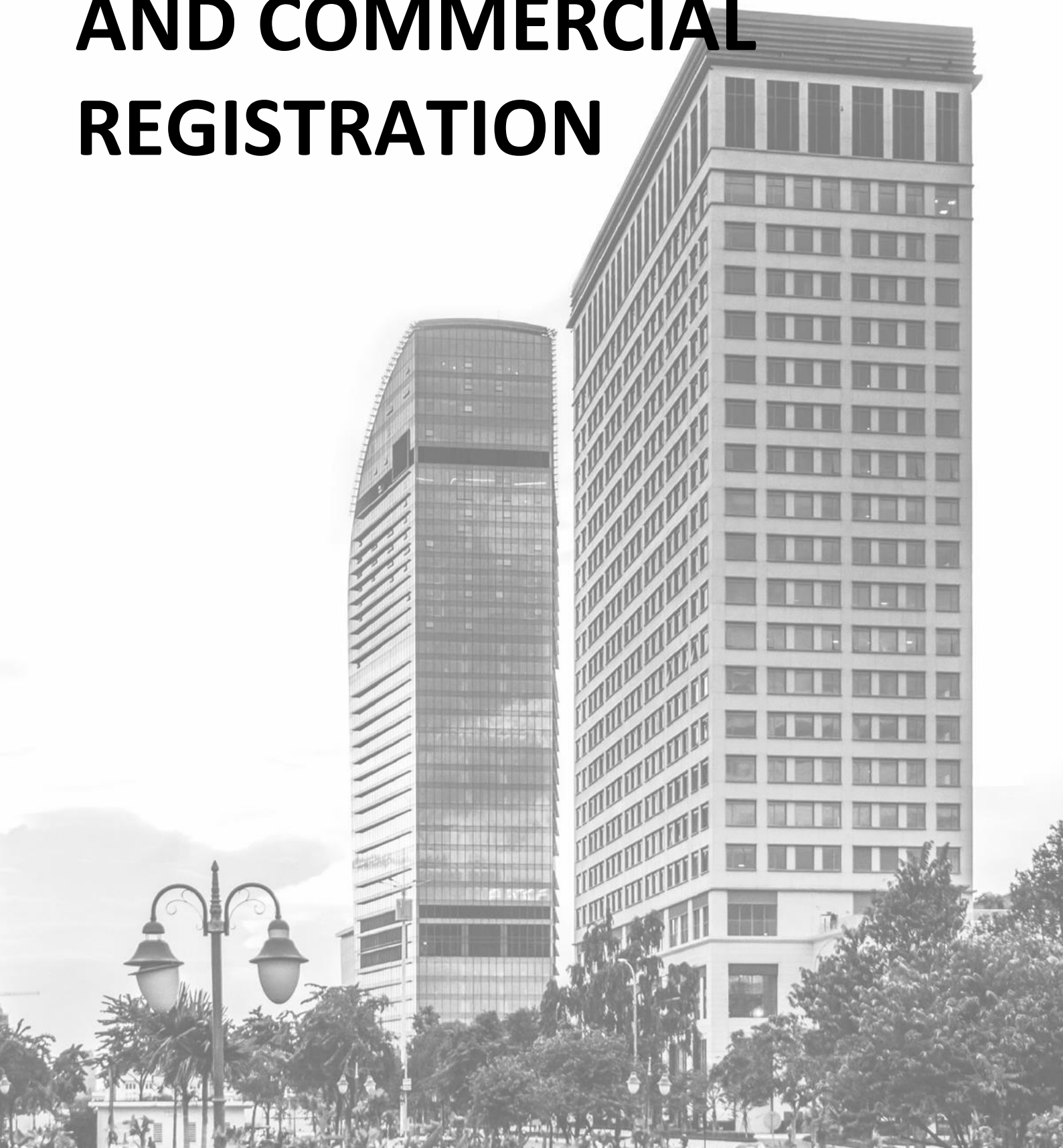
### **5.18 Mergers and Acquisitions Involving Investors**

In the event of the merger or acquisition of a company holding a QIP, or transfer of shares in a company holding a QIP, which results in the transferee holding 20% or more of the shares, written approval of the CDC or PMIS is required so that the new entity, buyer, or existing QIP holder continues to be entitled to the investment incentives and guarantees.

A written request for such approval must be submitted to the CDC or PMIS within ten working days prior to the merger, acquisition, or share transfer. The CDC or PMIS will provide its decision in writing within ten working days of receiving such a request.

## Chapter 6

# COMPANY LAW AND COMMERCIAL REGISTRATION



## Chapter 6

# Company Law and Commercial Registration

The initial issue faced by most investors is whether their business objectives will be best served by a direct equity investment through a locally-registered business enterprise, or by entering into distribution, franchising, management, financing, leasing, technical assistance, or other contractual arrangements with existing registered Cambodian legal entities.

This chapter addresses the permitted legal forms of business entity and their registration procedures at the MOC. Business and commercial enterprises in Cambodia must be registered via the MOC online system at least 15 days prior to the commencement of business activities. A business entity is deemed to exist on the date a certificate of incorporation is issued by the MOC.

The incorporation of a company is governed by: the Law on Commercial Rules and Commercial Register, promulgated on 19 June 1995 (“**LCRCR**”); the Law on the Amendment of the Law on Commercial Rules and Commercial Register, enacted on 18 November 1999 (“**LACRCR**”); and the Law on Commercial Enterprises which entered into force on 19 June 2005 (“**LCE**”).

The MOC issued Announcement 1217 PNRB, dated 27 November 2017, stating that effective from 1 January 2018, all payments for public services of the MOC must comply with the Joint Prakas on Public Service Provision of the MOC.

The above legislation replaced the former practice of business structures operating on the basis of contractual arrangements. The LCRCR, LACRCR, and LCE provide a comprehensive framework to establish and operate various types of business organization forms.

At present, the available forms of business entities in Cambodia are:

- a limited liability company;
- a branch office;
- a representative office;
- a partnership; and
- a sole proprietorship.

The three types of limited liability company available are:

- a single-member private limited company;
- a private limited company; and
- a public limited company.

A partnership may take the form of a general or limited partnership.

### 6.1 Commercial Registration under the LCRCR and LACRCR

The LCRCR and LACRCR provide extensive procedures for registering an enterprise at the MOC. They set out the necessary documents required for the registration of a company or business and determine the circumstances whereby any changes in a company must be notified to the MOC.

According to the LCRCR and LACRCR, the commercial register lists basic information on all registered business entities, including the company name, objectives, form of company, location of the registered office, capital, certificate of capital deposit issued by a bank, names of directors and shareholders, equity held by each shareholder and authorized signatories. Also listed are any patents, trademarks, and copyrights owned by the business and any judgments or judicial orders pronouncing the dissolution or nullity of the company, declaring the company bankrupt or court-ordered liquidation.

## **6.2 The Law on Commercial Enterprises**

Under the LCE, enterprises must comply with several requirements.

### **6.2.1. Agent**

A partnership or company must continuously maintain a registered agent that must be a legally competent natural person in the Kingdom of Cambodia.

### **6.2.2. Registered Office**

At all times, a company must have a registered office in the Kingdom of Cambodia.

### **6.2.3. Issuance of Shares**

The company must issue a minimum of 1,000 shares with a par value of not less than KHR 4,000 per share (approximately 1 USD).

### **6.2.4. Share Certificates**

Each shareholder is entitled to a share certificate, for fully paid-up shares.

### **6.2.5. Records**

Companies must prepare and maintain corporate records at the registered office, including:

- articles of incorporation and bylaws;
- minutes of meetings and directors' resolutions;
- copies of all notices;
- securities register;
- director records (including minutes of meetings);
- resolutions of shareholders; and
- accounting records.

### **6.2.6. Meetings of the Board of Directors**

Board of directors' meetings must be held at least once every three months.

### **6.2.7. Annual Declaration**

Following the issuance of the Prakas issued by the MOC on 5 April 2017 regarding the filing of the Annual Declaration of Commercial Enterprises ("ADCE"), please note that an ADCE must be submitted by each enterprise to the MOC using its online system.

Use of the online system for submission of an ADCE is now compulsory and must be performed within three months from the anniversary of the enterprise's re-registration on the MOC's online system. After that three-month period, a penalty of KHR 2 million (approx. USD 500) will be imposed by the MOC.



#### **6.2.8. Annual Financial Statement**

Twenty-one days before each annual shareholders' meeting, an annual financial statement must be sent to all shareholders (unless a shareholder has informed the company in writing that it does not wish to receive a copy). Before being issued, published, and circulated, annual financial statements must be approved by the board of directors, and, unless certain conditions are met by the company and the shareholders have waived the requirement to appoint an auditor, such approval must have a copy of an auditor's report attached.

#### **6.2.9. Disclosure of Interests**

Directors and officers must disclose in writing their interests in relation to any contracts with the company, or any material interest in relation to such a contract.

#### **6.2.10. Procedures for Shareholders' Meetings and Board of Directors Meetings**

The LCE provides for specific procedures (including quorum requirements and secret ballots), notification periods and information disclosure in relation to shareholders' meetings and directors' meetings.

#### **6.2.11. Corporate Secretary**

The LCE refers, in several provisions, to the use of a company secretary responsible for taking and keeping the minutes of the board of directors' meetings and sending copies of the minutes to all directors. Additionally, the company secretary must prepare a written report of the written communications of the board and distribute this report to the directors.

#### **6.2.12. Use of Khmer Name**

All enterprises must display their name in the Khmer language. If the name is displayed in another language, the Khmer name must be placed above and be larger than the name in the other language. The Khmer name must appear on all seals, signs, letterhead, and all documents used for public purposes.

Other key issues covered by the LCE include:

- appointment of auditors;
- provisions in relation to liquidation of a business; and
- penalties applicable for breaches of the law.

#### **6.2.13. Available Business Organization Forms**

All types of business organization forms are summarized in the chart below, followed by a more detailed examination of each form.

Form	Definition	Pros	Cons
Limited Liability Company	<ul style="list-style-type: none"> <li>company in which the liability of shareholders is limited to capital contribution.</li> <li>includes single-member private limited liability companies.</li> </ul>	<ul style="list-style-type: none"> <li>widely accepted.</li> <li>minimum capital of KHR 4 million (about USD 1,000).</li> <li>accepted for CDC approved investment project.</li> <li>flexible forms.</li> </ul>	<ul style="list-style-type: none"> <li>taxable activities in Cambodia.</li> <li>higher reporting and administration burdens.</li> <li>approvals required for share transfers and changes of directors (amongst other amendments to the company).</li> </ul>
Branch Office	<ul style="list-style-type: none"> <li>division of an offshore parent company.</li> </ul>	<ul style="list-style-type: none"> <li>simplified internal, legal, and accounting structure.</li> </ul>	<ul style="list-style-type: none"> <li>not acceptable for CDC investment project.</li> <li>exposes parent to liabilities of branch.</li> <li>no separate legal personality from its principal.</li> <li>taxable activities in Cambodia.</li> </ul>
Representative Office	<ul style="list-style-type: none"> <li>local representative of parent company.</li> </ul>	<ul style="list-style-type: none"> <li>rapid approval with minimum legal documentation.</li> <li>no taxable activities in Cambodia.</li> </ul>	<ul style="list-style-type: none"> <li>not acceptable for CDC investment projects.</li> <li>scope of permissible activities limited.</li> <li>cannot engage in business activities in Cambodia in its own capacity.</li> <li>no separate legal personality from its principal.</li> </ul>

### 6.3 Limited Liability Company

The limited liability company is the most common form of investment vehicle in Cambodia. It is usually established as a subsidiary of an investor's offshore holding company. The limited liability company can be 100% Cambodian-owned, 100% foreign-owned, or have any combination of Cambodian or foreign shareholding, subject to certain restrictions.

A limited liability company is formed with registration of its articles of incorporation (Articles) at the MOC, and receipt of a certificate of incorporation from the MOC. Any changes to the Articles and other corporate documents must also be registered in a timely manner at the MOC to be valid.

After establishment, a limited liability company must prepare and maintain, at its registered office, the following records:

- the Articles and the bylaws and all amendments thereto;
- minutes of meetings and shareholders' resolutions;
- copies of all notices to be sent or filed in accordance with the LCE;
- a securities register; and
- accounting records.

A limited liability company must issue a minimum of 1,000 shares with a par value of not less than KHR 4,000 per share (approximately one US dollar). The company has only one class of share unless the Articles specify other classes. Subject to differing class rights, shareholders have the right to vote at any meeting of the shareholders, receive any dividends declared by the company, and receive the remaining property of the company upon dissolution. If the Articles provide for more than one class of share, the rights of each class of share may (theoretically) be absolute, relative, or contingent, and the rights, privileges, restrictions, and conditions attaching to the shares of each class must be detailed in the Articles.

The board of directors has broad powers to manage the business and affairs of the company,

Including the powers to:

- appoint and remove officers and fix their salaries;
- issue, reissue or sell securities of the companies;
- adopt resolutions; and
- provide guarantees on behalf of the company.

Directors must act in good faith, within the scope of the company's business objectives, within the framework of the company's Articles and in compliance with applicable laws. Additionally, directors must comply with relevant registration, filing, and publication requirements of the company. Accounting books and records of the relevant financial year must be duly maintained at the registered office for ten more years.

At every annual shareholders' meeting, the directors must present an annual financial statement to the shareholders. Annual financial statements must be approved by the board of directors and be accompanied by the auditor's report (subject to limited circumstances whereby appointment of an auditor may be waived by shareholder resolution) before being issued, published and circulated.

### 6.4 Types of Limited Liability Company

Under the LCE, the types of limited liability companies permitted are listed below. The LCE describes in detail the distinction between these forms.

Form	Characteristics
Single-Member Private Limited Company	A private limited company with one physical or legal person as the shareholder. Requires a minimum of one director.
Private Limited Company	A limited liability company with two to 30 shareholders. Requires a minimum of one director. May have restrictions on the transfer of each class of shares as provided for by the Articles.
Public Limited Company	A limited liability company authorized by the LCE to issue securities to the public. Requires a minimum of three directors.

## 6.5 Branch Office

A foreign or local entity may operate its business in Cambodia through a branch office. Although relatively common in the banking community, the government's policy, historically, was to limit branches to foreign investors that have executed contracts with the government.

Such a limitation is not present under the current law. One notable consideration for branches is that the foreign parent company may be liable for the losses and debts of the branch. Branches cannot hold QIPs and do not have separate legal personality from their principal parent company.

## 6.6 Representative Office

For some investors, the need to establish a subsidiary or branch of their offshore company, while foreseeable in the longer term, may not immediately be necessary. A more appropriate form may be that of a representative office. Representative offices are primarily used for the sourcing local goods and services and gathering local information for the parent company. They also serve as a vehicle for promoting and marketing the offshore parent's products and services in Cambodia. They are thus best suited to assisting foreign investors wishing to gain entry to the Cambodian marketplace.

A representative office is not allowed to engage in active trading or provide services in Cambodia. It may not purchase, sell, or conduct any service or activity considered to be within the usual scope of the parent company's business. It also may not engage in manufacturing, processing, or construction. Permitted activities include the right to employ local workers, and to market products and services at trade fairs. The representative office may negotiate commercial contracts on its parent company's behalf, but the contract may only be entered into by the parent company.

The representative office is a non-taxable legal entity precisely because it is not permitted to engage in any sort of taxable activity. Doing so would expose the representative office to tax liability. The representative office, however, is required to withhold salary tax on salaries paid to employees and pay patent tax (an annual business operation tax). Representative offices cannot register for QIP status.

## 6.7 Partnerships

A "general partnership" is a contract between one or more persons to combine their property, knowledge or activities to carry on business in with a common view to profit. They are jointly and severally liable for the obligations of the partnership to third parties.

A “limited partnership” is a contract of partnership between one or more general partners who are the sole persons authorized to administer and bind the partnership, and one or more limited partners, who are bound to contribute to the capital of the partnership. The general partners are jointly and severally liable for the debts of the partnership to third parties, whereas the limited partners are liable only to the extent of the sum of money or value of the property they agreed to contribute.

While this form is common for local and small businesses it is less so for larger investments, as the processes used by the MOC for registering this business form are unclear given the lack of precedent to date.

## **6.8 Restrictions on Foreign Shareholdings**

Cambodia places very few restrictions on the level of foreign participation in investments. As a result, a substantial proportion of investors choose to establish 100% foreign-owned limited companies. However, it should be noted that only a Cambodian company or citizen may own land and foreign ownership restrictions apply to certain sectors.

## **6.9 Required Government Approvals, Permits, and Licenses**

Certain business sectors, such as; banking, school, construction and real estate, financial leasing, insurance, medical, mining, oil and gas, telecommunications, and advising on investment require special licenses from various government entities.

## Chapter 7

# TAXATION





# Chapter 7

## Taxation

### 7.1 Overview

Prior to 1 January 2016, Cambodia had three types of tax regime: real, simplified, and estimated. In brief, estimated taxpayers negotiated their taxes upfront whereas real regime taxpayers were required to submit monthly and annual tax returns and declare their taxes on a self-assessment basis. In practice most small and medium enterprises in Cambodia fell under the estimated tax regime which, while accounting for over 80% of all businesses in Cambodia, contributed to less than 10% of annual collected tax revenue.

As a result of these inefficiencies in December 2015 the Law on Financial Management 2016 abolished both the simplified and estimated regimes of taxation in Cambodia.

### Change of Regime

From 1 January 2016 only one regime of taxation in Cambodia remained – the real regime of taxation which was subsequently renamed the self-assessed tax regime. The self-assessed regime consists of three categories of taxpayer as set out below:

- *Small Taxpayers:*  
Taxpayers that are Sole Proprietorships or Partnerships that:
  - have annual taxable turnover from KHR 250 million (USD 62,500) to KHR 700 million (USD 175,000);
  - have taxable turnover, in any period of three consecutive calendar months (within this tax year), exceeding KHR 60 million (USD 15,000);
  - expected taxable turnover of KHR 60 million (USD 15,000) or more in the next three consecutive months; and
  - participate in any bidding, quotation or survey activities for the supply of goods and services.
- *Medium Taxpayers:*
  - enterprises that have annual turnover from KHR 700 million (USD 175,000) to KHR 4 billion (USD 1 million);
  - enterprises incorporated as legal entities; and
  - government institutions, foreign diplomatic and consular missions, international organizations and agencies.
- *Large Taxpayers:*
  - enterprises with annual turnover over KHR 4 billion (USD 1 million);
  - branch of a foreign company;
  - subsidiary of multinational companies; and
  - enterprises registered as a QIP as approved by the Council for the Development of Cambodia/CDC.

*\*Please note Small Taxpayers are able to follow a simplified accounting system as outlined in Prakas No. 1820 MEF.Prk dated 25 December 2015 on Methods and Procedures on the Implementation of Simple Accounting Record for Small Taxpayers. The simplified accounting system provides prescribed rules on recording expenses, depreciable assets, WHT requirements and income recognition that may differ from the general rules as outlined in this Chapter that apply to Medium and Large taxpayers.*

References to Self-Assessed Taxpayers (“SAT”) in this Chapter refer to Medium and Large Taxpayers.

## Annual Taxes

- Tax on Income (“TOI”)
- Minimum Tax (“MT”)

## Monthly Taxes

- Prepayment of Income Tax (“PIT”)
- Withholding Tax (“WHT”)
- Tax on Salary (“TOS”)
- Value Added Tax (“VAT”)

## Other Significant Taxes

- Patent Tax (“PT”)
- Specific Tax on Certain Merchandise and Services (“ST”)
- Accommodation Tax (“AT”)
- Tax on Public Lighting (“TPL”)
- Tax on Unused Land (“TUL”)
- Tax on Immovable Property (“TIM”)
- Additional Tax on Dividend Distribution (“ATDD”)

## 7.2 Annual Taxes

Each taxable year (being a calendar year), SAT taxpayers are required to either pay TOI or MT, by the 31st of March of the following year, whichever tax is greater.

### Tax on Income

TOI is a tax on income (revenue – expenses) with a standard rate of 20%. Previously called Tax on Profit its name was changed to Tax on Income in 2017. Special tax rates apply to taxpayers in extraction or insurance industries. It is imposed on a resident taxpayer’s world-wide income.

### Rates of Tax on Income

Business Types	Tax Rates
Legal Entities (General Businesses)	20%
Small Taxpayers	Progressive rates
Oil or natural gas production sharing contracts or realized in the exploitation of natural resources.	30%
Insurance activities relating to property or risk in Cambodia*	5% on gross premiums

*\*Please note that under the 2017 Law on Financial Management, the taxation of insurance entities was amended. For insurance or re-insurance activities on property or risks in the Kingdom of Cambodia, Tax on Income will be determined at 5% of the gross premium which is received in the taxable year. Incomes from other activities besides gross premium are subject to the 20% Tax on Income.*

*For insurance or re-insurance activities on life, which is of a saving manner and any other activities other than the insurance or re-insurance of property or risks, the Tax on Income rate will be 20% of taxable income. The Rules and procedures for the implementation of income tax for insurance companies are determined by Prakas 490 dated 30 April 2018 of the Ministry of Economy and Finance (“MEF”).*

## Deductibility of Expenses

As a general rule, expenses are deductible if they are paid or incurred in a tax year to carry on the business of the taxpayer. The tax regulations provide that “expenses linked to abnormal management,” expenses that “provide benefits to third parties,” “expenses for personal needs” and “extravagant expenses” are not tax deductible.

Special rules apply that cap deductions on annual interest and charitable contributions. These are discussed in more detail below.

## Non-deductible Expenses

Expenses specifically not allowed as tax deductions include:

- any expense in relation to amusement, recreation or entertainment;
- personal or living expenses;
- penalties and fines;
- donations, grants or subsidies;
- prepayment of profit tax, minimum tax or profit tax;
- withholding tax and salary tax borne by the enterprise; and
- losses on the sale or exchange of property directly or indirectly between related parties.

## Non-related business expenses. Tax Depreciation

Tax depreciation is based on the depreciation methods detailed below:

Property	Method	Rate
<b>Intangible Property</b>		
Having a specific useful life	Straight - Line	varies based on the estimated useful life
If there is no specific useful life	Straight - Line	10%
<b>Tangible Property</b>		
Class 1: Buildings and structures including their basic components	Straight - Line	5%
Class 2: Computers, electronic information systems, software & data handling equipment	Declining Balance	50%
Class 3: Automobiles, truck, and office furniture and equipment	Declining Balance	25%
Class 4: All other tangible property	Declining Balance	20%

### 7.3 Minimum Tax

MT is a yearly tax and is separate from the TOI. MT is calculated at 1% of annual turnover inclusive of all taxes except VAT. Note however that the monthly settlement of the Prepayment of Income Tax (see below) is usually sufficient to cover the MT. Therefore, if the MT is payable instead of the TOI, typically no additional MT payments need to be made.

The 2017 Law on Financial Management amended the obligation to pay MT by stating that this tax will only be imposed on an enterprise that *does not keep a proper record of accounts*. Prakas 638 issued on 4 July 2017 set out what constitutes *improper accounting records* as follows:

- enterprises with accounting records which do not meet the requirements set out by the GDT and the Ministry of Economy and Finance;
- enterprises which fail to issue invoices for business transactions as stated in Articles 77, 79 and 98 of the LOT;
- enterprises which commit serious negligence as stated in Article 126 of the LOT;
- enterprises which commit tax evasion as stated in Article 127 of the LOT; and
- enterprises which do not have an audit report from independent auditors if their annual turnover is more than KHR 2 billion (approximately USD 500,000).

In December 2016 In December the Ministry of Economy and Finance issued Prakas 1536 which provided [a table of weighted criteria](#), to determine whether a taxpayer could be classified as Gold, Silver or Bronze based on the points they reach out of a total score of 20. The Prakas went on to indicate that the Cambodian tax authorities would provide a tax compliance certificate, valid for two years, for each class of taxpayer i.e. Gold, Silver or Bronze.

One of the criteria to qualify for a Gold classification is that the taxpayer maintains proper accounting records.

The 2017 Law on Financial Management has also clarified that QIPs are not automatically exempted from MT and still need to evidence that they also maintain proper accounting records to be exempted.

### 7.4 Monthly Taxes

#### *Prepayment of Income Tax*

As noted in Article 28 of the LOT an enterprise which is liable to TOI according to the self-assessed regime has the obligation to make a monthly PIT at the rate of 1% of monthly turnover inclusive of all taxes, except VAT, realized in the previous month.

We have emphasized the reference to TOI in the paragraph above to highlight the fact that even though a taxpayer may qualify for an MT Exemption under Prakas 638 – see above - they will still be required to pay the monthly 1% PIT with the exception of QIP entities during their TOI exemption period.

For those taxpayers who obtain a MT exemption under Prakas 638 and who make a tax loss during the year - the 1% monthly PIT (calculated on monthly turnover) will simply be carried forward to the next year as a tax credit until the business is profitable at which time the accumulated tax credits can be used to offset any resulting TOI liability.

#### *Withholding Tax*

Taxpayers carrying on a business in Cambodia must withhold certain amounts from payments made to resident and non-resident taxpayers. The amounts withheld are remitted to the GDT. The following payments are subject to WHT.

Payments by resident taxpayers to residents in respect of:

- performance of services – 15% (except payments to a tax registered taxpayer supported by a valid VAT invoice);
- interest – 15% (except domestic banks and saving institutions);
- royalties – 15%;
- rental – 10%;
- interest payments on fixed deposits made by local banks to residents – 6%; and
- interest payments on saving accounts made by local banks to residents – 4%.

Payments by resident taxpayers to non-residents\* in respect of:

- Interest paid by a resident enterprise or resident partnership company, or a governmental institution of the Kingdom of Cambodia;
- Dividends distributed by a resident enterprise;
- Income from services performed in Cambodia;
- Compensation for management and technical services paid by a resident person;
- Income from movable or immovable property, if such property is situated in Cambodia;
- Royalties from the use, or right to use intangible property paid by a resident, or paid by a non-resident through a permanent establishment that he maintains in Cambodia;
- Gain from the sale of immovable property located in the Kingdom of Cambodia or from the transfer of any interest in immovable property situated in Cambodia;
- Premiums from the insurance or reinsurance of risks in Cambodia;
- Gain from the sale of movable property which is part of the business property of a permanent establishment maintained by a non-resident taxpayer in Cambodia; and
- Income from business activities carried on by a non-resident through a permanent establishment in Cambodia.

WHT does not apply to sale of goods payments.

*\*We note that Cambodia now has Double Tax Agreements in place which may reduce the standard WHT rate of 14% on certain transactions to qualifying non-residents. See below for further details.*

#### *Insurance Entities*

Instruction No. 14005 GDT on the Implementation of Withholding Tax on Insurance Company was issued by the GDT on 16 July 2019 and provides that:

- Insurance Enterprises that make payments to non-resident taxpayers for reinsurance on life insurance, shall be subject to WHT for the net premium of life reinsurance.
- In the case of negative net premium of life reinsurance, insurance companies that make payments to non-resident taxpayers for reinsurance on life insurance, are allowed to use the remaining amount of premium to be offset against the gross premium for the following months.
- Insurance Enterprises have an amnesty to amend their tax returns voluntarily and will not be charged additional penalties if they disclose and pay the additional taxes before 31 December 2019.

## Deemed Dividends

Prakas 372 issued on 5 April 2019 provides that if shares are transferred in companies, that are incorporated in Cambodia and registered for tax, then any retained earnings held by the Cambodian company at the time of the share transfer will be considered as a dividend distribution. In addition, if any of the shares being transferred resulted from an earlier conversion of retained earnings to capital, those shares will also be regarded as dividend distributions.

What that means for non-resident shareholders transferring shares in Cambodian entities is that they should now be mindful of WHT implications on deemed dividend distributions as outlined above. The Cambodian entity in which the shares are transferred would need to withhold the WHT on a deemed dividend scenario if applicable.

Prakas 372 also provides that companies in Cambodia looking to reduce their registered capital may also be treated as distributing dividends if they have retained earnings on hand at the time of the capital reduction.

## 7.5 Tax on Salary

An individual who is a tax resident of Cambodia is subject to TOS on Cambodian and foreign sourced salary income at progressive rates from 0% to 20% while a non-resident individual is subject to a flat rate of 20% on Cambodian sourced salary income only.

Individuals are classified either as resident or non-resident taxpayers. An individual is deemed to be resident if their residence or principal place of abode is in Cambodia or is present in Cambodia for more than 182 days in any 12-month period. A non-resident is a person who does not meet the above criteria.

Salary includes remuneration, wages, bonuses, overtime, compensation and loans or advances provided by the employer.

The tax base for TOS can be reduced via a rebate which is provided for every dependent child and non-working spouse of the resident employee. The dependent rebate was increased from KHR 75,000 to 150,000 (for every dependent child and non-working spouse) under the 2017 Law on Financial Management – effective from 1 January 2017.

## Exempt Salaries

The following salary payments received by a resident taxpayer are not subject to TOS:

- reimbursement of business expenses by the employer provided that; the costs were incurred in the course of employment, are not excessive, and can be substantiated;
- indemnity for being laid off within the limits of the Labor Law (please see below on Seniority Payments);
- additional remuneration received with social characteristics as stated in the Labor Law;
- supply of free or below-cost uniforms or special professional equipment used in the course of employment; and
- accommodation allowances and travel costs received in the course of employment, where the allowance is not in excess of expenditure incurred.



Circular 011 issued in 2016 provided that allowances received by employees “*within the framework of fulfilling employment activities*” would not be included in the tax on salary base and not be subject to fringe benefit tax provided that “*documentation supporting the allowances have been lodged with the GDT.*” Circular 011 notably expanded the eligibility criteria for this exemption to employees and workers of **all factories and enterprises**.

The allowances expressly contemplated by Circular 011 are as follows:

- transportation allowances covering travel to and from an employee’s residence and workplace;
- accommodation or housing allowance provided within the workplace in accordance with the Labor Law;
- meal allowances provided to all employees and workers regardless of their position or function;
- National Social Security Funds or social well-being funds within the limit as provided by Law;
- health insurance or life insurance premiums provided to all workers and employees regardless of their position or function;
- infant allowance or infant day-care center expenses as stipulated in the Labor Law; and
- severance pay for employment termination or indemnity for layoffs within the limit as provided by the Labor Law.

Additionally, the GDT recently issued Circular no. 003 MEF dated 11 April 2019 on Tax Exemption on back-pay seniority payment prior to 2019 (“**Back-Pay Seniority**”) and seniority payments from 2019 onwards, and service fees for job seeking, training, sending and managing labor to work overseas by private recruitment agencies. Based on this Circular, the back-pay seniority payment of Cambodian workers in the garment and footwear sector and other sectors shall be exempt from Tax on Salary, and not included in the salary tax base calculation.

## Salary Tax Rates

The 2018 Law on Financial Management amended the monthly tax on salary rates for tax resident employees in Cambodia as follows:

A resident taxpayer is subject to TOS on Cambodian and foreign sourced salary income at progressive rates from 0% to 20% which are tabled below.

Monthly Salary		Rate
Khmer Riel (KHR)	Approx. USD equivalent	
0 – 1,200,000	0 – 300	0
1,200,001 – 2,000,000	300 – 500	5%
2,000,001 – 8,500,000	500 – 2,125	10%
8,500,001 – 12,500,000	2,125 – 3,125	15%
12,500,001 – upwards	3,125 – upwards	20%

Exchange rate USD 1 = KHR 4,000

## Fringe Benefits Tax

Fringe benefits provided by employers to employees are subject to FBT at a rate of 20%.

FBT is primarily imposed on the following benefits:

- vehicles for private use;
- accommodation; food, utilities and household personnel;
- educational assistance (except for employment-related training);
- low interest loans;
- discounted sales;
- social contributions in excess of the levels provided for by Labor law;
- life and health insurance premiums (except where provided to all employee regardless of job classification);
- pension contributions exceeding 10% of the employee's monthly salary; and
- entertainment, amusement or recreation expenses which are not part of employment activity.

## 7.6 Value Added Tax

VAT is applicable to the supply of goods and services. Goods are defined as tangible goods other than land and money. Services are defined as the supply of something of value other than goods, land or money.

An enterprise is required to apply VAT at the standard rate of 10% on taxable supplies in Cambodia including the importation of goods into Cambodia. A VAT rate of 0% ("**zero-rate**") applies to goods exported from Cambodia. Taxable supplies are any supplies other than non-taxable supplies. Non-taxable supplies not subject to VAT include:

- public postal services;
- hospitals, clinics, medical and dental services and the sale of medical and dental goods incidental to performance of such services;
- wholly state owned public transportation services;
- insurance services;
- primary financial services;

*(The definition as to what constitutes a Primary Financial Service is currently being reviewed by the Ministry of Economy and Finance);*

- the importation of articles for personal use exempt from customs duties; and
- non-profit activities that are in the public interest as recognized by the Ministry of Economy and Finance.
- The 2017 Law on Financial Management created some additional classes of non-taxable supplies, namely:
  - educational Services;
  - the supply of electricity and clean water;
  - unprocessed agricultural products; and
  - services relating to the removal and/or removal of waste material either solid or liquid.

*Prakas* 559 issued in May 2017 further expanded the new classes of non-taxable supplies as follows:

The term "electricity" refers to electricity which is supplied for the purpose of domestic consumption or business consumption. The supply of electricity does not include cable installation or other related measurement tools.

The term “clean water” refers to clean water which is supplied for the purpose of domestic consumption or business consumption except for the sale of drinking water. The supply of clean water does not include pipeline installation or other measurement tools.

The term “unprocessed agricultural products” refers to bulbs, flowers, leaves, shoots or suckers, roots, and miscellaneous plant elements which have been obtained from local cultivated land, whether sliced or ground or not, which has not been processed to create a final product.

The term “solid and liquid waste” refers to solid and liquid material or substances which can no longer be used, or that have been abandoned.

## VAT System

The Cambodian VAT system follows conventional VAT systems, whereby a VAT registered enterprise can offset input VAT incurred on purchases against its output VAT. In circumstances where the taxpayer’s input VAT for the month exceeds its output VAT (i.e. VAT credit), the taxpayer is allowed to carry forward the VAT credit to offset output VAT in the next period.

VAT paid on the following expenditure cannot be used as VAT input:

- entertainment expenses;
- products or imports of certain petroleum products;
- purchases or imports of motor passenger vehicles; and
- mobile telephone calls.

## Online VAT Credits and Refunds

The GDT has introduced the online VAT credit and refund system (“**e-VAT filing**”) in accordance with Instruction 001 MEF dated 09 January 2019 in order to ensure effectiveness, efficiency, transparency, convenience, rapidity, and reliability in the provision of taxpayer services. Based on this Instruction, each enterprise is required to submit the request for VAT input credits or refunds via the online system from January 2019. The enterprise is also required to extract the form of the request for VAT input credit or refund from the system and submit them together with the tax return to the tax authority. However, the implementation of the Instruction 001 was delayed until the end of May 2019.

## 7.7 Other Taxes

### Patent Tax (PT)

Businesses are required to pay PT upon business registration and every year thereafter for each business activity that they carry out.

In previous years the Government fee required to obtain a PT Certificate was approximately USD 285. The revised PT fees are as follows:

Self-Assessed Taxpayer	Patent Tax Fee Khmer Riel (KHR)	Patent Tax Fee United States Dollars (US)
Small Taxpayer	KHR 400,000	USD 100
Medium Taxpayer	KHR 1.2 million	USD 300
Large Taxpayer	KHR 3 million or KHR 5 million*	USD 750 or USD 1,250

*\*If the annual turnover of the Large Taxpayer exceeds KHR 10 billion (USD 2.5 million) then the PT payable will be USD 1,250. If the annual turnover of the Large Taxpayer is less than KHR 10 billion (USD 2.5 million) the PT payable will be USD 750.*

The PT must be paid at the place where taxpayers have their specific/real business operation. A taxpayer which has a branch office, warehouse, factory and workshop with the same business objective in the same location (city-province) must only pay one PT fee.

### **Specific Tax on Certain Merchandise and Services (ST)**

The ST is imposed on a number of local and imported products and services. The rates range from 3% to 45%. Goods subject to this ST include soft drinks, alcoholic beverages, cigarettes, and certain services such as entertainment, domestic and international air tickets, and telephone services.

### **Accommodation Tax (AT)**

AT is a tax levied on accommodation services provided by hotels. AT is calculated at the rate of 2% on the accommodation fee inclusive of other service charges and taxes except VAT and AT itself.

### **Tax on Public Lighting (TPL)**

TPL is collected at the rate of 3% on the selling price of alcoholic beverages and cigarettes, whether imported or domestically manufactured. The tax base of the TPL is calculated inclusive of all applicable taxes except VAT and TPL itself. Profits realized when a company is exempt from TOP and applies to each stage of domestic sale within Cambodia.

Prakas 976 which entered into force on 9 October 2017 brings a measure of downstream tax relief on the secondary sales of Alcohol and Cigarettes. Prakas 976 reduces the tax base on the calculation of PLT to 20% of the selling price, excluding PLT itself and VAT for secondary sales i.e. excluding an importer or local producer.

### **Stamp Duty**

Stamp Duty is imposed on the transfer of ownership of immovable property, all kinds of vehicles, and shares. It is also imposed on contracts for the supply of goods and services to public institutions and certain legal documents relating to the establishment, merger or dissolution of businesses. The rates are as follows for:

- Transfer of ownership or right of possession of immovable property and the contribution of immovable property as capital in a company -- 4% of the value of the immovable asset;
- Transfer of ownership or right of possession of vehicles -- 4% of the vehicle's value;
- Transfer of any or all parts of a company's shares -- 0.1% of the value of shares transferred;
- Registration of contracts to supply goods or service to the government -- 0.1% of the contract price; and
- Registration of legal documents such as certificates of incorporation, merger certificates and letter evidencing the winding up of the company -- KHR 1 million (approx. USD 250).

Under the 2017 Law on Financial Management and the Prakas 507 from the Minister of Economy and Finance (MEF)- Stamp Duty will be exempted and subject to the tax relief as follows:

- Stamp Duty will be exempted for:
  - the acquisition of ownership or tenancy rights over concession land granted by the Royal Government;
  - the acquisition of ownership or tenancy rights over immovable property among the relatives;
  - the acquisition of ownership over all types of motorcycles, tricycles, tractors and all types of water-borne vehicles with an engine capacity of up to 150 horsepower;

- the transfer of shares, receipt of shares, company merging, restructuring of shareholder composition, such division of shares of the companies that issue securities to members of the public with approval from the Securities and Exchange Commission of Cambodia;
  - the acquisition of ownership or tenancy rights over immovable property and all types of vehicles registered under the inventory of governmental institutions;
  - the acquisition of ownership or tenancy rights over immovable property and all type vehicles of belonging to diplomatic missions or foreign consuls or international organizations, or technical cooperation agencies of other governments; and
  - the purchase of means of transportation or vehicles as commodities for resale of the enterprises registered with the tax administration.
- The acquisition of ownership or tenancy rights of immovable property among relatives will be also granted with tax relief.

Rules and procedures on tax exemption and relief as stipulated above will be determined by a Prakas issued by the MEF.

### **Transfer of Ownership Rights**

In addition, the MEF issued the Prakas 343 dated 22 March 2019 in order to determine and impose the new tax base on the stamp duty tax on the transfer of ownership rights of immovable property. This Prakas will be implemented from 1 July 2019 for the transfer of ownership rights on building or/and land across the capital and provinces in Cambodia.

### **Tax on Immovable Property (TIM)**

The definition of immovable property includes; land, houses, buildings and other construction. TIM is imposed at the rate of 0.1% on the value of the immovable property exceeding the threshold of KHR 100 million (approx. USD 25,000). The immovable property's value is determined by the Immovable Property Assessment Committee. The property tax return must be filed, and taxes paid by 30 September every year.

### **Tax on Unused Land (TUL)**

TUL is imposed on land on which there has been no construction or construction has been abandoned. The tax is imposed only on areas as designated by the Unused Land Appraisal Committee ("ULAC"). Tax on Unused Land is collect at the rate 2% of the market value of the land as evaluated by the ULAC. The tax return must be filed, and taxes paid by 30 September each year.

### **Additional Tax on Dividend Distribution (ATDD)**

ATDD applies to the distribution of profits previously not taxed at the full rate of 20% (such as those distributed by QIPs). Profits realized when a company is exempt from TOP are not subject to the ATDD until the retained earnings are distributed, either during or after the tax deferral period. From 2017, ATDD also applies to distributions made by Branches in Cambodia to their Foreign Principal that have not been taxed at source.

## **7.8 Import and Export Duties**

Import duties are collected on all goods (other than those specifically exempted from import duties as stated by law or relevant authorities) crossing the border, at rates of between 0% and 35%. Cambodia is a member of the WTO and applies the most-favored nation rate to imports from other WTO members. The country is also part of the ASEAN Free Trade Area and applies the tariff rates agreed upon under the ASEAN Trade in Goods Agreement to imports from other ASEAN states.

Cambodia levies export duty on a few items such as timber, rubber, uncut precious stones and certain aquatic products.

## 7.9 Tax Administration

### Patent Tax and Annual Tax on Income Return

Companies must submit TOI and Patent Tax returns no later than three months following each year. Newly registered enterprises must lodge a Patent Tax return within 15 days after it receives approval for business registration from the MOC.

### Monthly Tax Returns

Companies are required to lodge Monthly Tax Returns to the tax authority on a monthly basis. Monthly Tax Returns consist of:

- return of Prepayment of Income Tax\*      20th day of the following month (lodgment)
- return for Withholding Tax                      20th day of the following month (lodgment)
- return for Tax on Salary                      20th day of the following month (lodgment)
- return for Value Added Service      20th day of the following month (lodgment)

*\*Specific Tax, AT, PLT, ADDT and Other Taxes also included in this return.*

### 7.10 Tax Loss

Companies are allowed to carry forward tax losses for a maximum of five years. Tax losses cannot be set-off against previous years' profits.

Tax losses will be forfeited upon a change in ownership of the business, or if there is a change in business activity. Tax losses will also be forfeited in the event that a taxpayer is subject to a unilateral reassessment by the GDT.

### 7.11 Tax Audit

The LOT provides the GDT with the power to carry out audits of a taxpayer's activities and reassess tax liabilities. From the date of tax return submission (monthly or yearly), the GDT may conduct a reassessment within three years. However, this period may be extended to five or ten years if there is evidence of tax evasion.

In early 2016 the Tax Disputes Committee was established to hear taxpayer protests that remained unresolved after going through the formal tax disputes procedures as listed in the tax regulations.

### 7.12 Penalties

Tax penalties are imposed for violations of the LOT and its regulations. The level of the penalty depends upon the nature of the violation, and is determined as follows:

- where a taxpayer or withholding agent is considered negligent (the amount of deficient tax paid is 10% or less than the amount of taxes due) the penalty is 10% of the unpaid tax;
- where a taxpayer or withholding agent is considered seriously negligent (the amount of deficient tax is more than 10% of taxes due) or the taxpayer has failed to settle tax liabilities by the due date as stated in a tax notification on late payments issued by the GDT, the penalty will be 25% of the unpaid tax; and



- where a tax audit conducted by the GDT exposes an underpayment of taxes, the penalty will be 40% of the unpaid tax.

In addition, penalties are imposed for late payment of taxes and late lodgement of returns, together with interest charged at 1.5% per month.

### 7.13 Double Tax Agreements

Cambodia has signed Agreements for the Avoidance of Double Taxation (“DTAs”) with Singapore, China, Brunei, Thailand, Vietnam, Indonesia and Hong Kong. The DTA with Singapore and Thailand came into force on 1 January 2018 and those with China, Brunei and Vietnam entered into force on 1 January 2019.

DTAs are expected to reduce barriers on cross-border investment and trade between the countries, along with the fostering of heightened future economic growth in Cambodia. Of note is the reduction in the standard WHT rates for payments made to non-residents whereby the standard Cambodian WHT rate of 14% with respect to payments of interest, royalties, service fees and dividends are reduced to 10% in most cases for those taxpayers who qualify and obtain approval from the GDT under the DTA.

### 7.14 Group Relief

There is no group relief provision in Cambodia.

### 7.15 Thin Capitalization

There are no thin capitalization rules in Cambodia.

Please note however that Circular 151 set a limit to the interest deductions applicable to each loan that a taxpayer contract. The interest rate deduction limit for borrowers will be based on this new benchmark:

- taxpayers borrowing money from non-related persons may deduct interest expenses of up to 120% of the deemed market rate applicable at the time of the borrowing.
- taxpayers borrowing money from related persons may deduct interest expenses of up to 100% of the deemed market rate applicable at the time of the borrowing.

On 13 March 2019, the GDT released Notification 4630, which provided the deemed market rates for determining the caps on interest rate deductions under Circular 151 for loans that had been entered into using Khmer Riel and United States Dollars in the 2018 financial year.

The deemed market rates for 2018 are as follows:

- for borrowing in USD – 8.35%
- for borrowing in KHR – 9.44%

These interest deduction limits are applied for each loan and are in addition to the annual deduction limit under Article 12 of the Law on Taxation and Section 5.9 of Prakas on Tax on Profit, which caps the annual interest deduction at the sum of 50% of the taxpayer’s non-interest income and 100% of its interest income for the applicable tax year.

### 7.16 Transfer Pricing Rules

On 10th October 2017, the Cambodian Ministry of Economy and Finance issued Prakas No. 986. MEF.P. (“Prakas 986”) in order to combat perceived transfer pricing abuses and losses of tax revenue to the country’s state budget. Prakas 986 requires that Cambodian enterprises engaging in related party transactions must comply with new compliance requirements:

- an annual transfer pricing declaration must be submitted together with the annual declaration on tax on income.

- annual transfer pricing documentation, to be submitted upon the GDT's request.

The five methodologies endorsed by Prakas 986 to determine arm's length pricing in a related party transaction adhere to the parameters set by the Organization for Economic Co-operation and Development.

### 7.17 Tax Disputes Committee

In January 2016 Sub Decree no. 03 was issued establishing a Committee of Tax Arbitration ("CTA"). The CTA's function is to review, resolve and make decisions on protests regarding tax and customs disputes. The CTA is comprised of:

- the Minister of Economy and Finance as Chairperson;
- the Secretary of State of the Ministry of Economy and Finance as Vice-Chairperson; and

the Representative of the National Accounting Council, the General Director of the General Department of Policy for Economy and Public Finance, and the General Director of the General Department of Internal Audit as Members.

The establishment of the CTA provides an opportunity for a taxpayer to appeal decisions made by the GDT during the course of tax disputes. If the taxpayer does not agree with the findings of the CTA, it has the right to appeal to the Courts in Cambodia within 30 working days following the decision.

For more detailed information about the Cambodian tax regime and recent developments, please refer to the tax alerts on our website - [www.dfdl.com](http://www.dfdl.com)

## Chapter 8

# BANKING AND FINANCE



## Chapter 8

# Banking and Finance

The regulatory framework applicable to the banking and finance sector is set out in the Law on Banking and Financial Institutions promulgated on 18 November 1999 (the “**Banking Law**”); the Insurance Law promulgated on 4 August 2014; and various regulations issued by the National Bank of Cambodia (“**NBC**”) and the Ministry of Economy and Finance (“**MEF**”) since 2000/01. Other important laws and regulations affecting banks and financial institutions include the Law on Negotiable Instruments and Payment Transactions, promulgated on 25 October 2005; the Law on Secured Transactions, promulgated on 22 May 2007; the Law on Anti-Money Laundering and Terrorist Financing, promulgated on 24 June 2007; the Law on the Issuance and Trading of Non-Government Securities promulgated on 19 October 2007; the Law on Financial Leasing promulgated on 20 June 2009; and the Civil Code of 2007 (enforced from 2011 onward). These are discussed further below.

### 8.1 The National Bank of Cambodia (NBC)

The NBC is the central bank and is charged with supervising and regulating financial institutions in Cambodia. It has the power to license banks, regulate money transfers, provide credit, conduct foreign exchange transactions, and deal in precious minerals and commodities. The NBC’s authority to supervise and regulate banks includes authority over micro-finance institutions (“**MFIs**”), specialized banks and commercial banks (known collectively as “**covered entities**”). The NBC’s powers extend to insolvency actions involving covered entities.

The NBC may require all covered entities to submit reports on a monthly, semi-annual, or annual basis regarding their activities and compliance with regulatory requirements. It may appoint an examiner to investigate bank operations, appoint a control committee to run and manage the bank, establish credit ceilings and foreign exchange requirements, set banking business hours, and establish interest-rate guidelines.

If a bank or financial institution is held to have violated or be operating in violation of the Banking Law, the NBC has wide ranging powers – from imposing fines to revocation of the covered entity’s license, seeking a term of imprisonment through a court order and it has the authority to appoint a provisional administrator in order to preserve, remedy, or resolve such a bank’s financial position. The provisional administrator may be appointed by the court as a liquidator with the authority to liquidate the bank’s assets where necessary.

An important development in the banking sector came in late 2006 with the introduction of an indefinite license being provided by the NBC to all forms of banking and financial institutions operating in Cambodia. Moreover, in late 2007, some licensed MFIs that satisfied certain additional regulatory requirements were licensed by the NBC to collect deposits from the public: these institutions are called micro-finance deposit institutions (“**MDIs**”).

### 8.2 Types of Banks

The Banking Law divides banks into commercial banks, specialized banks, and specialized financial institutions (including securities companies). MFIs and MDIs are not explicitly recognized in the Banking Law but are subject to the Banking Law and supervised by the NBC because MFIs and MDIs engage in banking activities. Only licensed banks, MFIs, and MDIs may engage in the activities set out in the Banking Law.

Banking activities conducted by commercial banks will be carried out by a public limited company. In terms of licensing, the Banking Law requires the NBC to consider, among other things, the characteristics of any “influential shareholder,” as defined by law, and to consider the extent that an applicant bank’s ownership

would be spread among shareholders. The NBC looks to the above qualities for the purpose of determining whether the proposed shareholders of the Cambodian bank would be able to inject capital where the proposed bank fails to meet its prudential requirements.

All commercial banks that existed before the Banking Law came into effect had to apply for a new license from the NBC after its enactment. Commercial Banks must have a minimum registered capital of at least KHR 300 billion (USD 75 million).

Commercial Banks may carry out all types of banking operations, such as credit operations for valuation consideration, leasing, guarantees and commitment under signature, collection of non-earmarked deposits from the public, provision of means of payment to customers, processing of payments in national or foreign currency, foreign exchange operations, money market intermediation, transactions in derivatives, and spot or forward dealing in precious metals, raw materials, and commodities.

Specialized Banks are licensed by the NBC to engage in a limited subset of the activities which commercial banks are authorized to do. Specialized bank locally incorporated must maintain minimum registered capital of at least KHR 60 billion (USD 15 million).

MFIs are generally authorized to engage in credit services and saving, but an MDI license is required to collect deposits from the public. MFIs that have portfolios below a certain value and that have a limited number of borrowers are required to register with the NBC, but do not require an MFI license. Any MFI that has a portfolio above a certain value or a number of borrowers above the legally specified amount must be licensed as an MFI. MFI licensure requires the entity to be organized as a limited company or a cooperative. MFI must maintain minimum registered capital of at least KHR 6 billion (USD 1.5 million).

The NBC plays a very active role in regulating the banking sector. Several regulations dealing with matters such as corporate governance, insolvency ratios, and liquidity ratios of a bank or financial institution have been issued by the NBC. Amongst other financial activities, it is possible that banking activities are the most regulated business activities in Cambodia.

In practice, most commercial banks will perform overseas wire transfers, offer foreign exchange services, and will issue letters of credit secured by cash deposits. Lending is increasing, supported by recent developments regarding the enforcement of secured interests, as discussed below. Loans are typically for short terms with relatively high interest rates compared to those found in developed countries, and security or collateral is often a necessity.

The Banking Law sets out a step-by-step procedure for provisional administration and subsequent liquidation of banks when they fail to carry out their duties and obligations under the law. In particular, there are procedures for appointing a provisional administrator after attempts at recapitalizing the bank via capital injections from “influential shareholders” do not succeed. The NBC may appoint a provisional administrator who then has exclusive powers to manage, direct, and represent the bank. The provisional administrator may declare the suspension of payments and refer the case to the court, which will appoint a liquidator.

### **8.3 Insurance**

Under the Insurance Law, only insurance companies, agents, and brokers that are licensed to operate in Cambodia may insure risk, sell insurance products, and conduct an insurance business in the country. Insurance contracts must be prepared in Khmer and are subject to principles of good faith and mutual benefit to all the parties. Insurance companies, whether state-owned, private, or joint-venture are only allowed to operate in Cambodia in the form of public limited companies.

Life insurance companies and general insurance companies are each separately licensed and required to have registered capital of at least approximately USD 7 million (actual value expressed in SDR or ‘Special Drawing Rights’, the exchange rate is for the date on which the license is granted). For companies involved in both life and general insurance, the required registered capital is approximately USD 14 million. The insurance company is required to make a 10% fixed guarantee deposit with the NBC. This deposit is

maintained until the company ceases its business operations in Cambodia.

Purchase of insurance from a licensed insurance company is required for the following: motor vehicle third-party liability insurance for all types of commercial transport vehicles (including passenger transport); and all buildings, repairs, and installation sites under the responsibility of entrepreneurs, contractors, or sub-contractors, except those of the state. In August 2008, a regulation on the life-insurance business was adopted by the MEF.

## 8.4 Financing and Secured Transactions

Domestic lending has expanded in recent years. In 2015, the amounts lent by banks registered in Cambodia increased in value by approximately 33% over the previous year, and in 2016 and 2017 this increase in value was 15%. Cambodia's legal framework allows relatively unrestricted local and foreign lending and the overall growth outlook for Cambodia remains positive.

Security over movables may be governed either by the Civil Code or the Law on Secured Transactions. While it is possible to take a pledge or assignment by way of transfer under the Civil Code, such forms of security are rarely used due to the burdensome nature of the requirements. The Law on Secured Transactions, on the other hand, provides creditors with a robust and efficient framework within which they may take security over locally based movables.

Subject to some restrictions, movable property that may be given as security under the Law on Secured Transactions includes both tangible and intangible assets such as; rights, claims, shares, accounts, and secured sales contracts, and they may secure one or more obligations.

The Law on Secured Transactions established the Secured Transactions Filing Office, under the auspices of the MOC. Security interests may be registered (or de-registered) quickly and at a low cost. Records of past security filings may be found since the start of operations of the Secured Transactions Filing Office in early 2008.

The Law on Secured Transactions cannot be used to take security over immovable property, and the Civil Code remains the primary governing legislation in this respect. Under the Civil Code, lenders may take a hypothec (similar to a mortgage) over the land. Other forms of security are also possible (e.g. a pledge of land) but these are relatively uncommon in Cambodia.

Generally, the hypothecatee will take possession of the hard title to the hypothecated property and register its security interest at the relevant land office. It is critical for lenders to conduct proper due diligence on the hypothecator's title to the land.

## 8.5 Currency and Foreign Exchange

Cambodia is a primarily cash-based economy; however, credit cards are becoming more commonly accepted commercially. The national currency of Cambodia is the Khmer Riel (KHR), which has remained stable since 1998 at around KHR 4,000-4,200 to the US dollar.

Parties are free to denominate their transactions in foreign currencies. The US dollar is in common circulation and is freely traded throughout the country (though less so outside of the capital Phnom Penh).

The 2003 Investment Law guarantees that investors may freely remit foreign currencies abroad for the purposes of the following:

- payment for imports and repayment of principal and interest on international loans;
- payment of royalties and management fees;
- remittance of profits; and
- repatriation of invested capital upon dissolution of an investment project.

Under the Foreign Exchange Law of 1997, foreign currencies may be freely purchased through the banking system. The law specifically states that there will be no restrictions on foreign exchange operations,



including the purchase and sale of foreign exchange, transfers, and all types of international settlements. However, the law does require these transactions to be performed solely by authorized intermediaries. These intermediaries are the lawfully established banks in Cambodia, required to report transactions in excess of USD 10,000 to the NBC. There is no requirement that the investor sending or receiving the funds make a report on the transaction. The burden rests solely with the bank, as the authorized intermediary.

It is important to note that while foreign exchange transfers are not currently restricted, the law does allow the NBC to implement exchange controls in the event of a foreign-exchange crisis. What would constitute such a “crisis” remains unspecified however.

## 8.6 Negotiable Instruments

Negotiable Instruments are written orders or promises to pay a determined sum of money, transferable by delivery, and where required, also with endorsement. They include checks, bills of exchange, and promissory notes. The Law on Negotiable Instruments, promulgated on 24 October 2005, governs the use of negotiable instruments. The following points are treated in detail: endorsement, acceptant, aval, maturity, payment, recourse for non-acceptance or non-payment, intervention for honor, parts of a set, copies, alternations, limitation of actions of recourse and time calculations.

Payment transactions are transfers of funds, either credit or debit, between or from bank accounts, initiated by means of a payment order, which may be written, electronic, or under some conditions, in oral form.

Payment systems consist of institutions and mechanisms facilitating payments in money and the transfer of monetary value by means of payment transactions. In addition to the sanctions imposed by the Law on Negotiable Instruments and Payment Transactions, such as a fine from KHR 5 to 50 million, and imprisonment from two to five years, the NBC has broad powers to adopt and enforce penalties on persons who fail to pay debts in connection to negotiable instruments and payment orders. The penalties may include: a warning or reprimand; a prohibition or limitation on issuing any negotiable instruments or authorizing debit transfers for up to 12 months; a penalty payment of 5% to 100% of the face value of any dishonored instrument, payment order, instrument or authority issued, in violation of a prohibition or restriction.

In 2017 the NBC passed the Prakas on Management of Payment Service Providers (14 June 2017), which established the licensing requirements for non-bank entities offering payment services to the public.

## 8.7 Impact of the Civil Code on the Banking Business

The Civil Code is a relatively recent piece of legislation that applies to obligations generally. It is general legislation and therefore, as a general principle, any provisions of any law applicable to banks and other financial institutions that conflict with any provision of the Civil Code are likely to take precedence over the conflicting term in the Civil Code. The main provisions of the Civil Code affecting or that may affect banking business relate to:

- formation of contracts;
- assignment/novation of contractual positions;
- grounds on which a contract may be rescinded (reflecting, in part, consumer protection concerns);
- taking of guarantees and the formalities required;
- security interests (described above);
- rates of interest chargeable on “loans for consumption”; and
- requirements on sellers to explain the details and risks of transactions.



## Chapter 9

# THE SECURITIES MARKET



# Chapter 9

## The Securities Market

The Cambodian Stock Exchange (the “**CSX**”), a joint venture between the government of Cambodia and the Korea Exchange, was established in mid-2011 to offer increased access to Cambodian equity capital markets. For this purpose, the Securities and Exchange Commission of Cambodia (the “**SECC**”) was established to assist the government on the strategic and regulatory aspects of the securities market in Cambodia. The SECC is also tasked with licensing all relevant securities-related operators. These include; the securities market operators, securities depository, clearance and settlement of facility operators, underwriters, dealers, brokers, investment advisors, securities representatives, investment advisory representatives, securities-specialized accounting firms, cash settlement agents, securities registrars, securities transfer agents, and payment agents.

This chapter will primarily help companies and investors understand the general regulatory framework of securities, initial public offerings, and corporate governance for listed companies.

### 9.1 Overview of Securities Regulatory Framework

The securities market is primarily governed by the Law on the Issuance and Trading of Non-Government Securities, dated 19 October 2007 (the “**Securities Law**”) and its implementing Sub-Decree No. 54, dated 8 April 2009 (the “**Securities Sub-Decree**”), implementing regulations issued by the SECC, and the Law on Government Securities, dated 10 January 2007 (the “**Government Securities Law**”).

Securities include government securities and non-government securities. Non-government securities issued by public limited companies or other legal entities include equity securities, bonds or debentures, interests in a managed investment scheme, derivative instruments, and government securities. Such securities include Treasury bills, Treasury bonds, and other instruments creating or acknowledging indebtedness and issued by or on behalf of the government.

### 9.2 Securities Market Operators, Clearance and Settlement Facility Operators, and Securities Depository Operators

Securities market operators, clearance and settlement facilities operators, and securities depository operators may be separately licensed by the SECC. The NBC may operate a clearance and settlement facility or securities depository without being licensed by the SECC. A securities market operator may not be authorized unless clearance and settlement facilities are adequately established. A securities market, deposit, and clearance and settlement operator license were issued on 28 February 2011 to only one company – the CSX, which is 55% owned by the Cambodian government and 45% owned by the Korea Exchange.

### 9.3 Securities Firms

Securities firms, including underwriters, dealers, and brokers, may trade securities in the securities market under their own account or on behalf of their clients. Securities firms must be licensed by the SECC. Certain securities dealers will be exempt from licensing requirements where the dealers engage in certain exempt securities transactions.

A securities underwriter may:

- provide important advice on issues of securities such as pricing and distribution timelines or issue an amount and number of securities to be issued in the offering and so on;

- acquire from an issuer all or part of the securities, with a view to distributing or reselling;
- acquire the unsold portion of the securities in a public offering, with a view to ensuring the success of the issuance; or
- make arrangements for a public offering on behalf of an issuer or participate directly or indirectly in a public offering.

Additionally, a securities underwriter may also operate a security dealing, securities brokerage, and investment advisory business.

#### 9.4 Securities Dealers, Securities Brokers, and Investment Advisory Firms

A securities dealer may trade securities on its own account and at its own risk. Additionally, a securities dealer may also operate a securities brokerage and investment advisory business.

A securities broker may buy or sell securities on behalf of and by the order of its clients for a commission. A securities broker may also operate an investment advisory business.

An investment advisory firm is a professional firm licensed by the SECC to provide investment advisory services to public investors regarding decisions on securities investments. Fifteen securities and investment advisory firms were licensed by the SECC for an initial term of two years from 19 October 2010. Currently there are six securities underwriters, one securities dealer, and three securities brokers licensed by the SECC.

#### 9.5 Equity Securities Issuance or Initial Public Offering

Securities may be issued under the form of a private placement or an initial public offering (“IPO”). Private placements may be made only if: i) the total number of people to whom the offer is made is no more than 30; and ii) the offering is not publicly advertised by any means including for the purposes of seeking information or any advice on the securities investment.

Private placements will not be authorized by the SECC, but the SECC must be notified of the placement when the private placement is completed, and the result of the placement must be reported to the SECC. To date, no comprehensive guidelines or regulations have been adopted to regulate private placements.

Securities cannot be publicly issued and traded unless they are authorized by the SECC upon all requirements being satisfied. An IPO may not be conducted unless, amongst other things, the requirements in the following sections are satisfied.

There are two stock exchange markets in Cambodia, being the **Growth Board** and the **Main Board**. Although these two stock exchange markets are not expressly defined, based on the listing requirements for each board, these two markets are operated based on the size of the companies proposing to list. Pursuant to Prakas 006/15 on the Implementation of Listing Rules dated 10 September 2015, at the application date, to be listed on the Main Board, an eligible applicant must have total shareholder equity of KHR 30 billion (approximately USD 7.5 million) and KHR 2 billion (approximately USD 500,000) to be listed on the Growth Board. Any listed company may apply to move from the Growth Board to the Main Board, subject to the submission of an application to the SECC and the fulfillment of requirements under the Main Board. Under this Prakas, it is understood that the purpose of the Growth Board is a listing market for small and medium sized enterprises and newly incorporated companies that have high growth potential.

##### 9.5.1. Corporate Compliance

An issuer must comply with the following corporate requirements:

- the issuer must be a public limited company or permitted entity;

- share ownership of the shareholders holding the largest number of voting shares must not be changed for the last full year until being officially listed; and
- the issuer must prepare and maintain corporate records including articles of incorporation, minutes of meetings, the resolutions of directors and the committees “of directors”; copies of all meeting notices; a securities register; shareholders’ agreement; minutes of meetings thereof and shareholders’ resolutions and share certificates.

Furthermore, depending on which market an issuer is listed on, an issuer must comply with the following:

For the Main Board:

- shareholder’s equity must not be less than KHR 30 billion at the date of filing the application for initial listing on the CSX;
- the number of shareholders holding less than 1% voting shares, must be at least 200 as of the date of completing the procedures for initial listing, unless determined otherwise by the SECC as proposed by the CSX; and
- the number of shares held by shareholders holding less than 1% voting shares must be at least 7% of the total voting shares, unless determined otherwise by SECC as proposed by the CSX.

For the Growth Board:

- shareholder’s equity must be not less than KHR 2 billion at the date of filing the application for initial listing on the CSX;
- number of shareholders holding less than 1% voting shares must be at least 100 as of the date of completing the procedures for initial listing, unless determined otherwise by the SECC as proposed by the CSX; and
- the number of shares held by shareholders holding less than 1% voting shares must be at least 10% of the total voting shares, unless determined otherwise by SECC as proposed by the CSX.

### 9.5.2. Regulatory Compliance

An issuer must comply with the following regulatory requirements:

- the issuer’s establishment must be in good standing with regard to company registration, tax registration, labor registration, the National Social Securities Fund, including the filing of all changes or amendments and other required documents;
- the issuer must have regulatory approvals or licenses required for some specific activities such as environment impact assessment reports, construction permits, factory licenses, tourism licenses, and/or specific operating licenses; and
- the issuer must report to the relevant authorities such as the CDC, the MOC, the GDT, and/or other governmental authorities.

### 9.5.3. Accounting and Tax Compliance

An issuer must prepare financial and accounting records in compliance with accounting standards as determined by the Ministry of Economy and Finance, and the records must be properly kept for ten years. The issuer is also required to file monthly and annual tax returns to the GDT.

### 9.5.4. Corporate Governance

An issuer cannot be listed on the securities market unless, among other things, corporate governance requirements are strictly observed and implemented in line with Article 38 of the Securities Law.

The issuer must set up a mechanism to:

- protect the shareholders' and other stakeholders' rights;
- organize the management structure of the company, as well as determine the authority and obligations of the board of directors; and
- set up a management monitoring system to facilitate disclosure and transparency.

The board of directors must be composed of independent directors, at least one-fifth of whom are board members. An audit committee and a risk management committee must be established by the board. Both the audit committee and risk management committee must be composed of at least three members, with each committee chaired by an independent director. A code of conduct and ethics for directors and senior officers must be adopted by the board and publicly disclosed. The issuer is required to set up a management monitoring system through market mechanisms and disclosures in an efficient and timely way, providing required information that may influence the decision-making of shareholders and other stakeholders.

### 9.5.5. Prospectus

The issuer must prepare a prospectus with the assistance of the underwriter, accounting and auditing firm, law firm, and other reliable professional advisers.

The content of the prospectus must address the following:

- general information;
- risk factors;
- use of proceeds;
- investment projects;
- description of business;
- description of plant, machinery, and equipment;
- operational plan and financial position;
- asset valuation and/or re-valuation;
- directors and officers;
- involvement of directors and officers in certain legal proceedings;
- certain relationships and related parties' transactions;
- directors' and officers' compensation;
- options granted to directors, officers, and employees;
- transactions with directors and shareholders;
- net assets per share and earnings per share;
- ownership of the issuer's equity securities;
- determination of the offering price;
- description of equity securities being offered;
- financial information and financial statements; and
- consolidated financial information and financial statements.

The prospectus must be registered with and approved by the SECC.

## 9.6 Initial Public Offering Process

Before starting the process for an IPO, the issuer must engage an underwriter that advises the issuer on how to comply with the requirements above, to prepare the prospectus, and determine the amount of shares or other securities to be issued and their price.

The issuer must then file an application to the CSX to determine whether it is eligible to be listed on the CSX. After the CSX confirms the listing eligibility of the issuer, the issuer files the final prospectus to the SECC for its IPO.

After the SECC issues its approval-in-principle for the IPO, the issuer must prepare and submit the terms and conditions, including the securities pricing to be approved by the CSX and then by the SECC. After the prospectus is registered and approved by the SECC, the newly issued securities are offered to and subscribed by the public through securities underwriters, dealers and/or brokers. The underwriter itself is required to subscribe the outstanding newly issued securities after the end of the subscription date, if any. At the end of the IPO, the issuer must register with the CSX so that its securities may be traded.

## 9.7 Other Securities Supporting Actors

The securities and the subscribers will be registered with the securities registrar of the issuer. ACLEDA Bank PLC, Tricor Securities Services PLC and Phnom Penh Securities PLC. are licensed securities registrars for the issuer.

After registration with the CSX, the securities may be freely traded on the market. To facilitate the trading process, three cash settlement agents – ACLEDA Bank PLC, Canadia Bank PLC, and the Bank for Investment and Development of Cambodia PLC (“**BIDC**”) – were licensed by the SECC on 28 February 2011 to assist securities firms in settling payments for the securities.

During securities trading, any of the transfer agents and paying agents – ACLEDA Bank PLC, Tricor Securities Services PLC or Phnom Penh Securities PLC – are required to be engaged by the issuer to assist in registering the securities and paying dividends and interest, if any, at the end of each financial year.

Please note that all issuers need to be audited by independent auditors accredited by the SECC. Currently, there are six audit firms – PricewaterhouseCoopers (Cambodia) Ltd., KPMG Cambodia Ltd., BDO Cambodia Limited, Ernst & Young (Cambodia) Ltd., Angkor Certified Accountant Network McMillan Woods (Cambodia) Co., Ltd., Grant Thornton (Cambodia) Ltd., Crowe (KH) Co., Ltd, Deloitte (Cambodia) CO., LTD and Baker Tilly (Cambodia) Co., Ltd – accredited by the SECC to assist issuers.

## 9.8 Developments at the CSX

The CSX has been in operation since mid-2011. However, the first IPO of shares in the Phnom Penh Water Supply Authority did not take place until April 2012. Currently, there are five companies listed on the CSX, these are:

- Phnom Penh Water Supply Authority (“**PPWSA**”), listed on 18 April 2012;
- Grand Twins International (Cambodia) PLC (“**GTI**”), as the first private company, listed on 16 June 2014;
- Phnom Penh Autonomous Port (“**PPAP**”) as the first joint-venture public enterprise, listed on 9 December 2015;
- Phnom Penh SEZ Plc. (“**PPSEZ**”), the first private Cambodian company, listed on 30 May 2016; and
- Sihanoukville Autonomous Port (“**PAS**”), listed on 8 June 2017.



In the debt capital markets, over the last year, there are two bond listings on the CSX, one issued by Hattha Kaksekar Limited in late 2018 and another by LOLC Cambodia in April this year. Both bonds are plain bonds with a tenure of three years. It is expected that other banks and micro-finance institutions will also be looking to issue bonds on the CSX.

## 9.9 New Tax incentives for Entities Seeking to List on the CSX

Sub-Decree 01 ANKr.BK dated 4 January 2019 introduced a new package of tax incentives for those entities in Cambodia looking to list on the CSX. The 2019 tax incentives provided to listing entities on the CSX are much more comprehensive and concessional than those initially offered in 2011 when the CSX was first established, and in 2015.

The Sub-Decree reflects the desire of the Cambodian regulators to increase the existing number of listed entities on the CSX. At the time of writing, there are five listed entities on the Main Board of the CSX, and the Sub-Decree has been introduced to encourage new applicants, particularly SMEs, to list.

### 9.9.1. To Whom the Sub-Decree Applies

The Sub-Decree is applicable to entities that list and offer either stock or debt securities on the CSX from 4 January 2019 and to public investors, both non-resident and resident, who hold or trade stock, debt or government securities from those entities that have listed on the CSX.

There is a three year limitation on applying for the incentives offered under the Sub-Decree. Entities that are granted approval from the SECC and registered with the CSX to make initial public offerings of equity and/or debt securities within three years from the issuance of the Sub-Decree (before 4 January 2022) need to submit an application to the GDT through the SECC.

### 9.9.2. What Types of Incentives are Available?

The Sub-Decree provides a number of tax incentives to qualifying entities:

#### *Tax on Income*

A qualifying entity will be eligible for a 50% reduction of its annual TOI liability for three years commencing at the beginning of the first tax year that the approval was given if the securities were issued before 30 June of that year. If the securities were issued after 30 June and before 31 December the TOI reduction would take effect from the following year.

#### *Tax Amnesty*

Qualifying entities shall also receive an amnesty for historical taxes including TOI, WHT, VAT, Specific Tax, Accommodation Tax, and Public Lighting Tax.

For qualifying entities that offer stock and debt securities on the Main Board of the CSX the historical tax liability waiver can extend up to ten years from the date the entity meets the requirements for registration on the Main Board. The initial two historical tax years, from the date of listing, of the entity will still be subject to tax re-assessment by the GDT.

For SMEs that qualify to register on the Growth Board of the CSX, the historical tax liability waiver also extends to ten years. Only the first historical tax year of the listing entity will remain subject to tax re-assessment by the GDT.



### **9.9.3. Tax Compliance Requirements before Listing with the CSX**

The Sub-Decree provides that the issuance of stock or debt securities and registration of security trading does not require the completion of a comprehensive tax audit for prior tax years. What is required is a tax compliance certificate from the GDT confirming that the entities have declared on a regular basis their tax declarations and tax payments.

### **9.9.4. Eligibility of Entities Listed with the CSX Prior to 2019**

Entities that were already listed on the CSX prior to the enactment of the Sub-Decree are still entitled to receive the three year 50% TOI reduction with respect to their annual TOI liability.

### **9.9.5. Incentives offered to Public Investors With Government, Stock or Debt Securities**

Public investors, whether resident or non-resident are entitled to a 50% reduction of WHT that would be applicable on the payment of interest or distribution of dividends received by them from holding or trading in government, stock or debt securities. This reduction is effective for three years from the effective date of the Sub-Decree.

### **9.9.6. Revocability of Tax Incentives**

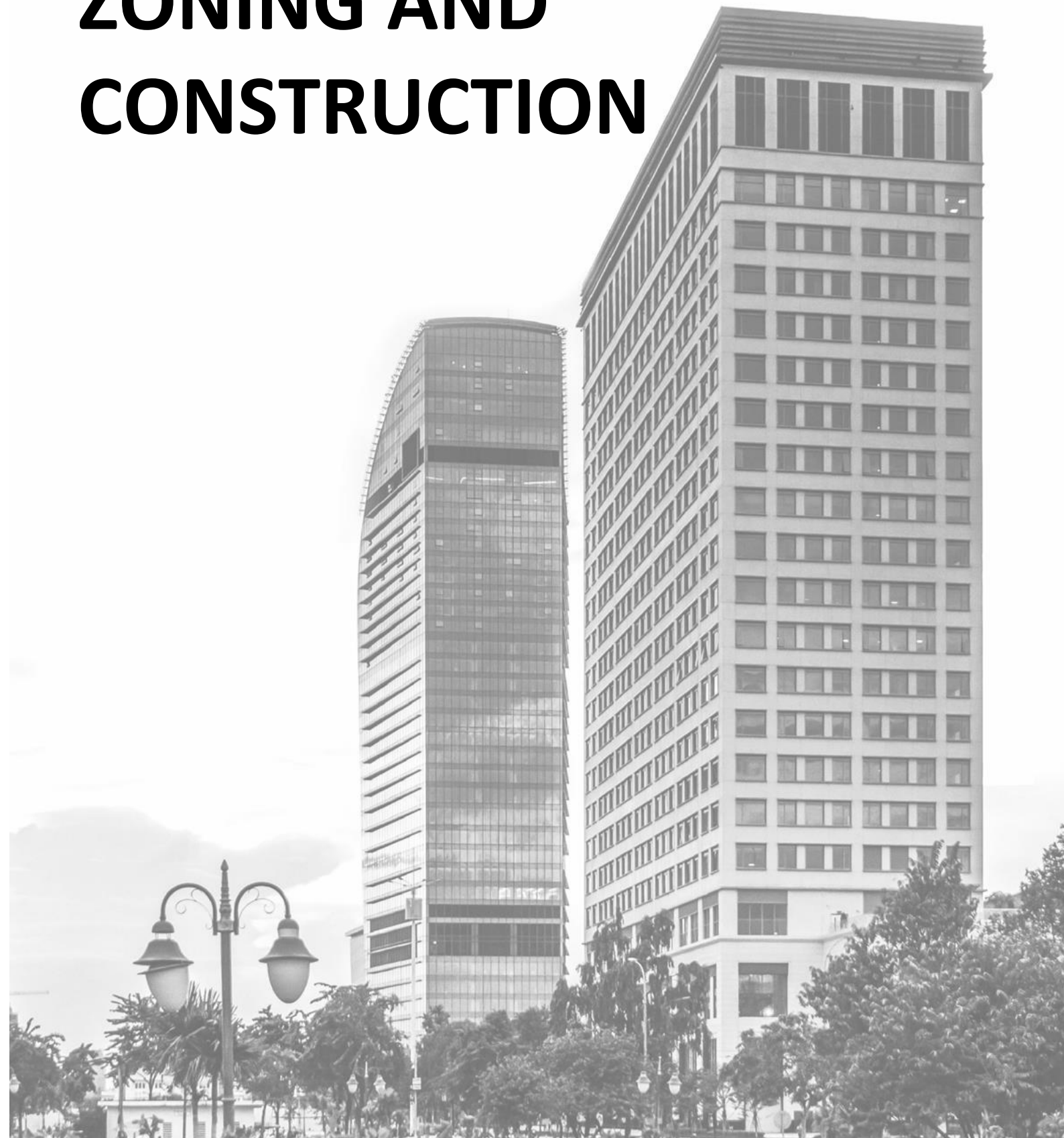
The GDT reserves the right to propose that the tax incentives of an entity be revoked in the event that the entity fails to:

- File monthly tax declarations and tax payments by the due deadline;
- File their annual Tax on Income declaration and tax payment by the due deadlines;
- Attach to the annual TOI declaration the audited financial statements of the entity;
- Allow the GDT to conduct a tax audit; and

Pay taxes as required by the tax regulations in Cambodia.

## Chapter 10

# REAL ESTATE, ZONING AND CONSTRUCTION



## Chapter 10

# Real Estate, Zoning and Construction

The 2001 Land Law, the 2007 Civil Code and the 2011 Law on the Implementation of the Civil Code constitute the main framework applicable to real estate transactions.

In November 2001, a new Land Law was enacted which considerably improved the legal infrastructure for land-related investments in Cambodia. The 2001 Land Law clarified various types of rights relating to land, including ownership, easement, usufructs, security interest, state and private land concessions and leases. It also clarified the process by which land is transferred by sale or succession and registration of the transfer.

In implementing the 2001 Land Law, the government established cadastral commissions at the local and national levels in 2002. These are vested with the power to settle disputes over unregistered immovable property and recognition of lawful possession. Regulations also detail the structure and mission of the cadastral commissions. Cambodia has now put in place mechanisms to register land throughout the country, both systematically and sporadically.

In 2007, the new Civil Code helped consolidate the regulatory framework, previously implemented in the 2001 Land law through a series of provisions regarding leases, ownership and land securities amongst others.

In accordance with the Law on the Implementation of the Civil Code (Implementation Law), the new Civil Code, promulgated in December 2007, came into force on 21 December 2011.

The purpose of the Implementation Law is to ensure continuity in the legislation governing civil matters, and to guarantee proper enforcement of Civil Code provisions and of any matter related to the implementation of the Civil Code. As a result, a number of provisions in the existing Cambodian laws have been abrogated or amended.

The Implementation Law revoked certain provisions of the 2001 Land Law. Specifically, it revoked provisions dealing with:

- means of acquisition of ownership, including acquisition through the sale of immovable property;
- acquisition by exchange of immovable property;
- acquisition by succession;
- and acquisition by gift;
- rights and obligations of owners, including the enjoyment of ownership benefits;
- accession to fruits and products of ownership, accretion of ownership, and leases on immovable property;
- limited proprietary rights, including usufructs , the rights to use, habitation and easements;
- undivided ownership;
- joint ownership; and
- immovable property used as surety, including mortgage, antichrèse, and gage.

For the purposes of harmonization with the Implementation Law, the Ministry of Justice and the Ministry of Land Management Urban Planning and Construction issued Prakas 30 introducing new procedures to register real property rights in conformity with the provisions of the Civil Code.

## 10.1 Watching Brief

The Trust Law (“**Trust Law**”) has been recently adopted. Key developments expected in 2019:

- Public Private Partnership Law;
- Sub-Decree on the development of coastal areas;
- Promulgation of the Environmental Code;
- New investment law;
- Commercial contracts law;
- SEZ law; and
- Construction law.

## 10.2 The 2010 Law on Foreign Ownership

There is a general restriction against foreigners owning land in Cambodia. However, regarding foreign ownership of co-owned buildings, a major step forward was achieved with the promulgation of the Law on Provision of Ownership Rights over Private Units in Co-Owned Buildings to Foreigners. The promulgation of this law was followed by the adoption of Sub-Decree No. 82, dated 29 July 2010, on the Determination of the Proportion and Methods for Calculating Private Units that Can Be Owned by Foreigners in Co-Owned Buildings. This allows foreigners to own up to 70% of private units in co-owned buildings or condominiums, excluding ground and underground floors. Specific formalities have to be undertaken in order to apply for co-ownership titles in order to register a foreigner’s rights to co-owned buildings or condominiums. This law may be applied to both newly constructed co-owned buildings or existing buildings which are to be converted into co-owned buildings. Most private units in Cambodia are not registered as “co-owned” property at the Land Registry, therefore, according to the laws of Cambodia, only Cambodian citizens or Cambodian entities can legally own them. Cambodian entities are defined as entities in which 51% or more of the voting shares are held by a Cambodian citizen or entity with a registered address in Cambodia. As a result, in order for foreigners to own land in accordance with Cambodian law, it is often necessary that they set up a landholding company in which they hold 49% of the voting shares and a Cambodian legal person or entity holds the other 51%. In addition, foreigners may register a security interest in land by way of a hypothec (mortgage).

## 10.3 Land Investment Structuring

Cambodia is rich in land for potential investment and development. Land may be privately owned by Cambodian individuals or entities with Cambodian nationality without restriction as to the duration of the ownership.

Nearly all investments in Cambodia involve investment in immovable property of some sort. For foreign investors, the investment in land is usually in the form of a long-term lease, also known as a perpetual lease with a duration of 15 years or more, a concession granted by the government, or as noted above, a minority interest (up to 49%) in a Cambodian company that owns the land, coupled with secured lending using land as collateral.

As to perpetual leases, a major improvement made by the 2001 Land Law was the creation of perpetual lease rights as interests in rem (imposing a general liability) on land. This means that the leaseholder should have much stronger rights than under the previous system which treated all leases as contractual rights without creating an interest in the land.

A perpetual lease can be assigned, sub-leased, mortgaged or transferred through succession. The perpetual lease can also be pledged as security for financing purposes. Such lease terms must be for at least 15 years, can reach up to a maximum of 50 years, and are renewable.

The perpetual lease may be registered against the title to the land being leased. However, registration of the perpetual lease with the relevant Land Office is not a condition of the validity of such a lease and there is no legal requirement to register it. Nonetheless, in order for the lease to be enforceable against a third party, the lease should be registered against the title to the land with the relevant Land Office. Once registered, the relevant Land Office will issue a perpetual lease certificate to the lessee.

Foreign ownership of buildings located on land perpetually leased by the foreign entity is permitted by law. However, the means by which such ownership can be registered have not yet been established other than for rights concerning usufructs.

Land is protected from expropriation by the Constitution and the 2001 Land Law, which permit expropriation of land only if such expropriation is in the “public interest” and if “fair and just compensation” is given to the owner in advance. The new Law on Expropriation was promulgated on 26 February 2010. This Law provides Cambodia’s first regulatory framework for state confiscation of private property. Notably, it empowers the state to expropriate property for the development of public infrastructure that serves the public or state interest with advance payment of fair and just compensation.

If an investor intends to take a perpetual lease interest in land, or an ownership interest through a 51% Cambodian-owned company, it is very important that clear, unencumbered ownership of the land owned by the landlord or land-holding company is verified. Given Cambodia’s recent history, this can sometimes be time-consuming and may lead to uncertain results. However, a thorough title search should reveal any registered encumbrances or other problems that could affect legal transfer of the land.

As mentioned, the Trust Law has been promulgated this year. Trusts are classified into:

- public trusts;
- social trusts; and
- commercial trusts, including where property or funds are transferred to a trustee to be held on behalf (and for the benefit) of a third party and the trustee must transfer such property or funds back to the third party upon the occurrence of certain events.

The creation of a trust must have in-principal authorization from the relevant regulator and be registered with the Ministry of Economy and Finance.

Due to its recent enactment, some provisions remain untested and will almost certainly in our view be a matter of ongoing interpretation and refinement in respect of its practical effect. In addition, we are not aware of any enforcement of trust agreements by the courts in Cambodia.

## 10.4 Overview of Land Ownership History

Cambodia’s recent land-ownership history makes it crucial for the investor to conduct a proper title search before purchasing an interest in land. At present, there are a number of different documents in use in Cambodia that may be presented as evidence of valid ownership or possessory rights of the land. Not all of these documents represent unencumbered, indefeasible ownership of land. Some are only claims of ownership, while others allow the government to repossess the land without compensation. An understanding of Cambodia’s land ownership history is thus essential to guide and protect new investors.

## 10.5 Land Ownership Reform

The status of private immovable property ownership in Cambodia has been as tumultuous as Cambodia's modern history. Before 1975, private land-ownership was protected by law. During the Khmer Rouge period, all private interests in land were abolished. Beginning in 1979, after the fall of the Khmer Rouge, a typical communist-style ownership structure was put in place with the state as owner of all immovable property. During this period, occupation of land and buildings by an individual or family was enough to give the occupants certain "usufruct" rights to the structure. This "ownership by occupation" was particularly pronounced in the urban areas where many families, upon returning to the cities after the period of civil conflict, simply occupied whatever available structure they desired. This right of use was informally recognized through the "family card," which was issued by the State of Cambodia ("SOC") Government for various population control purposes, and which named the family and its address.

In 1989, the SOC promulgated and implemented a number of legal measures aimed at facilitating the transfer of state land into private hands. Any Cambodian occupying land or buildings could file a claim at the local agricultural or land office requesting ownership of the occupied property. Following an investigation process that identified and measured the plot's boundaries and any adverse claims, the state recognized that the applicant was the true owner-occupant by issuing a certificate of land use and possession.

## 10.6 Family Issues

Cambodia's land privatization scheme provided for privatization to families based on their "family card" and their perpetual occupation of the land in question. Land, therefore, is usually owned by the entire family, as represented by the husband and wife. In order for valid title to pass, the signature of both husband and wife, as well as those of all their children aged 18 years and older, is mandatory on all transfer documents. Innumerable land cases have ended up in court because this rule has often not been followed.

## 10.7 Current Land-Ownership Situation

Cambodia's current system and rules for land registration, titling, ownership, and transfer of land are in a state of transition. The 1992 Land Law and various regulations issued from 1989 set in place a procedure for the transfer and registration of land. The 2001 Land Law and its implementing decrees and Prakas further clarified this process.

Official certificates of title which evidence ownership of immovable property are currently available, with the number of landowners in Phnom Penh and other urban centers who have obtained such titles continually increasing. Landowners can obtain a certificate of title through either sporadic registration or systematic registration conducted by the MLMUPC.

Before an investor deposits any money toward the purchase of land, he or she should ensure that the landowner has a valid certificate of title registered with the relevant authorities. If there is no certificate of title, the investor should confirm that the purported owner of the land is the true owner by conducting due diligence at the relevant local village and commune offices, as well as at the Land Registry and review any available supporting documents that reflect ownership and possession of the land concerned.

## 10.8 Real Security Rights Involving Real Property

The 2011 Implementation Law revokes certain provisions of the 2001 Land Law, including Part 5, which dealt with immovable property used as surety. Under the Civil Code, foreign investors have real security rights. The new code establishes five types of real security rights, including pledges and hypothecs. A real security right is established in order to secure an existing or future debt, if it can be specified. Where the holder of a real security right does not receive satisfaction of the secured claim, the holder may enforce the real security right in accordance with procedures established by law.

The registration mechanisms for the aforementioned security rights have been put in place by Prakas 30.



## 10.9 Pledge

Under a pledge, a pledgee is entitled to hold possession of the item he or she has received from the debtor or a third party as security for his or her claim and to obtain satisfaction of the pledge's claim from such an item in preference to other creditors.

Unless otherwise provided, the pledgee of an immovable asset may use and receive profits of the immovable asset in accordance with its ordinary use, pay the costs of management thereof, and will bear all other charges pertaining to such an asset; and may not demand interest on the secured claim. The pledge of an immovable asset cannot exceed five years and is renewable.

## 10.10 Hypothec

With regard to the legal regime governing hypothecs, a hypothec is entitled to obtain satisfaction of its claim in preference to other creditors out of the immovable property offered as security by the debtor or a third party. A perpetual lease or usufruct may also be the object of a hypothec.

A hypothec may not assert the hypothec against a third party other than hypothecator unless the security creation instrument is notarized or made by a competent official and registered in the Land Registry. A hypothec extends to all things attached to and that form part of the land comprising the object of the hypothec when the hypothec was created, including buildings and things attached to the land after the hypothec was created. In the event of a failure to perform on a debt, a hypothec may apply to the court for compulsory sale of all the hypothecated land with one exception. This is where buildings attached to the hypothecated land are subject to a perpetual lease, usufruct, or leasehold agreement registered in the land registry. In such a case, the hypothec may not demand the compulsory sale of the building together with the hypothecated land. Under the Civil Code, multiple hypothecs over immovable property are permissible.

## 10.11 Hypothec and Transfer of Rights over a Perpetual Lease or an Economic Land Concession

### Economic Land Concessions

On 29 August 2007, the Council of Ministers adopted the Sub-Decree on the Mortgaging and Transfer of Rights over a Perpetual Lease or an Economic Land Concession (State Land Sub-Decree).

A perpetual lease has a term of at least 15 years. In line with the State Land Sub-Decree, a land concession or perpetual lease shall be registered on the original land title certificate by the MLMUPC. This Ministry will then issue individual certificates of perpetual leases and certificates of economic land concessions.

Immovable property subject to a concession or perpetual lease must be registered with the Land Registry of the MLMUPC. Where the lease or land concession is for immovable property that is not titled but belongs to the government, such a lease or concession shall be signed by the Minister of Economy and Finance ("MEF") together with the relevant ministers or heads of provincial/municipal governmental entities acting as the trustee authorities of the immovable property.

Hypothecs and other liens may be taken over perpetual leases or concessions. Furthermore, such rights can be transferred to other parties. However, the hypothec or transfer of a perpetual lease or concession shall not be considered as a hypothec of the actual land subject to such agreement, and the hypothec term cannot exceed the terms of the lease or concession agreement for the individual plot of land. The lessee or concessionaire may further hypothec or transfer the buildings and other immovable properties it constructed on the land unless otherwise stated in the lease or concession agreement.



## State Land

State land refers to all land belonging to the state, under the control of ministries or national institutions or which has been allocated by the government to a public entity or public enterprise for occupancy. Under the 2001 Land Law, state land is divided into two categories: state public land and state private land.

State public land refers to land of interest to the public, and is specifically placed under public interest property including natural forest land, natural lakes or ponds, railways, ports, national parks and public schools etc.

State private land refers to all land not considered to be state public land and not legally possessed or owned by individuals or communities in accordance with the 2001 Land Law.

State public land cannot be sold to the private sector, although under limited circumstances, it can be acquired by someone through leasehold possession for a period no longer than 15 years. Additionally, such land can be reclassified as private land after it loses its public interest nature. State private land can be exchanged, leased, granted on concession or sold to private individuals or legal entities. These transactions are governed by special laws and regulations.

## Sale, Lease, and Exchange of State Property

On 27 November 2006, the Council of Ministers adopted Sub-Decree 129 on Leasing and Transferring State Properties (Sub-Decree 129). Sub-Decree 129 sets out the rules and procedures for leasing, purchasing and exchanging state private property. It states that the relevant Ministry, department or provincial or municipal authorities that have control and duties of care over certain state properties. These are considered the trustee authorities over such properties and the MEF is named as the centralized state property control authority for all state property (which is owned by the government).

The trustee authorities report to the MEF as the state property control authority, with regard to all state property under their trusteeship so that the MEF can compile a centralized index of such property. The trustee authorities must annually update their individual records of state property under their control and report the inventory to the MEF. The reporting procedures will be set out in a MEF Prakas.

On 28 April 2016, Sub-Decree 69 was issued in the purpose of the switching authority between the MAFF and MOE for the preservation of protected forests, protected areas, protected and productive areas, and economic land concessions. Under this Sub-Decree, thirteen protected forests and areas and five protected and productive areas which were managed by the MAFF had been placed under the management of the MOE, but 73 other economic land concessions which were managed by the MOE had been placed under the management of the MAFF. It is necessary for foreign investors to understand the different types of protected land and under which competent authority the land is managed in Cambodia.

## Lease of State Public Property

No state property including that belonging to a public legal entity may be sold, exchanged, leased or granted as a concession. The trustee authorities will prepare documents concerning the state's properties available for lease and submit proposals to the State Property Management Authority (SPMA) for examination and approval by the government.

Leasing of state public property may only occur under the following conditions:

- the lessee of state public property will not modify or damage the property; and
- the lessee of the state's public properties will not affect or modify the function of the property serving the public interest.

In addition, the lease of state public property may not exceed 15 years.

## Lease and Sale of State Private Property

There will be a bidding process for the sale or lease of state private property where there is more than one bidder, unless otherwise requested by the trustee authority and approved by the SPMA. The rules and procedures for the bidding process will be set out in a Prakas issued by the MEF.

Negotiation of the lease or sale price may also occur where:

- bidding has failed;
- the property has special characteristics requiring the lessee or purchaser to fulfill certain conditions on the property; or
- there is only one interested lessee or purchaser of a specific plot of state private land.

## Exchange of State Private Property

State private property may also be exchanged for other property, to allow for private development and that the relevant authority for the land can have alternative locations for headquarters etc. needed for operations. Exchange of all state private property is under the government's authority. Conditions of payment for the exchange and land prices will be determined in a schedule prepared by the trustee authority and submitted to the SPMA for review then forwarded for the government's approval.

Any lease, purchase or exchange of state property not in compliance with Sub-Decree 129 will be considered void. Investors may inquire for information related to state land at the MLMUPC or the State Property Department of the MEF. Investors are strongly encouraged to exercise thorough due diligence regarding the sale, concession or lease of any land that appears to be used or occupied by a state entity.

## Legal Framework for Land Concessions

Under the 2001 Land Law, three types of concessions can be granted; social concession, economic concession, and use, development and exploitation concession.

### Social Concessions

In 2003, the government issued the Sub-Decree on Social Land Concessions providing the basis for rules and procedures granting social land concessions on state private land. A social land concession allows the beneficiaries to build residential constructions and/or to cultivate land belonging to the state for their subsistence. In other words, social land concessions are granted for residential and farming purposes. It is important to note that social concessions are only granted to Cambodian citizens at the head of their family and that have a legal capacity to own the land.

### Economic Concessions and Use, Development and Exploitation Concessions

Investors may have interests in state private property through economic concessions. The 2001 Land Law defines an economic land concession as a land concession responding to an economic purpose that allows the concessionaire to clear the land for industrial or agricultural exploitation.

On 16 December 2005, the Council of Ministers adopted the Sub-Decree on Economic Land Concessions, which established the criteria, procedures, mechanisms, and institutional arrangements for the initiating, granting and monitoring of economic land concessions. The primary purpose of granting economic land concessions is to develop intensive agricultural and industrial-agricultural activities with a high level of capital and to increase employment opportunities in rural areas.

Formerly, economic land concessions with a value of less than KHR 10 million and a total concession area of less than 1,000 hectares could be granted by the relevant provincial or municipal governor. The Council of Ministers removed this authority in 2008 and now all economic land concessions must be granted by the MAFF.

Economic land concessions can only be granted on land registered and classified as state private land, and for uses consistent with a land-use plan adopted by the Provincial/ Municipal State Land Management Committee. The size of the concession is generally limited to 10,000 hectares with some exceptions available. Furthermore, environmental and social impact assessments must be completed for the anticipated project. There must be a resettlement plan if the land is occupied and there must be consultation with the local authorities and residents regarding the project.

According to the Sub-Decree on Economic Land Concessions, there are two permissible ways to initiate economic land concession projects: through a solicited proposal where a contracting authority proposes a project for solicitation purposes from investors; or through an unsolicited proposal where an investor proposes a project to the state. Proposals must include specific information including but not limited to, a business and investment plan for use of the land, a description of employment requirements and source of the Labor, information about the equipment and environmental and social impact.

Solicited proposals are the preferred method of initiating an economic land concession. However, if the investor can demonstrate exceptional advantages to achieving the purposes of economic land concessions, such as introduction of new technology, exceptional linkages between social land concessions and economic land concessions and access to processing or export markets, unsolicited proposals may be considered by the contracting authority.

The government issued a moratorium on 7 May 2012 suspending the issuance of economic land concessions and revoking any existing economic land concession not in compliance with obligations detailed under the Economic Land Concession Agreement (“**Moratorium**”).

Companies that obtained approvals from the government already but failed to develop the land under concession or failed to comply with the concession contracts or the legal procedures in force will also have their approvals revoked. The revoked concessions will be put under the direct management of the state.

Furthermore, economic land concessions already approved in principle by the government will continue to be implemented in accordance with established legal principles and procedures. However, the Moratorium stipulates that the relevant ministries, institutions and authorities rigorously monitor economic land concession contracts to avoid negatively affecting the lands and livelihoods of communities. The authorities have not given any indication on how long the Moratorium will last and we note that a number of economic land concessions have been revoked accordingly. In 2015 the government announced that the duration of all economic land concessions would be reduced to a maximum of 50 years.

## 10.12 Legal Framework for Infrastructure Concessions

### Law on Concession

The Law on Concession passed on 19 October 2007 is meant to facilitate the implementation of privately financed infrastructure projects in Cambodia. Following the promulgation of the Law on Concession, an implementing Sub-Decree also needs to be issued.

### Infrastructure Projects Eligible for Concession

Infrastructure facilities providing services (whether directly or indirectly) to the general public in the following sectors are eligible to be granted as concessions:

- power generation, power transmission, and power distribution;
- transportation facilities and systems such as roads, bridges, airports, ports, railways, and canals;
- water supply and water treatment facilities;
- infrastructure for telecommunications and information technology;
- infrastructure facilities for tourism projects such as tourism sites and museums;
- infrastructure for the gas and oil sectors, such as oil and gas pipelines;

- sewerage, drainage, and dredging;
- solid waste management and treatment;
- public infrastructure related to health, education and sports;
- infrastructure related to SEZs and social housing;
- irrigation and agriculture-related infrastructure; and
- other sectors for which a specific law allows the granting of concessions.

The infrastructure project must be approved as a concession project in accordance with the procedures to be outlined in the implementing Sub-Decree before the concession contract on a given infrastructure project can be entered into.

## Selection of Concessionaire

Depending on the circumstances, the contracting authority will select the concessionaire through an international or national bidding process or through a negotiated process. The process for selecting the concessionaire will be set forth in the implementing Sub-Decree.

When the selection process is completed, and the contracting authority is ready to accept a final bid or a negotiated proposal, the contracting authority will obtain in-principle approval of final terms of the concession contract as required by the procedures set out in the implementing Sub-Decree.

After obtaining this in-principle approval, the contracting authority will issue notification of awards to the selected candidate before entering into the concession contract.

## Concession Contract

A concession contract between the contracting authority and the concessionaire is required for the grant of the concession. The contracting authority and the concessionaire are required to sign the concession contract within six months of notification of the award, although this period can be extended by written agreement between the contracting authority and the concessionaire. Failure by the contracting authority to sign the concession contract within this required timeframe entitles the concessionaire to withdraw its bid or proposal without forfeiting its bid bond.

The ministries, public institutions, state-owned legal entities and territorial authorities that have been delegated the power under Cambodian laws are entitled to enter into a concession contract with a private party on infrastructure projects within their areas of authority. These government authorities also have the right to execute the relevant ancillary agreements.

A concession contract may take any of the following forms:

- build, operate, and transfer (“**BOT**”);
- build, lease, and transfer (“**BLT**”);
- build, transfer, and operate (“**BTO**”);
- build, own, and operate (“**BOO**”);
- build, own, operate, and transfer (“**BOOT**”);
- build, co-operate, and transfer (“**BCT**”);
- expand, operate, and transfer (“**EOT**”);
- modernize, operate, and transfer (“**MOT**”);
- modernize, own, and operate (“**MOO**”);
- lease and operate (“**LO**”); or

- undertake management or a management agreement, or any variant of these forms, or similar forms including the implementation of infrastructure projects by a public-private joint venture.

The Concession Law requires the following issues to be included in the concession contract:

- the nature, scope and standard of work to be performed and services to be provided by the concessionaire;
- any incentives to be granted to promote cost-efficiency, accelerate construction and increase the quality of operations and maintenance of public interest concern;
- any fees, tolls, rentals or other charges to be applied by the concessionaire must be approved by the appropriate regulatory agency;
- agreed risk allocation or risk sharing;
- service levels and standards required from the concessionaire in the operation and management of the infrastructure facility and consequences of non-compliance with the service levels and standards;
- payment mechanisms;
- required commitment and cooperation of the contracting authority and other public authorities to support the implementation of the infrastructure project throughout the concession period; and
- other matters as the parties deem appropriate.

The Concession Law also calls for the establishment of methods to determine and adjust any tariffs or fees the concessionaire is entitled to collect with respect to the infrastructure project.

As to the concession period, the Concession Law sets the maximum term of 30 years from the date of signing the concession contract but allows the government to grant a longer period if the nature of the project so requires.

## Special Economic Zones

The government has established a number of export processing zones. The framework for SEZs is now governed by a Sub-Decree on Special Economic Zones (“**SEZ Sub-Decree**”), described below.

### Sub-Decree on Special Economic Zones

The main purpose of the SEZ Sub-Decree is to set out procedures and provisions related to the establishment and the management of SEZs in Cambodia. It provides for two types of SEZ: general industrial zones and export processing zones (wholly dedicated to exports).

### Establishment of Special Economic Zones

All SEZs must be approved for establishment by the CDC. Basic terms are detailed in the SEZ Sub-Decree as follows:

- must be 50 hectares or more in size;
- must be fenced;
- anti-flooding system, clean water system, electricity, telecommunications and postal systems must be provided;
- a residential center must be built for employees and employers with a large road system, public parks and fire protection systems; and
- sewage systems, recycling systems for liquid wastes, environmental protection measures and other related infrastructure must be provided.

## Procedure for Establishment

The procedures to establish an SEZ are as follows:

Institutions	Relevant Steps or Procedures	Timing
CDC	Application by the zone developer to register as a Qualified Investment Project and pay the application fee.	At any time
One-Stop Service Committee at the CDC	Decision to approve or reject the application.	Within 28 days from application.
CDC	Inform the investor of the decision by the One-Stop Service Committee and issue the conditional registration certificate.	No later than 28 days from the application date.
CDC	The zone developer shall provide: the planning and detailed feasibility studies (notably the master plan) of all infrastructure, commercial registration documents, articles of incorporation, and other certified letters required in the conditional registration certificate.	Within 180 days after the issuance of the conditional registration certificate.
CDC and Other Relevant Institutions	The CDC will obtain, on behalf of the zone developer, all governmental authorizations required from the relevant competent authorities, and will issue the final registration certificate.	Within 100 days from the submission by the zone developer of the detailed planning.
Council of Ministers (i.e. Prime Minister)	Promulgation of a Sub-Decree specifically on the establishment of the SEZ and its borders.	Same time as the issuance of the final registration certificate.

## Registration Procedure for Zone Investors

Zone investors must register with the SEZ Administration by providing all required documentation. The SEZ Administration will then register the project and grant incentives as provided by the Law on Investment and other regulations.

## Management Structure

The CDC is the main authority for the government on all strategic and regulatory aspects for the development of SEZs in Cambodia. Notably, the CDC will resolve disputes in relation to SEZs and nominate officials for the administration of an SEZ.

Each SEZ will have an administration that will act as the “One-Stop Service” mechanism for that SEZ. The administration will be structured as follows:

## Organization Relevant Provisions

Organization	Relevant Provisions
Chairman	Administration will be headed by a chairman with, if necessary, one or more vice-chairmen. Minimum qualifications are detailed in the draft Sub-Decree.
Location	Situated in the SEZ. The zone developer must provide necessary infrastructure and equipment for functioning.
Composition	Appointed by the relevant line ministries.
Power	Sufficient power to all assigned officials to make relevant decisions for the SEZ.
Mandate	Designated officials shall be nominated for a three-year period with the possibility of extension.
Duties	Relevant provisions.
General	Examine the import or export of goods and persons in the SEZ. Ensure implementation by the zone developer and zone investors of the agreement between the zone developer and CDC.
Customs	Provide customs forms for import-export and facilitate the process. Collect customs duties and taxes.
Registration	Register zone investors and provide relevant documentation and incentives.
Reporting	File monthly, quarterly, half-yearly, and annual reports with CDC.



The SEZ Sub-Decree provides detailed provisions on the duties of the zone developer, notably:

### Duties Relevant Provisions

Duties	Relevant Provisions
Financing	Providing capital for the development and operation of the SEZ without guarantees from the government.
Land	Must own the land or necessary interest in the land (i.e. long-term lease).
Infrastructure	Undertake the construction of all necessary infrastructure in the SEZ.
Development	Rent land space and provide services to zone investors.
Management and Marketing	Prepare internal regulations in relation to various aspects of the SEZ. Actively advertise and attract investors to the SEZ. Ensure security services on the SEZ grounds.
Reporting	File reports with the CDC and other reporting obligations towards the government.

The incentives that can be granted by the CDC to zone developers are detailed in the SEZ Sub-Decree. The process to obtain these incentives is explained and the main incentives are listed as follows:

Tax, Duty or Others	Incentives
Tax on Profit	Exemption of nine years.
Import Duties	The import of equipment, construction equipment, means of transportation to be used in the infrastructure construction, and transportation in the SEZ shall be exempted. This exemption will also apply to the import of machinery and equipment for the construction of connecting roads and other infrastructure for public services.
VAT	Zero percent rate for the zone developer and the zone investors as follows: VAT recorded for every import by zone investors and cancelled if the output materials of production are exported.
FOREX	The zone developer, zone investor, and foreign employees will have the right to transfer offshore all income from the investment and salary received from the SEZ after payment of tax.
Investment Guarantees	Protection against nationalization, price fixing, and all FOREX transactions.

*The SEZ Sub-Decree sets forth additional provisions for export processing zones (“EPZs”).*

The import or export of goods to and from the EPZ shall be considered as the import or export of goods to or from Cambodia, which firstly requires the owner of the goods to complete the relevant customs paperwork with the customs authority at the EPZ.

No retail business can be located in the EPZ. Additionally, zone investors cannot remove output materials from the EPZ without permission from the SEZ Administration. Zone investors must seek approval from the SEZ Administration for any domestic purchase or disposal of products from the EPZ.

### 10.13 Real Estate Licensing

On 14 February 2007, the MEF issued the Prakas on Granting Professional Certificates and Licenses for Valuation Services and Immovable Property/Real Estate Services (Real Estate Prakas). The Real Estate Prakas was followed by two instructional circulars from the MEF, the most significant being the Instructional Circular on the Implementation of the Real Estate Prakas, issued on 3 August 2007 (Circular 002). On 29 June 2017, Prakas 636 on the management of business providing valuation services and immovable property services was issued by the MEF. This Prakas 636 is aiming at determining the mechanisms, rules, and procedures to manage and control real estate valuation services and other real estate services.

Under this Prakas, all individuals who want to provide real estate valuation services or other real estate services must hold proper certificates to run the business, notably, the evaluation license, real estate agent license and property management license. The issuance of Prakas 636 provides more quality assurance to customers and the general public when dealing with real estate agents.

### 10.14 Management of Real Estate Businesses

Prakas No. 965 (“**Prakas 965**”) on the Management of Housing Development Activities was issued on 24 August 2016 by the MEF. Prakas 965 supersedes Prakas No. 1222 on the Management of Real Estate Development Businesses (“**Prakas 1222**”) issued on 15 December 2009 by the MEF as a mechanism to control the management, inspection and licensing of real estate projects in Cambodia and Prakas No. 548, dated 30 July 2008, on the Management, Inspection and Granting of Licenses for Real Estate Developers (“**Prakas 548**”).

The significant changes introduced by Prakas 965 include:

- There are only two types of housing developer’s license (“**HDL**”) instead of three;
- The validity of the HDL will never expire once approved;
- The registered capital shall be USD 500,000;
- The buyer shall pay a 1% (maximum) deposit of the purchase price while the developer is awaiting approval of the construction permit;
- 2% of investment capital can only be withdrawn upon completion of construction with a closing permit and assessment from MEF, submission of a report on completion of construction to the MEF, and within 30 days starting from the day of the request for withdrawal; and
- Frequent reports on the progress of construction must be submitted to the MEF depending on the type of HDL.

Project bank accounts are now clearly controlled by the developer. However, the withdrawal of money from a project-related account is subject to some regulatory control and is in some instances tied to the actual progress of a project, which must be assessed by a licensed independent engineering company.

The roles and duties of the Inter-Ministerial Working Group are expanded.

The existing rule (required as a licensing condition) that real estate developers post security of 2% of a project's expected cost has been maintained. This only applies to the second category of real estate developer mentioned below. Such a deposit has to be provided either in the form of a cash (to be remitted into a bank account opened by the real estate developer) or in the form of a bank guarantee.

Under Prakas 965, two categories of real estate developer are established:

- developers who have their own capital and/or by loans from banking and financial institutions for developing residences/housing and can sell residence/housing to users/customers upon completion of the construction; and
- developers financed by their own capital and/or by loans from banking and financial institutions and/or by financial resources raised in advance from the housing buyer for developing residences as the construction goes along and can proceed with the sale of residences to users in accordance with the terms and conditions prescribed in the Prakas.

License fees for real estate developers are determined in accordance with the category of the developer and the size of the developer's projects. Additional requirements are to be imposed by the Inter-Ministerial Working Group.

### 10.15 Land Use Zoning

The Law on Land Management, Urban Planning, and Construction regulates both local and national land use. The purpose of this law is to establish a national framework for the development, administration and implementation of land use policies and regulations in Cambodia. The government has focused its efforts in three areas – Siem Reap province, Sihanoukville province and the greater Phnom Penh region in an attempt to create a comprehensive land use plan. However, these plans are general in nature and require detailed Sub-Decrees in order to be fully implemented. Investors intending to undertake projects in any of these three areas should familiarize themselves with the various land use permits and committees that exist both at the local and national level. For example, in Siem Reap, the Apsara Authority has been established by law to regulate the use of land around the Angkor Wat temple complex. Various use zones have been established to conserve and protect the temples and surrounding areas.

In 2015 the government adopted regulations on land use planning and zoning. The Urbanization Sub-Decree aims to define urbanization of the capital, cities and provincial towns in Cambodia by outlining land development, construction and land use. This will include a master plan on land use or a master plan, land use plan and a detailed plan. Land is divided into two types – areas where development is permitted and controlled areas. Various restrictions are imposed on developments such as minimum number of car parking spaces, building height and the requirement to obtain a certificate of accuracy of urban planning and construction before obtaining a construction site closing permit.

In short, every construction must be in accordance with the provisions of the Urbanization Sub-Decree. There are penalties such as revocation of construction permits, reconstruction and fines for persons failing to comply with a construction permit and the requirements of the Urbanization Sub-Decree. Use of land or buildings that occurred before the Urbanization Sub-Decree came into force are allowed to continue according to existing conditions provided they are not dangerous or hazardous to public well-being, safety, the environment, history and culture. A number of sub-regulations will be issued to provide further details in respect of various elements such as permitted building height.

Foreign investors should familiarize themselves with the applicable zoning rules and regulations before moving forward with acquiring an interest in land.

## 10.16 Construction Permits

Before building any structure on land or substantially remodeling a building, the owner of the land or building must obtain a construction permit signed by either the government delegate of the city, if construction is occurring in an urban area, or in rural areas by the provincial governor.

For any building larger than 3,000 square meters, the permit must also be approved by the MLMUPC.

In order to apply for this permit, various specified documents must be submitted, in Khmer, detailing the planned construction. These documents are compiled and reviewed by the Land Management, Urbanization, and Construction Office or the municipal or provincial/district authorities where construction is planned. Proposed industrial buildings must include information on remedying possible environmental pollution resulting from operation of the industry. The construction plans must be signed by the landowner and drawn by an architect or construction company registered with the MLMUPC.

The construction office reviewing the documents has 45 days in which to issue a decision after all supporting documents have been submitted. Construction must begin within one year after the permit is issued, although one extension is allowed. Additionally, a permit for opening a construction site is required before commencing construction. Upon completion, and prior to the building being opened to the public, its construction must be approved by the issuing of a certificate attesting that the construction was properly accomplished according to the approved plans (known as a permit for closing the construction site).

## 10.17 Regulations Applicable to Residential Development Projects

The Law on Provision of Ownership Rights over Private Units of Co-Owned Buildings to Foreigners (**The Foreign Ownership Law**) was promulgated on 24 May 2010.

The main purpose of this law is to “determine the management and use of co-owned buildings” as well as mechanisms and procedures for registering “private units of co-owned buildings.” The law aims to ensure the protection of legal ownership rights for possessors of “private units of co-owned buildings”. This is to facilitate management activities and co-owners living in co-owned buildings. The law also provides regulations for the co-owners in the sale, exchange, donation, succession, perpetual lease and creation of hypothecs for their private units.

The registration procedures for private units of a co-owned building have been specifically designed to be straightforward, transparent and in line with the principles of decentralization and good governance. The immovable property developer will create internal regulations that do not contradict public order or applicable laws before announcing the sale or rent of units in the co-owned building.

A co-owner of a private unit of a co-owned building has the right to dispose of their private unit if it does not affect the common area or its uses by other co-owners and does not affect the solidity and original appearance of the building. In the case that the developer has constructed the co-owned building on land leased from a third party, the duration of perpetual lease allowed on the private unit and the right of use of the common areas is equal to the duration of the perpetual rent agreement as agreed between the developer and the landowner.

The MLMUPC has the authority to register and issue certificates acknowledging ownership of private units of a co-owned building to all co-owners, following the procedure determined in the law. The registration of units of a co-owned building will be implemented according to the following procedure:

An owner of a private unit applies for cadastral registration at the municipal/district/khan cadastral administration office. The application will be submitted to the local municipal/district/khan office of Land Management Urban Planning, Construction and Geography where the co-owned building is located for review.

When the process is approved, the concerned municipal/district/khan office of Land Management Urban Planning, Construction and Geography will give one week's notice before field data collection. When the field data collection related to the private unit of the co-owned building is complete, the officers shall submit the file with all documents to the Capital/Provincial Department of Land Management Urban Planning, Construction and Cadastral for review and a decision to be made. This will allow information about the unit to be displayed on the site of the property, as well as in the local commune/sangkat hall where the co-owned building is located.

When the public display is complete with no claims having been made and disputes (if any) having been resolved, the Capital/Provincial Department of Land Management Urban Planning, Construction and Cadastral shall register the private unit of the co-owned building.

The new co-owners shall enjoy the same rights and bear the same responsibilities as the previous owners. In the case that a hypothec or perpetual lease over a private unit is created, the co-owner and concerned persons will request the cadastral administration to make corresponding inscriptions on the certificate acknowledging the unit's owner.

The Foreign Ownership Law allows foreigners (individuals or corporate entities) to own up to 70% of the units in a co-owned building and enjoy common areas within a co-owned building provided that the building is registered as such at the Land Office and those units are on a floor above the ground level. Management of Boreys (Management of Villas, Apartments, and Condos) is governed by Sub-Decree 39.

A borey is the Cambodian equivalent of a compound or residential community that has restricted access to its residents only. A borey is defined as "...one location consisting of parcels of land, homes, other buildings, public space and other infrastructure on one same plot of land in accordance with the formally approved overall plan of the borey..." (Article 4 of Sub-Decree 39).

A borey is distinguished from an apartment complex, villa, condominium or SEZ. Lots within the borey may be subdivided and co-ownership is possible within the walls of a borey (Article 18 of Sub-Decree 39). Sub-Decree 39's objective is to define categories of ownership within the borey, management within the borey (including the treatment of public spaces or common areas) and provide guidelines on how owners and developers of land within the boundaries of the borey can deal with, dispose of or secure their lots.

The MLMUPC is the authority in charge of the registration and issuance of a borey's land lot ownership certificates. Sub-Decree 39 confirms that all residences in the form of private units of co-owned buildings shall be registered in accordance with Sub-Decree 126 on the Management and Use of Co-Owned Buildings dated 12 August 2009.

Sub-Decree 39 also provides that borey developers must obtain a confirmation letter from the MEF in relation to their solvency in addition to the real estate developers' license governed by Prakas 1222, issued on 15 December 2009.



## Chapter 11

# TELECOMMUNICATIONS





# Chapter 11

## Telecommunications

### 11.1 Overview

This chapter reviews the telecommunications sector in Cambodia, examining the country's performance and prospects in this sector while analyzing the current regulatory environment and likely future direction.

The Law on Telecommunications promulgated on 17 December 2015, is very much a framework law and subject to many new sub-regulations yet to be formulated. Implementation of an industry specific regulatory framework is still a relatively new concept in Cambodia. However, as investor interest in this fast-developing sector continues to grow, the regulatory framework itself has started to progress somewhat. Based on the rolling out of the new Law, a number of telecommunications regulations are expected to take effect in the near future with the aim of streamlining the sector and encouraging its further growth.

The development trend in Cambodia's telecommunications sector remains positive. One of the key factors facilitating this growth has been a combination of heavy foreign and local investment encouraged by a lack of restrictions or limitations on foreign ownership in this sector.

Governmental efforts to liberalize the market by allowing private investment and promoting competition have also contributed to the success of the telecommunications sector, especially with regard to mobile services. With lower-than-average mobile phone tariffs compared to other Southeast Asian countries, mobile services in Cambodia have surpassed the growth of fixed-line systems which remain relatively underdeveloped.

Increasing internet access and greater market penetration of this in Cambodia are also prime factors. Nonetheless, compared to neighboring countries, subscription rates are still very low providing plenty of scope for future investment and development. Some telecom operators are upgrading their internet infrastructure to 5G, offering faster speeds and more reliable internet connections on smart phones.

The overall outlook for Cambodia's telecommunications sector looks promising and the sector is primarily positioned to enjoy robust growth in the years to come.

### 11.2 The Current Regulatory Environment

The Telecommunication Regulator of Cambodia ("TRC") was established in 2012. Previously the duties of reviewing laws and regulations and managing the telecommunications market were undertaken by the MPTC.

The TRC is an independent and accountable regulator striving towards a global, competitive, stable and more self-regulating telecommunications industry in order to generate economic growth and address the social development needs of Cambodia.

Generally, the TRC is responsible for policymaking. The TRC is vested with regulatory and supervisory authority including the responsibility of issuing and administering licenses and the administration of Cambodia's radio frequency spectrum.

By way of background, the MPTC simultaneously played the roles of policymaker, regulator and operator of Cambodia's fixed-line telephone network. Despite the MPTC establishing Telecom Cambodia ("TC") in January 2006 as a state-owned enterprise, to separate its operational wing, TC remains under the technical administration of the MPTC and the financial administration of the MEF. The absence of a comprehensive telecommunications regulatory framework combined with current industry practice in Cambodia has resulted in the TRC having wide discretion over the granting of licenses, determination of terms and conditions attached to these licenses and general policymaking surrounding the telecommunications sector.

The TRC has the following functions and duties:

- implementation of telecommunications sector policy developed by the MPTC;
- ensuring telecommunications sector structures are in line with the telecommunications sector policy;
- supporting the telecommunications market environment in order to ensure fair and effective competition in the telecommunications sector;
- protecting the public interest in receiving services provided by licensees;
- enforcing regulations for the telecommunications sector; and
- determine which telecommunications networks and services are required to have a standard license or a particular license.

### 11.3 Telecommunications Law

This law has been promulgated and intended to ensure the use of infrastructure/facilities, networks and the provision of effective, safe and reliable services for the benefit of Cambodian society. The law also seeks to encourage private companies in developing the sector, protect users and promote increased national budget revenues. This law addresses issues such as management competence, use of infrastructure and networks, standards of service, equipment, universal access, a national telecommunications numbering plan, electronic addresses, rules on service pricing, legal and fair competition and the rights of operators and users.

The TRC will have autonomy in administrative and regulatory matters and will be independent of operators and persons related to the telecommunications sector. Only those persons and entities approved by permission letter, certificate or license from the TRC may engage in telecommunications operator services. The MPTC is responsible for networks and infrastructure supporting the sector.

Pursuant to the Law on Telecommunications, operators and persons involved in the sector are required to satisfy conditions set by the TRC to ensure compliance with this law and other relevant regulations in order to apply for authorizations, certificates or licenses.

Despite the developments in the regulatory framework in Cambodia, these are still outpaced by the rapid growth and development of infrastructure in the sector. Consequently, there is usually a disparity between regulations and some of the legal and technical practices in place.

At present, primary regulatory aspects of the telecommunications sector are governed by practices and procedures of the TRC/MPTC which also issue regulations and circulars under old legislation inherited from the United Nations Transitional Authority in Cambodia ("UNTAC"). Some of the recent important regulations issued by the TRC/MPTC include:

- instruction of the TRC regarding management on the cost of mobile phone and fixed phone services and the cost of inter-connection between telecommunications operators;
- Inter-Ministerial Circular (MEF and MPTC) regarding measures to prevent unfair competition in the telecommunications sector (i.e. it contains reference to taxation of income and turnover in the case of commercial promotions and discounts by enterprises);
- Prakas on Inter-connection regarding inter-connection between telecommunications operators;

- Joint-Prakas (MEF and MPTC) on permits, certificates and licenses issued by the TRC;
- Government regulations on prohibiting operators from blocking each other's inter-connection traffic;
- notifications of the MPTC regarding the use of radio frequency and communication radio equipment; and
- MPTC Letter regarding Domain Registration Fee & Annual Fee for Government Institutions.

Generally speaking, to construct, own, and/or operate a telecommunications network or provide any telecommunications services, a license must be obtained from the TRC/MPTC. Telecommunications licenses follow a fairly standard format with three principal classes:

- mobile (2G and 3G);
- ISP/Internet; and
- Voice over Internet Protocol ("**VOIP**").

Currently, a license is required from the TRC for the provision of the following services:

- mobile telecommunications services;
- fixed-line telecommunications services;
- VOIP services;
- Internet service provider ("**ISP**");
- telecommunications-type approval form;
- national numbering plan;
- access code; and
- public switched telephone network ("**PSTN**").

The TRC/MPTC currently enjoys vast discretionary powers over the granting of licenses and setting the terms and conditions thereof which vary on a case-by-case basis. These terms are usually confidential between the TRC/MPTC and each licensee constituting a private agreement between the two parties.

There are however, some customary licensing terms and steps required when applying for such licenses. Customary steps for applying for a license may include:

- a letter to the TRC/MPTC requesting permission to apply for the license(s), a reasonable description of the service(s) to be offered, and if applicable, a discussion of the frequencies and spectrum required; and
- submission of information required by the TRC/MPTC (including, inter alia, feasibility studies, technical and business plans and other information as specified by the TRC/MPTC).

Customary terms may include:

- license terms of between 10 to 30 years onward (with some renewability);
- license fees based on a combination of a percentage of gross revenue (the percentage usually increases over the period of the license) plus a percentage of dividend sharing; and
- there may be inter-connection fees, an annual frequency charge fee, micro-wave license fees, etc., applicable on a case-by-case basis.

#### 11.4 License Fees

Telecommunications operators are normally required to share both their revenues and dividends with the MPTC. The percentage of revenue and dividends to be shared increases incrementally and reaches around 10% over a ten-year period. Older licensees sometimes have to pay a higher revenue share. Licensees that have some fixed-network capability or carry international traffic may also be required to share up to 50% of their gross revenue with the MPTC or TRC. The exact percentages of revenue and dividends to be shared by operators with the TRC/MPTC vary on a case-by-case basis and are determined by the terms and conditions negotiated between the TRC/MPTC and the operator.

#### 11.5 Roll-Out Obligations

Licenses do not normally contain any roll-out requirements other than to launch public services within one year of awarding the license.

#### 11.6 Price Regulation

The telecommunications sector in Cambodia is price-regulated, and operators are not free to fix prices based on market dynamics. The TRC/MPTC issues detailed tariff schedules for the inter-connection of telecommunications equipment and the provision of telecommunications services.

#### 11.7 Radio Frequency Spectrum

Normally, the TRC/MPTC controls the radio spectrum and is responsible for awarding frequencies to telecommunications operators. In practice, other governmental departments also share this role, including the ministries of defense, interior, and information.

Radio frequencies are not always allocated in a transparent fashion and there have been instances of operators claiming that the same spectrum has been allocated at least twice. Operators are granted frequency allocations either as a part of their license(s) or through a side letter from the TRC/MPTC.

Similarly, there appear to be a number of mobile licensees having been granted frequency allocations but not having put them to use. The MPTC is now taking steps to re-register all allocations of frequencies and ensure that all frequency allocations are paid.

As per TRC/MPTC records, all of the GSM 2G spectrum has been allocated, and so has the 3G spectrum in the 2,100 MHz band. Spectrum in the 800 MHz band is still available for potential CDMA 2000 or GSM 850 use and also in the 1,900 MHz band.

#### 11.8 Law on Concessions

In late 2007, to promote and facilitate the implementation of privately financed infrastructure projects in Cambodia the government promulgated a Concessions Law which amongst other matters, specifically authorizes the use of a concession contract (e.g., build, operate, and transfer [BOT]; build, transfer, and operate [BTO]; build, own, and operate [BOO] build, lease, and transfer [BLT]; modernize, own, and operate [MOO], etc.) in relation to infrastructure facilities (i.e. physical facilities and systems) for the telecommunications sector, including “telecommunications and information technology infrastructure”.

#### 11.9 Information and Communication Technology (“ICT”)

Cambodia ICT’s sector has experienced significant growth with the number of internet subscribers have reached 12.5 million subscribers in 2018, compared to 10.8 million in 2017. In response to this rising industry, the Government has introduced a number of regulations and master plan to promote this sector. Sub-Decree No. 110 dated 21 July 2017 (“**Sub-Decree 110**”) was issued granting authority to the MPTC to issue permits, certificate and license to the ICT operators in Cambodia. Further, a Joint-Prakas No. 498 of the MEF and MPTC has been enacted on 8 May 2018 (“**Joint-Prakas 498**”) to elaborate on the type of licenses, approvals and permits issued by the MPTC including the prescribed timeframes and fees for each service rendered by the MPTC.

Currently, a license from the MPTC is required for conducting the following ICT related activities:

- Operating an internet cafe;
- hosting a website;
- import or distribute computer/electronic hardware supporting the ICT industry;
- manufacturing, assembling, or installing computer/electronic hardware supporting the ICT industry;
- software development;
- consulting services in the ICT industry;
- establishing an ICT industrial park; and
- establishing and operating commercial data center.

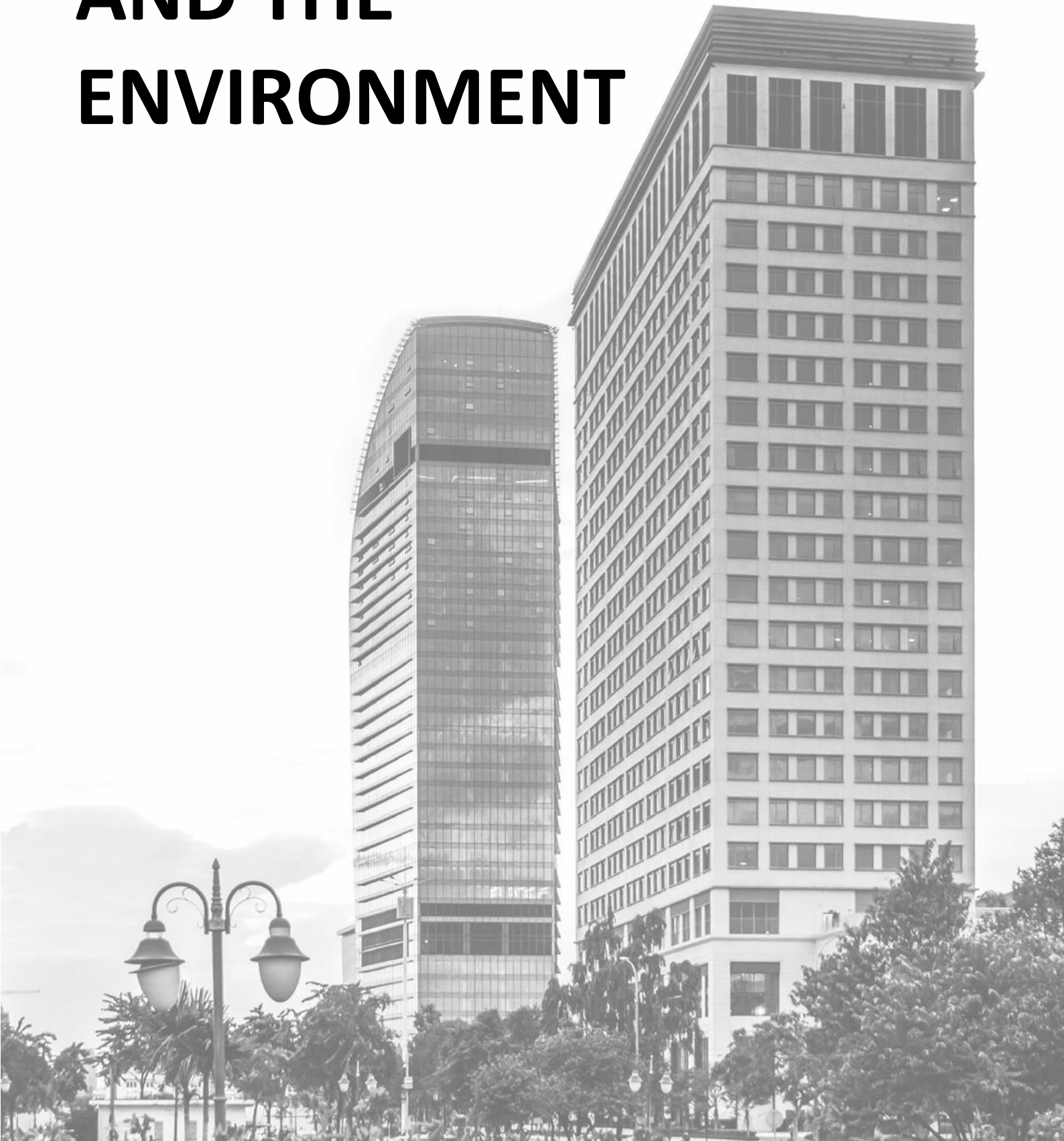
### **11.10 World Trade Organization Commitments**

Cambodia became a member of the WTO in 2004. Since then it has been developing laws at a significant pace to deal with matters covered by the WTO regime including laws related to telecommunications.

Cambodia has made certain commitments with respect to telecommunications services as part of its WTO accession treaty and has undertaken to follow these obligations in the WTO's standard Reference Paper. The Telecommunications Law attempts to follow these standards.

## Chapter 12

# NATURAL RESOURCES AND THE ENVIRONMENT





## Chapter 12

# Natural Resources and the Environment

The regulatory framework for the use and protection of Cambodia's vast natural resources has grown considerably in recent years. This framework is expected to continue to expand in the future as this sector receives financial support from external aid. This section outlines the regulatory regime currently in place. Keep in mind that because of the technical and complex nature of regulations in this area, implementation and enforcement can be inconsistent.

### 12.1 Oil and Gas

At present, Cambodia does not have a comprehensive petroleum law. Under current legislation the government body in charge of petroleum is the Ministry of Mines and Energy ("**MME**") (formerly known as Ministry of Industry, Mines, and Energy ("**MIME**") prior to 24 December 2013 and also incorporating the Cambodian National Petroleum Authority ("**CPNA**"). Although new legislation governing the petroleum sector is currently being drafted, the industry is still governed by the Petroleum Regulations (1991). The draft law has already been approved by the Council of Ministers and it is now under the review of the National Assembly's committee.

Amongst other things, a General Department of Petroleum ("**GDP**") was established under the MME to carry out central administration of the MME and deal with the day-to-day administration of the petroleum resources and petroleum products sector. This covers all activities related to oil and gas industries for both upstream and downstream activities in Cambodia. The Ministry sets coordination procedures at the working level among the GDP and other ministries of the Royal Government of Cambodia. The introduction of inter-agency working groups will allow cooperative application of resources to support processes for each activity required such as approval, compliance and inspection. Finally, the GDP is making progress through building its capacity to store, manage and utilize sovereign geological information on Cambodia's petroleum resources.

The Petroleum Regulations still constitute the core legislation regulating petroleum activities concerning crude oil, natural gas and other liquid, gaseous, solid or semisolid hydrocarbons in their natural state. The Petroleum Regulations were subject to subsequent amendments in 1995 and 1999 revising the bidding procedures and the process of selecting contractors. In addition to the Petroleum Regulations, the draft model Production-Sharing Contract ("**PSC**") is also currently in use in Cambodia and was adopted by the General Department of Petroleum to provide comprehensive guidelines for the petroleum sector.

The State's mineral rights to natural gas are now vested in the GDP. As part of this integration of the CNPA with the supervision of the MME, all agreements and contracts entered into by the CNPA continue to be valid.

The present investment regime for the exploration of oil and gas and infrastructure projects in Cambodia is based on regulations and PSCs. Each project is considered by the GDP on a case-by-case basis and upon negotiable terms. In assessing any bids, the GDP, in particular, will examine:

- the financial standing;
- the technical competence and professional experience;
- the experience in marketing petroleum products of the bidder;
- the proposed minimum work and expenditures during the exploration period;
- the proposed allocation of petroleum; and
- any proposed educational and training facilities to be created.

Presently, under Sub Decree 576 on the Organization and Functioning of the MME, this section is governed by the GDP under the auspices of the MME.

The GDP is authorized to determine petroleum zones for exploration, oversee bidding for petroleum-related activities, negotiate and execute petroleum contracts and to audit the financial situation of petroleum operating contracts, including the right to inspect equipment and review the results of exploration. The GDP is also mandated to prepare commercial regulations on price and promote competition.

In late 1997, the GDP granted conditional licenses to five companies to drill in four blocks in the Overlapping Claims Area, a contested zone in the Gulf of Thailand subject to competing claims by Cambodia and Thailand. The right to drill was conditional on an agreement between the two countries.

A memorandum of understanding was signed in 2001 between the two countries regarding the Overlapping Claims Area. This memorandum recognizes the existence of the overlapping area and states the intention of the two countries to conclude an agreement for the joint development of hydrocarbon resources located within this area. This memorandum should pave the way for further development of this area. Discussions and negotiations are still underway relating to revenue sharing and sectors to be covered by the joint developments.

In the non-contested area, the Cambodian government has demarcated six offshore blocks for licensing. Contracts have been awarded to five of these six offshore blocks thus far (blocks A-E). The contract for Block F is under negotiation with CNOOC Limited. Block A, which was awarded to Chevron and its partners in March 2002 is reported to contain an estimated 700 million barrels of oil and 3-5 trillion cubic feet of natural gas. For other blocks, estimates are not available yet and it may take another few years until data on those blocks is released.

While the attention of foreign oil firms over the past decade has been on offshore blocks, new data on the Tonle Sap Basin as well as improved security in the countryside mean that new exploration opportunities exist in this untested frontier. The Tonle Sap region has long been thought to be a promising prospect for hydrocarbons and is receiving greater foreign interest.

While the investment regime for oil and gas is governed by the Petroleum Regulation, importation and supply of fuel and LPGs (as final products) are not governed by this regulation.

## 12.2 Mining

To facilitate the management and exploitation of mineral resources within Cambodia, the Law on Mineral Resources Management and Exploitation ("**Mining Law**") governs the management and exploitation of mineral resources, the exploitation of mines and all activities relating to mining operations in Cambodia except for the exploration and exploitation of petroleum and gas.

The Mining Law sets out rules and procedures for the granting and management of mineral exploration or exploitation licenses. The Mining Law provides for six categories of mining licenses:

- **An artisanal mining license** will be issued only to Cambodians to explore for and exploit mineral resources by using locally available hand tools and by working alone or with family members in a group not exceeding seven persons;
- **A pits and quarries mining license** will be issued to a qualified natural person or legal entity to explore for and exploit construction materials, industrials and industrial minerals, quarried from pits and used in the construction, chemical and processing industries;
- **A gem mining license** will be issued to a qualified natural person or legal entity to explore for and exploit precious, semi-precious and ornamental stones;
- **A mineral (gemstone) cutting license** will be issued to a qualified natural person or legal entity to cut precious, semi-precious and ornamental stones;
- **A mineral exploration license** will be issued to a qualified natural person or a legal entity to explore for mineral resources; and

- **An industrial mining license** will be issued only to a concessionaire holding a mineral exploration license to explore for and exploit mineral resources found in commercial deposits located within the boundaries of the area of land granted under the mineral exploration licenses.

Mining/mining licenses are primarily under the authority of the MME. It should be noted that a mineral exploitation proposal except proposals related to decorative stones and construction stones and materials, must be submitted to the one-stop service of the CDC. The CDC will issue approval after the preliminary study and exploration stages subject to the MME's discretion. The CDC's in-principle approval must be obtained before the MME issues an industrial mining license.

The mineral sector is managed specifically by the General Department of Mines Resource of the MME ("GDMR"). The GDMR has two principal roles, one being the promotion of mineral resource development, the other being the regulation and supervision of mineral resources development.

The MME may require the applicant to enter into a mining agreement if it deems the mining exploration license or mining exploitation proposals to be sufficiently large and of special benefit to the country.

In May 2016, the Cambodian government issued a ministerial ordinance in a form of Sub-Decree 72 ("**Sub-Decree 72**") to manage mineral resource exploration licenses and industrial mining licenses. Sub-Decree 72 provides for procedures, processes and conditions related to the issuance of exploration licenses and industrial mining licenses. Rights and obligations of licensees are now regulated by Sub-Decree 72.

Under Sub-Decree 72, an exploration license is valid for three years and may be renewed for another two terms provided that each such term does not exceed two years. Similarly, the validity of an industrial mining license cannot exceed 21 years and may be renewed for another two terms provided that each term does not exceed ten years. In exceptional circumstances, an industrial mining license may be renewed more than the terms specified above, although Sub-Decree 72 is silent as to what constitutes exceptional circumstances permitting such a renewal.

On 3 May 2017, the MEF and the MME issues a joint regulation to set out the prescribed timeline, application fee and the validity of all licenses and permits issued by the MME including mining licenses.

In order to crack down on illegal mining activities, on 31 May 2018, the National Assembly adopted the Law on the Amendment to the Mining Law to impose punishment against unlicensed mining activities. Under this amended legislation, illegal mining is subject to a fine of up to USD 12,500 and up to five years in prison.

Licensees must be aware that they have reporting obligations to the MME. A licensee holding an exploration license must report to the MME on an annual basis about the results and associated expenses related to mineral resources exploration for each year before the end of the first month of the next calendar year or within 30 days following the date of exploration license expiry. Similarly, a licensee holding an industrial mining license must file a monthly production and sale report to the MME in a form as determined by the MME within 15 days of the following calendar month. Failure to comply with reporting obligations may result in license revocation.

The Cambodian government encourages and promotes investment in the mining sector and grants customs duties exemptions for the exploration of gas, oil and all kinds of mining as well as supply bases for gas and oil activities.

It should be noted that all mineral resources are reserved for local supply. The export of raw mineral resources is prohibited under Cambodian law.

### 12.3 Available Concessions for Mining

There are two ways to source an available and potential mining concession in Cambodia:

- through a joint venture or contractual arrangement with the existing mining concessionaire; or
- through direct contact with the GDMR. Geology and mineral data are necessary to assess the recoverability of available mineral resources, however, the GDMR has limited geology and mineral data. Currently, the GDMR has only fourteen sheets of 1:200,000 geological maps that cover Cambodia.

## 12.4 Water Resources

The Ministry of Water Resources and Meteorology (“**MOWRM**”) was established in 1999 with governing powers over Cambodia’s vast water resources. The MOWRM is responsible for developing and managing water resources in Cambodia. Additionally, the Ministry of Rural Development (“**MRD**”) is specifically responsible for rural water supply sanitation. The MME is also in charge of water supply for provincial capitals and medium-sized and small towns as well as for the regulation of the private sector involved in piped water systems.

The MOWRM has the duty of managing and developing Cambodia’s aquatic resources for use by business, agriculture and inhabitants as well as for recreational and environmental purposes. The MOWRM also oversees irrigation and flood control development.

The Law on Water Resource Management was enacted on 29 June 2007 to determine the rights and obligations of water users, sets the main principles for water management and outlines the participation of farming communities using water in the development of water resources.

According to the Law on Water Resource Management, licensing or authorization is required for the use, consumption or diversion of water for industrial or agricultural purposes beyond basic needs such as drinking, laundering, bathing, raising animals and the watering of gardens and crops. The construction of water works related to the aforementioned activities also require licensing or authorization from the MOWRM.

The MOWRM’s license or approval is also required for the following activities:

- extracting sand, soil, stone, gravel, oil and gas from seas, rivers, canals, channels, ditches, lakes and ponds;
- filling of rivers, canals, channels, ditches, lakes and natural reservoirs;
- emitting, stowing or storing poisonous substances that can affect water quality or cause danger to human beings, animals and plants; and
- constructing bridges over rivers or constructing ports or buildings on the shore or on beaches.

Companies or individuals that discover underground water sources or underground water wells in the course of their mineral exploration and other activities have the obligation under the Law on Water Resource Management to inform the MOWRM of such discoveries.

## 12.5 Environmental Protection

We understand that the Cambodian Government aims to prepare an Environmental Code although it may take years to achieve such a feat. Currently, environmental matters are governed by the Law on Environmental Protection and Resource Management, enacted to protect and restore Cambodia’s natural environment and to ensure the conservation, development, management and sustainable use of natural resources.

The Law on Environmental Protection and Resource Management empowers the MOE to inspect any premises or any means of transport if the MOE considers that it affects the environment. To ensure the sustainability of natural resources, the Law on Environmental Protection and Resource Management requires all ministries to consult with the MOE before issuing decisions or undertaking activities related to the protection, the development or the management of the use of natural resources.

The Law on Environmental Protection and Resource Management is supported by various governmental regulations including, inter alia, the Sub-Decree on Environmental Impact Assessment, the Sub-Decree on Water Pollution Control, the Sub-Decree on Solid Waste Management and the Sub-Decree on Control of Air and Noise Pollution.

## 12.6 Environmental Impact Assessments

Environmental impact assessments (“EIAs”) are required for some projects depending on their nature, size, activity etc., as specified in the Sub-Decree on the Implementation of Environmental Impact Assessment Process, enacted in 1999. The exact nature and format of the assessments are also set out in this Sub-Decree.

Investors whose projects are subject to an EIA are required to submit a preliminary EIA report and pre-feasibility study report to the MOE. For projects that may have severe environmental impacts, full EIA reports and feasibility study reports must also be submitted to the MOE. The approval of the MOE on the preliminary and full EIA reports must be obtained before commencing the project.

These investors are required to pay a service fee for examination of the EIA report and monitoring the implementation of the project and pay a contribution to the Environment Endowment Fund and environmental and social protection fund.

The MOE, as a matter of practice, rather than law, has been requiring newly licensed investment companies to enter into a contract with it. The contract requires the investor to state that it will comply with environmental regulations, will act to safeguard the environment and will immediately remedy any negative environmental impacts caused by the investing company.

## 12.7 Water Pollution Control

The Sub-Decree on Water Pollution Control was enacted on 6 April 1999 to control water pollution and to suppress and reduce public water pollution. The Sub-Decree sets out the standards on liquid waste that can be discharged. The Sub-Decree determines some pollution sources that need to obtain authorization from the MOE prior to the discharge of liquid waste or the transportation of liquid waste from certain industries. The Sub-Decree also prohibits the dumping of waste products or dangerous substances that will cause water poisoning.

## 12.8 Solid Waste Management

The management of solid waste is governed by the Sub-Decree on Waste Management, dated 27 April 1999. The importation of waste into Cambodia is specifically prohibited by the Sub-Decree. Pursuant to this Sub-Decree, authorization from the MOE is required for the transport or construction of hazardous waste disposal or storage sites; investment in hazardous waste treatment or incineration; investment in establishing waste disposal, waste incineration, waste storage or waste reprocessing sites. This Sub-Decree also requires that hazardous waste be disposed of and stored safely in accordance with accepted technical standards.

## 12.9 Noise and Air Pollution

The control of air pollution and noise nuisance is addressed in the Sub-Decree on Air Pollution and Noise Nuisance Control dated 10 July 2000. This Sub-Decree specifies the permitted level of pollutants and noise. The Sub-Decree prohibits the import, use or manufacture of motor vehicles and machineries that emit pollutants or noise beyond the permitted level. Pursuant to this Sub-Decree, the emission of pollutants and noise from immovable sources requires the authorization of the MOE.

## 12.10 Natural Protected Areas

Twenty-three natural protected areas were established by the Royal Decree on the Management of Natural Protected Areas dated 1 November 1993. These natural protected areas are classified under four major categories: national parks, wildlife sanctuaries, protected landscapes and multiple use areas. Subsequently, three additional natural protected areas have been classified by separate regulations. The Department of Nature Conservation and Protection of the MOE is responsible for overseeing the protected areas with the cooperation of the relevant ministries and authorities including; the MAFF, the MOWRM, the MLMUPC, the Ministry of Tourism, the MRD and the provincial/municipal authorities.

### 12.11 International Treaties

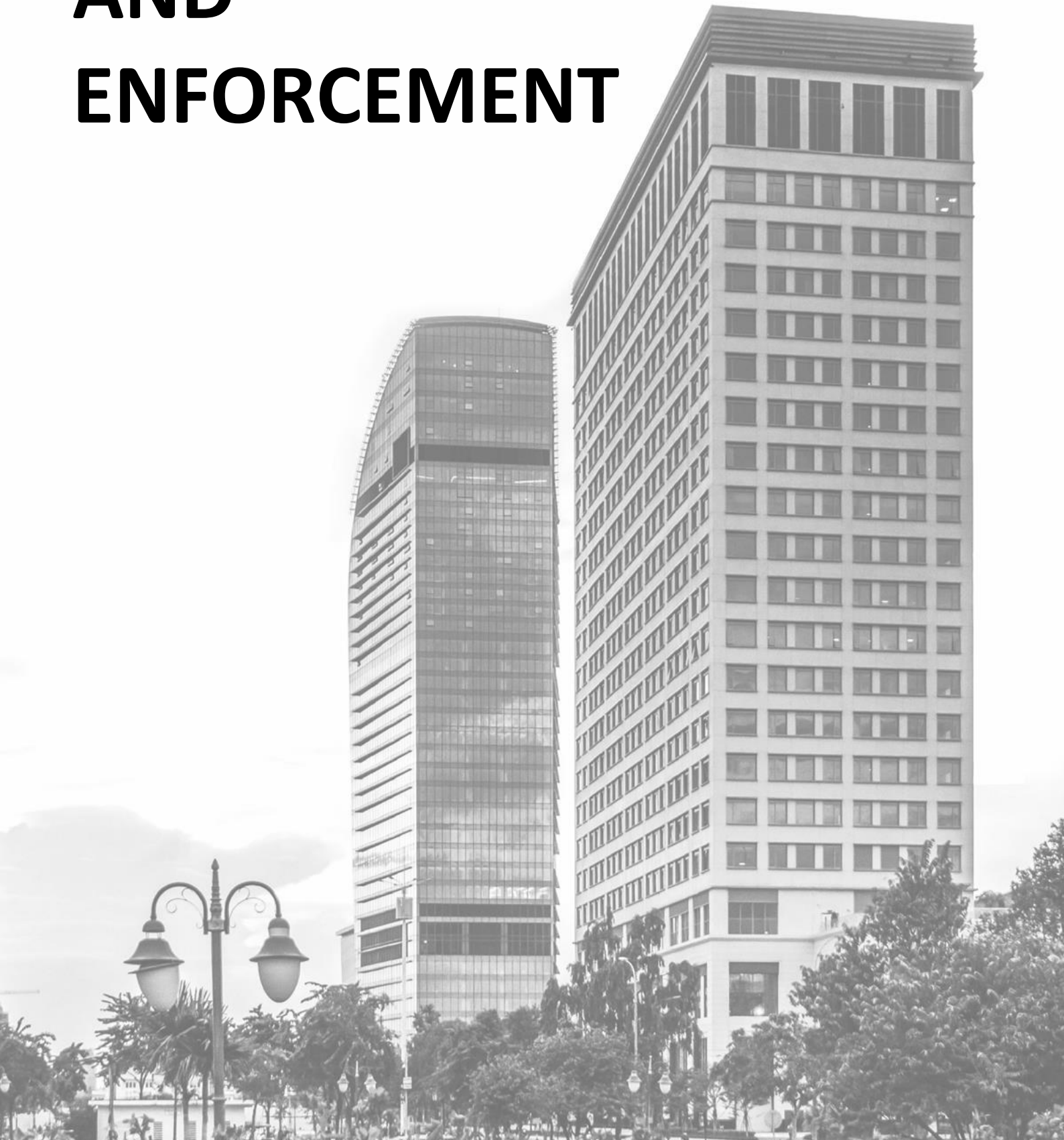
Cambodia is a member of a number of treaties in relation to environmental protection. Some main environmental protection treaties that Cambodia has ratified to date include:

- the Vienna Convention for the Protection of the Ozone Layer;
- the Montreal Protocol on Substances that Deplete the Ozone Layer;
- the International Convention on Climate Change;
- the Kyoto Protocol to the UN Framework Convention on Climate Change;
- the Convention on Biological Diversity;
- the Cartagena Protocol on Bio-Safety to the Convention on Biological diversity;
- the ASEAN Agreement on Trans-Boundary Haze Pollution;
- the Stockholm Convention on Persistent Organic Pollutants;
- the Basel Convention on the Control of Trans-Boundary Movements of Hazardous Wastes and their Disposal;
- the Convention on Wetlands of International Importance, Especially as Waterfowl Habitat;
- the Convention on International Trade in Endangered Species of Wild Fauna and Flora;
- the Agreement on the Establishment of the Global Green Growth Institute; and
- Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity.



## Chapter 13

# CONTRACT LAW AND ENFORCEMENT





# Chapter 13

## Contract Law and Enforcement

The Civil Code of Cambodia came into force on 21 December 2011 and has had a significant impact on contractual relationships and on Cambodia's legal framework generally. With few exceptions, the Civil Code replaces prior laws and regulations regarding contracts and provides comprehensive provisions in relation to contracts.

The Civil Code enshrines and regulates the formation, performance, interpretation and enforcement of many types of contracts. It also deals in greater detail with specific types of contracts such as sales contracts, leases, loan contracts, personal property mortgages, Labor contracts (which complements but does not replace Labor Law provisions regarding Labor contracts) and secured transactions.

### 13.1 General Contract Formation

The Civil Code introduces the concept of contract formation based on offer and acceptance. An offer is simply defined as a proposal made with the intention of creating a binding contractual relationship, upon acceptance by a party to whom an offer is made. The person making the offer to enter into a contract may establish conditions regarding how and when an offer may be accepted. Acceptance is otherwise an expression of intent to agree to the offer and can take the form of either a notice of acceptance or actions tantamount to acceptance.

Unless specified otherwise, contracts can be validly formed in writing, orally or through the actions of the parties. However, the Civil Code specifies that certain contracts may only be formed in writing such as a loan with an interest rate exceeding the legal interest rate or in the case of the sale of immovable property (see Specific Types of Contracts below).

Once a contract is effective, the parties are obliged to adhere to its provisions and act in good faith in the performance of their contractual obligations.

A contract may be voided, amongst other reasons, if it is concluded as a result of; mistakes relating to substantial terms of the contract, abuse of circumstances, fraud, duress, misrepresentation or if it is contrary to law, public order and customs. In the case of a voided contract, the Civil Code allows the aggrieved party to rescind the contract.

### 13.2 Rules of Contract Interpretation

The Civil Code is silent on how contracts are to be interpreted. However, the prior Contract Law of 1988 provided that if a contract is not clear, the local customs and practice of the place where the contract is made will be relied upon to properly interpret the contract. However, such local customs and practice will not take precedence over the law. Any ambiguity will be interpreted in favor of the party bearing responsibility for performance.

### 13.3 Breach of Contract and Remedies

Under the Civil Code, a breach of contract occurs when a party fails to perform an obligation under a contract without having legal justification for such failure. Where a party fails to perform a contractual obligation and therefore breaches the contract, the other party may demand specific performance, damages or termination of the contract.

Damages may include compensation for the benefit of performance that would have been received under the contract if the breaching party had performed, expenditures incurred as a result of non-performance as well as compensation for mental harm.

The remedy of specific performance refers to compelling a party in breach of contractual obligations to actually perform in accordance with the terms of the contract. Such a remedy may not be awarded where an obligation is not suitable for specific performance. By example, a contract for the sale and purchase of a

specific piece of real estate is a contract which often lends itself to a remedy of specific performance on the basis of an argument that there is no suitable substitute for a specific piece of real estate.

Notwithstanding the possibility of damages or specific performance, an aggrieved party may terminate a contract in the case of a material breach by the other party. This includes a failure to perform obligations within a specified time, where it is impossible to perform the contract or when the breach is so substantial that trust between the parties is destroyed and further performance cannot be expected.

Parties to a contract may agree in advance to establish the amount of damages and conditions for payment of damages in the event of breach. Such an agreement is known as liquidated damages.

A court may award damages in an amount higher or lower than the agreed liquidated damages if such agreed amount is grossly higher or grossly lower than actual damages incurred as a result of the breach.

### 13.4 Statute of Limitations

Claims for compensation for damages and right of termination of a contract are fixed at five years by the statute of limitations, contained within the Civil Code, for most types of contracts. Additionally, the statute of limitations period for a claim pertaining to the price of a product or service sold or provided by a manufacturer or merchant to a non-merchant is two years, but the right of a non-merchant to make a claim against a merchant or manufacturer is five years. Apart from the above, the statute of limitations period for property rights, other than claims and ownership, is ten years.

### 13.5 Specific Types of Contracts

The Civil Code provides detailed provisions in relation to certain specific types of contracts including sale and purchase contracts which addresses issues such as transfer of title to goods sold, obligations of sellers and buyers, sellers' warranties, non-conforming goods and seller's right to remedy non-conformance, amongst other things.

Additional specific types of contracts addressed by the Civil Code include interest bearing loans, loans for consumption, loans for use, contractor contracts, leases, personal guarantees, gifts, mandates, bailments, partnerships, life annuities and compromises. In addition to this, the Civil Code provides comprehensive provisions in relation to secured transactions, which complements the Law on Secured Transactions.

### 13.6 Real Estate Transactions under the Civil Code

**Sale and Purchase Agreements:** Other than the consent of the seller and the buyer regarding the terms and conditions of an agreement, in order to transfer ownership over immovable property, a sale purchase agreement becomes an authentic act and can be registered with the Cadastral Administration when the agreement is made by a notary or authenticated by a notary or made by a competent official for the purpose of transfer registration.

**Leases:** The Civil Code distinguishes between two types of leases; leases having a term of less than 15 years; and those having a term of 15 years or greater, referred to as long term leases or "perpetual leases." A perpetual lease may not have an initial term exceeding 50 years. However, this initial term is renewable for up to a further 50 years. A perpetual lease must be in writing and can be registered at the land office. Perpetual leasehold rights may be assigned, sub-leased and may be subject to succession and the lessor or the lessee should provide it in the lease agreement in order to avoid any further dispute.

### 13.7 Agency

The Civil Code contains specific provisions on agency, providing certain obligations and liabilities in relation to agent-principal relationships. Agency authorization can be created by contract or by law and as long as the agent acts within the agreed scope of agency authorization, the acts of the agent and contractual obligations arising from such acts, are imputed directly to the principal. Generally, where an agent acts outside the scope of the agency authorization, the agent can be held liable for damages or for actually performing the contractual arrangements entered into while purportedly acting as an agent for another. However, in some circumstances, where an agent executes a contract outside the scope of their agency authorization, and the other party to the contract believed, without negligence, that the agent was

authorized to enter into the contract by a principal, the principal can be responsible for performing the contract. Such a circumstance may occur, for example, where an agency authorization has been extinguished but the principal continued to give the impression or allowed another person to give the impression that the agency authorization was continuing.

### 13.8 Other Liabilities

The Civil Code includes torts in the same section as contracts, and under this category captures a number of different legal liabilities. These include the management of affairs without a mandate, unjust enrichment, intentional and negligent acts and product liability.

An intentional or negligent act is an act which harms another where the actor has foreseen that a particular result would occur and accepted such an occurrence or an act for which a person in a similar position as the actor could have foreseen that a particular result would occur.

In the area of product liability, where an unreasonably dangerous defect exists in a manufactured movable and such a defect causes harm, the manufacturer is liable if the defect could have been discovered based on scientific standards existing at the time of manufacture. The Civil Code extends this same liability to importers of manufactured movables regardless of whether the importer actually manufactured the goods.

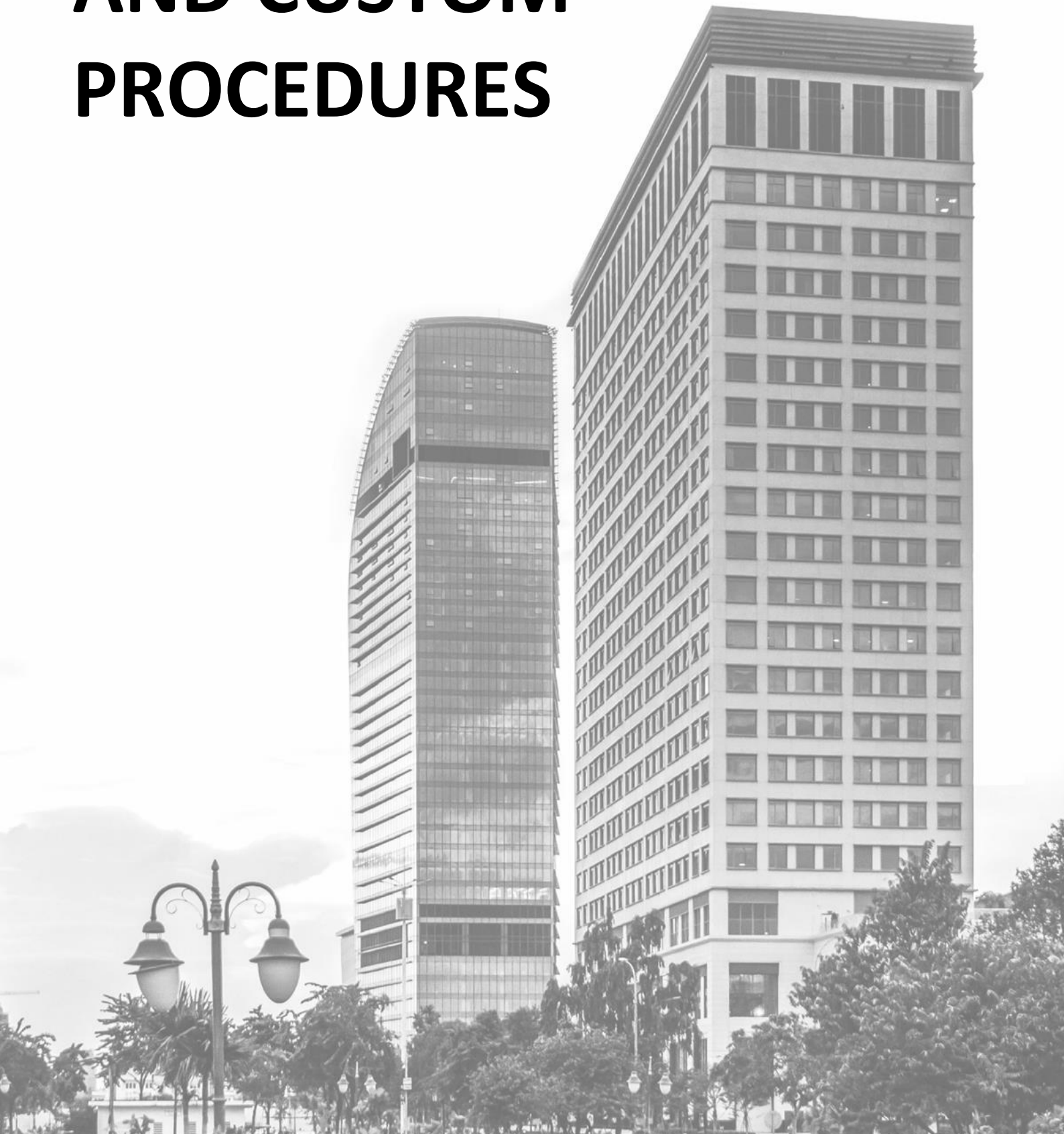
Under the Civil Code, where a thing is destroyed or damaged as a result of a tortious act, the injured party may seek compensation for the price of the damaged or destroyed thing – the cost of repair, etc. However, in the event where the injured party dies as the result of a tortious act, such an injured party's successors shall acquire the right to demand damages for economic harm and emotional distress suffered prior to death. Additionally, where an injured party suffers bodily harm as the result of a tortious act, the injured party may demand damages for economic harm and emotional distress suffered thereby. Furthermore, where one's honor or reputation is damaged by a tortious act, the injured party may seek damages for mental or emotional distress accompanying the loss in social standing.

The Civil Code provides a number of grounds for a defense against liability for tortious acts, including:

- a tortfeasor shall be excused from responsibility for harm caused by the tortfeasor where the injured party consented to or assumed the risk of such harm.
- a person who causes harm while engaged in justifiable, self-defense or emergency escape will not be held responsible for harm that results there from.
- a person who commits an act deemed reasonable and acceptable under prevalent social standards shall not be held responsible for the harm caused thereby.

## Chapter 14

# TRADE, COMMERCE, AND CUSTOM PROCEDURES



# Chapter 14

## Trade, Commerce, and Custom Procedures

### 14.1 Cambodia's Trading Relationships

Since 1993, Cambodia has benefited from a considerable increase in international trade and is now party to a number of trade agreements. Perhaps the most significant of these are Cambodia's membership of the Association of Southeast Asian Nations ("**ASEAN**") Free Trade Area ("**AFTA**") and the WTO and which Cambodia entered into in 1999 and 2004 respectively. Cambodia's membership of these have already led to important tariff reductions and should facilitate further trade liberalization both regionally and internationally.

In addition to the AFTA, Cambodia is also eligible for Preferential Tariff Reductions that are granted under Free Trade Agreements ("**FTAs**") that ASEAN has concluded with Korea, Japan, India, China, Australia and New Zealand, although different ASEAN states will implement the FTA at different times, particularly the CLMV states (Cambodia, the Lao PDR, Myanmar and Vietnam).

The ASEAN-Australia-New Zealand Free Trade Agreement ("**AANZFTA**") was concluded on 27 February 2009, and the government has adopted the Law on Adoption of the Agreement Establishing the ASEAN-Australia-New Zealand Free Trade Area, aimed at progressively liberalizing and facilitating trade in goods among the parties through progressive elimination of tariff and non-tariff barriers, as well as liberating trade in services among the parties, covering many sectors. With reference to this agreement, the schedules for reduction and elimination of Cambodian import duties for the period 2009-2025 have been promulgated.

For trade in goods, the AANZFTA provides reduced rates compared to those of 'most favored nation'/MFN status, but not as favorable as AFTA. Imports from Australia and New Zealand under the AANZFTA will be largely duty free by 2025. Note that Cambodian exports to Australia and New Zealand may be largely duty free and quota free. A key benefit of the AANZFTA, as with other FTAs, is that content will be counted in for origination on a regional basis for manufactured goods.

The ASEAN-China Free Trade Agreement ("**ACFTA**") is the FTA that covers the largest population in the world. It is a comprehensive cluster of agreements on goods, services, investment, intellectual property and dispute settlement. The initial framework was created in 2004. The ACFTA was ratified by Cambodia for Trade in Goods on 6 Feb 2008.

Cambodia has reached the 2015 deadline set under the ACFTA to bring nearly all of its customs duties on goods from China within the 0–5% range. These tariff rates will be subsequently reduced to 0% not later than 1 January 2020.

The ASEAN-Korea Free Trade Agreement ("**AKFTA**") was concluded on 1 May 2006 as an agreement mostly on goods but was later extended with agreements on services (1 May 2009) and Investment (2 June 2009). Cambodia ratified the AKFTA on 6 February 2008.

Cambodia has reached the 2018 deadline set under the AKFTA to bring nearly all of its customs duties on goods from Korea within the 0–5% range. These tariff rates will be subsequently reduced to 0% not later than 1 January 2024.

The ASEAN India Free Trade Area ("**AIFTA**") was concluded 13 August 2009. It entered into force from 1 January 2010 after ratification by India and one ASEAN states. Under the AIFTA, trade in goods was already finalized.

As far as the Trade in Goods is concerned, AIFTA provides as follows for Cambodia depending on the track which has been chosen for the goods. The tariff rates of goods under Normal Track 1 goods have been reduced to 0% from 31 Dec 2018. The reductions for goods placed under Normal Track 2 and the Sensitive Track with some exceptions also started from 1 January 2010 but elimination will only be carried out by 31 December 2021. The Highly Sensitive List has three different reductions.



Customs duties on goods on the Highly Sensitive List will be eliminated by 31 December 2024.

The ASEAN-Japan Comprehensive Economic Partnership Agreement (“**AJCEP**”) entered into force on 1 December 2008. It finally became effective for Cambodia from 1 December 2009. The AJCEP provides for Trade in Goods and Trade in Services and a sub-committee panel has been created to further discussions concerning the services sector. However, the AJCEP also provides for rules on Sanitary and Phytosanitary measures, mostly to promote investment and other issues.

Under the Trade in Goods, Japan has to eliminate 92% of its tariff rates based on tariff lines and trade value for goods in the Normal Track within ten years of the entry into force of the Agreement. The ASEAN 6 (Brunei, Indonesia, Malaysia, the Philippines, Singapore, and Thailand) will eliminate 90% of its tariff rates based on the tariff lines and trade value for goods in the Normal Track within ten years of the Agreement being in effect. For Vietnam, it will eliminate 90% of its tariff rates based on tariff lines and certain percentages on trade value for goods in the Normal Track within ten years. For Cambodia, the Lao PDR and Myanmar, certain flexibility was provided. Each will eliminate 90% of its tariff rates based on either tariff line or trade value for goods in the Normal Track within 13 years of the Agreement being in effect.

For Trade in Goods, the AJCEP classifies the tariff reduction schedule by “A” exemption from entry into force, “B” schedule that applies to most goods, “C” fixed at a base rate, “R” base rate and 5% as from the first day of the 19th year, and “X” excluded.

As a developing country, Cambodia also benefits from preferential access to the markets of developed countries. For example, Cambodia enjoys MFN status from the United States, the European Union (“**EU**”), and other developed countries. Since 2001, it has benefited from the EU’s “Everything But Arms” initiative (“**EBA**”) – part of the EU’s Generalized System of Preferences (“**GSP**”). Cambodia is also entitled to privileges under the respective programs of the US and Japan.

However, for products to enjoy the EBA rates, they must meet the Rule of Origin (“**ROO**”) requirement that at least 40% of the contents must have originated in Cambodia. Nevertheless, special waivers allow for certain Cambodian textile products to have cumulative origin with ASEAN countries or the EU. Similarly, for exports from Cambodia to the US, to benefit from the GSP there is a ROO requirement of 35%, although qualifying member countries of ASEAN – namely Cambodia, Thailand, Indonesia, and the Philippines – are treated as one country, which again provides for cumulative origin.

Cambodia’s largest export commodities include garments, rubber and timber with most goods being sent to the US and EU. Major imports include petroleum products, construction materials, vehicles and motorcycles while major trading partners include Thailand, Hong Kong, Singapore and China.

## 14.2 Cambodia and the World Trade Organization

Cambodia’s international trade and investment framework has made a big leap with WTO accession, which will have a significant impact on all sectors and all fields of business. Whilst the General Agreement on Tariffs and Trade (“**GATT**”) and the General Agreement on Trade in Services (“**GATS**”) are likely to have the biggest effect on Cambodia’s international trade, the Agreements on Trade Related Aspects of Intellectual Property (“**TRIPS**”), the Customs Valuation Agreement (“**CVA**”), and agriculture, anti-dumping and import licensing procedures will also have a bearing on the country’s international trading relationships. In order to ensure full compliance with WTO standards, the country has committed itself to institutional reform.

## 14.3 The General Agreement on Tariffs and Trade

As a result of the GATT, Cambodia is obliged to address both tariff and non-tariff barriers to trade. For example, Article 11 necessitates the general elimination of quantitative restrictions (bar certain exceptions permitted for reasons of necessity). To those ends, Cambodia promised upon accession, not to introduce, re-introduce or apply other non-tariff measures such as licensing, quotas, prohibitions, bans and other restrictions having equivalent effect that cannot be justified under the provisions of the WTO agreements.

One benefit of WTO membership is the MFN mechanism mentioned above. This principle provides that if a contracting state grants any advantage, favor, privilege or immunity to another in respect of a certain product, it is obliged to accord the same benefit immediately and unconditionally to all other contracting parties regarding similar products. Therefore, Cambodian exports to other WTO members are guaranteed these favorable rates and Cambodia must reciprocally apply the accepted MFN rates to goods imported from other contracting parties. Successive rounds of negotiation have resulted in a gradual lowering of MFN tariffs.

The WTO agreement provides for bound tariff rates, which set the maximum legal rate that may be applied to imports. In general, Cambodia's "applied rates" (i.e. the rates actually levied) are similar to the bound rates bar a few exceptions. Importantly, upon accession, Cambodia pledged to bind 100% of tariff lines. The principle of "national treatment" in Article 3 adds a further layer of protection to Cambodian exports because it obliges member states to treat imports no less favorably than products of national origin.

#### 14.4 The General Agreement on Trade in Services

This agreement forms another component of the "single WTO package" and as such is binding on Cambodia and all other member states. Once again, the MFN principle applies to all services (except one-off, temporary exemptions) and so treatment "no less favorable" than that extended to one country's service providers must similarly be offered to all other WTO members. This applies on the basis of four "types" or "modes" of supply (rather than specific service sectors):

- cross-border supply (services supplied from one country to another);
- consumption abroad (where a consumer from one-member state makes use of a service in another state);
- commercial presence (where a foreign business wishes to set up a subsidiary or branch operation to provide a service in the other country); and
- movement of natural persons (where individuals travel from their home country to supply services abroad).

Cambodia does have some MFN exemptions, with intended unlimited duration, although these are limited to audio-visual services, land transport, internal waterways and maritime transport. Members are also allowed to invoke specific limitations on market access and national treatment in their Schedule of Specific Commitments.

Cambodia provides market access or national treatment for the cross-border supply, consumption abroad and commercial presence of almost all services. There are some limitations applicable to the following sectors, but most do not comprise arduous barriers:

- telecommunications;
- insurance;
- banking and financial services;
- health-related and social services;
- tourism and travel services; and
- pipeline transport services.

#### 14.5 Agreement on Trade Related Aspects of Intellectual Property

During the accession negotiations, Cambodia requested a 2009 deadline for the implementation of the Agreement on TRIPS, but ultimately agreed to apply it no later than 1 January 2007. As required by the WTO, Cambodia has passed intellectual property laws that conform with TRIPS including:

- the Patent Law;
- the Trademarks Law; and



- the Law on Copyright and Related Rights.

To complete the legal framework on intellectual property, it is also anticipated that other laws and regulations will be adopted such as:

- the Law on Layout Designs of Integrated Circuits;
- the Law on Plant Variety Protection;
- the Law on Geographical Indications including Appellation of Origin; and
- the Law on Protection of Undisclosed Information.

#### 14.6 Customs Valuation Agreement (“CVA”)

Other important aspects of Cambodia’s WTO accession are the implications it will have on the manner in which customs duties are assessed and collected (see the section on Customs Valuation below for more details). Cambodia committed to implementing the WTO CVA by 1 January 2009 and is currently in the process of extensively reforming its customs regime. To that end, 2007 saw the passing of a new Law on Customs which has now entered into force.

#### 14.7 ASEAN

ASEAN was formed by its original five members in 1967 to promote economic, social and cultural development in the Southeast Asian region through inter-state integration and cooperation. ASEAN’s membership has now grown to ten countries with Cambodia being the most recent to join in 1999.

#### 14.8 The ASEAN Free Trade Area and Common Effective Preferential Tariff Scheme

The ASEAN Free Trade Area (“AFTA”) was established in 1992 with the aim of promoting the region’s competitive advantage as a single production unit. Eliminating tariff and non-tariff barriers to trade between the member countries will encourage greater economic efficiency, productivity and competitiveness. Importantly, investors in Cambodia can benefit from tariff rates established under AFTA’s Common Effective Preferential Tariff Scheme (“CEPT”) that are often considerably lower than those under the WTO. Thus, although each ASEAN member is free to impose tariffs on goods from outside ASEAN, based on its national schedules, for goods originating within ASEAN, member states must apply a tariff rate of no higher than 5%. The CEPT scheme covers a broad array of products, detailed in each member’s CEPT inclusion list.

As an ASEAN member, the Cambodian customs tariff classification system complies with the ASEAN Harmonized Tariff Nomenclature (based on the 6-digit Harmonized Commodity Description and Coding System of the WTO). Preferential Tariff Rates are granted for goods listed under the ASEAN Trade In Goods Agreement (“ATIGA”) which is intended to provide preferential tariffs on imports of goods originating from a member of ASEAN into another ASEAN member state.

Cambodia has reached the 2015 deadline set under ATIGA to bring nearly all of its customs duties on goods from ASEAN within the 0-5% range. These tariff rates will be subsequently reduced to 0% not later than 1 January 2025.

It is possible for ASEAN members to exclude certain products from the CEPT in two cases:

- temporary exclusions – products for which tariffs will ultimately be lowered to 0-5% range but which are being protected temporarily by a delay in tariff reductions; and
- general exceptions – products that an ASEAN member deems necessary for the protection of national security, public morals, the protection of humans, animals, or plant life and health and protection of Articles of artistic, historic, or archaeological value.

It should also be noted that currently CEPT does not apply to unprocessed agricultural products, although these will be gradually phased into the scheme in the future.

As under the EU's EBA and the US's Generalized System of Preferences, CEPT rates are subject to the satisfaction of a ROO local content requirement and it must be shown that 40% of a product's contents originate from any ASEAN member country. This requirement refers to both single-country and cumulative ASEAN content.

## 14.9 Cambodia's Domestic Customs Regime

Cambodia's new Law on Customs came into force in July 2007. The legislation provides for the assessment and collection of duties, taxes and fees on imported and exported goods as well as the control and regulation of the movement, storage and transit of such goods. Moreover, the Law on Customs is an important development in the implementation of Cambodia's international trade policy and promotion and application of international standards.

The Law on Customs provides that certain goods are wholly exempt from import duties and taxes. These include:

- goods temporarily imported into Cambodia (i.e. for transit or trans-shipment);
- goods used for or by, foreign diplomatic or consular missions, international organizations, and agencies of technical cooperation of other governments for use in the exercise of their official functions;
- goods for personal use by official personnel of such missions and organizations;
- goods originating in Cambodia or returning from abroad for which duties and taxes have previously been paid (providing that they have not been enhanced in value);
- goods exempted under the provision of any other law of Cambodia; and
- items donated for charity, goods for research and scientific purposes and samples and goods of no commercial value for exhibition.

Certain other goods and materials may be partially exempt or relieved from import duties where this is specifically provided for by any other law of Cambodia. In addition, a partial exemption may be granted with respect to:

- seeds and breeding animals for agriculture;
- goods expected to undergo repair, processing, or testing;
- goods re-imported in the same state;
- goods imported by the government for public purposes; and
- goods for temporary admission.

Importantly, this list is non-exhaustive, and partial exemption or relief may also be granted to other goods determined by Prakas of the MEF.

For goods that cannot be wholly or partially exempted from import duty, these will be levied with such duty at a rate of 7%, 15% or 35%, as listed in the 2012 Customs Tariff book.

## 14.10 Customs Clearance Procedures

Imported goods must be declared to a customs office or other location as determined by the director of the General Department of Customs and Excise ("GDCE"). The persons engaged or involved in the commercial or institutional import or export of goods must ensure that accurate documentation is kept, including the receipt of payment of customs duty and taxes (in accordance with what has been declared to customs), accounting books, records and other information pertaining to import or export, including that contained in electronic format.

Those who report goods to the customs office have an obligation to answer truthfully any question asked by a customs officer with respect to the goods and where a customs office so requests, make the goods available for inspection by customs in the manner prescribed by the director of customs.

In addition, there are certain goods, listed in Sub-Decree 209 (relating to putting into use prohibited and restricted goods, dated 31 December 2007), for which importation or exportation requires a license or permission, or an equivalent jurisdiction letter from the Ministry or competent specialized unit.

#### 14.11 Customs Valuation

Article 21 of the Law on Customs sets out the procedure by which the value of imported goods is determined for the purpose of customs duty calculation. A number of methods are detailed, to be applied in the order provided by the WTO CVA.

Therefore, ideally the customs value of imported goods shall be the transaction value, this being the price actually paid or payable for goods when sold for export to Cambodia. If, however, the transaction value of the imported goods cannot be determined, then the customs value will firstly be the transaction value of identical goods and if this method is also not feasible, then secondly the transaction value of similar goods.

If none of the three methods contemplated above is possible, then the customs value of the imported goods will be based on a deductive method (i.e. on sale price in the importing country). If this too is not feasible, then the computed method is used (i.e. based on the cost of materials, fabrication, and profit in the country of production). As permitted by the WTO CVA, the order of application of these two methods may be reversed at the request of the importer.

Finally, where all else fails, customs value is to be determined by using reasonable means consistent with the principles and provisions referred to elsewhere in Article 21 of the Law on Customs and on the basis of data available in the customs territory, subject to certain limitations. Article 21 also makes clear that all matters related to the determination of customs value are to be ultimately regulated by a Prakas of the MEF.

#### 14.12 Customs Bonded Warehouses

A customs bonded warehouse (“CBW”) is a building, place or an area that is used to store, process, display or provide for the sale of goods for which import duties are deferred or for other related purposes subject to customs control. To qualify, a CBW must meet certain requirements established by the GDCE of the MEF.

#### 14.13 Tax Incentive for Operator and Goods’ Owners

Goods can be stored in a CBW for a maximum of two years from the date of registration of the customs declaration. As an exception, the time limit may be extended by up to 12 months by the GDCE at the request of the CBW operator provided that the goods are in good condition.

There are three categories of CBW:

- public warehouses, which are licensed by the MEF, may be operated by an agency of the government or by any person and which are open to any person who has the right to store the goods in the warehouses;
- private warehouses, which are licensed by the director of the GDCE and are to be used solely by specified persons to store goods for their own specific uses, including operators of duty-free shops; and
- special warehouses, which are licensed by the director of the GDCE, are a type of warehouse for goods that may present a hazard or could affect the quality of other goods or could require special storage facilities.

Each CBW license will determine conditions for owners and operators, including the location, construction and layout of premises and procedures for control and handling of goods. In certain circumstances, the MEF may authorize the establishment of customs manufacturing bonded warehouses (“**CMBWs**”), which are a type of factory used to process and produce goods in the CBW. Goods so processed and/or produced in the CMBW can be exported and/or released for the domestic market.

The application of taxes, duties, and restrictions with respect to imported goods stored in a CBW shall be suspended until the goods have been released from the CBW for domestic use or export. Similarly, taxes and duties applicable to raw materials, components, machines, equipment and things for production with respect to a CMBW operator will also be suspended if the end products are for export, except those goods that are subject to export taxes.

#### **14.14 License Fee and Guarantee Deposit**

At the end of the calendar year, a CBW operator must pay an annual license fee at the rate of 1% of the monthly average taxes and duties of the goods stored in the CBW. If the license is issued after 1 July, the first annual license fee will be 0.5% of the average monthly taxes and duties of the goods in store.

CBW operators are also required to pay a guaranteed deposit equal to 5% of the annual taxes and duties applicable to the goods stored in the CBW. For the first year of operation, the amount of guaranteed deposit will be determined by the director of the GDCE. The customs administration has the right to adjust the amount of guaranteed deposit if necessary, which may be paid in cash or by other instruments.

#### **14.15 Penalties**

The Law on Customs sets out a regime of penalties to be applied to any person who commits a customs offence. These are as follows:

- any person who commits minor violations (including inaccuracies and omissions when completing declarations) that have no impact on duties or taxes is subject to administrative fines of KHR 100,000 (approximately USD 25) to KHR 500,000 (approximately USD 125);
- any person who commits violations of provisions that involve the evasion of duty or taxes where the goods are not prohibited or restricted, is subject to administrative fines of between one and three times the duty and tax evaded, and to a judicial penalty of confiscation of the goods or imprisonment for one month to one year;
- any person who obstructs or impedes a customs officer is subject to administrative fines of KHR 1 million (approximately USD 250) to KHR 5 million (approximately USD 1,250) or a judicial penalty of imprisonment for one to six months or both; and
- where a violation involves goods that are prohibited or restricted under the provisions of Article 8 of the LOC, the offender will be subject to an administrative fine of up to three times the value of the goods or conveyance and other things used to conceal smuggled goods or imprisonment for one to five years, or both.

#### **14.16 Customs Advance Ruling**

The Customs Advance Ruling can be obtained from the GDCE for the three following topics, (i) Tariff Classification, (ii) the Origin of Goods and (iii) the interpretation and application of the Law on Customs and regulations in respect to the customs valuation.

The GDCE will take at least 30 working days to issue an Advance Ruling for tariff classification. An advance ruling request is restricted to individual goods (one HS code), or individual import transaction. The Customs Advance Ruling will be issued by the GDCE with a full explanation of the reasons for the ruling on tariff classification and origin of the goods within 30 working days, and the ruling on customs valuation within 90 working days, from the receipt of all complete necessary required document and information.

#### 14.17 Changes to Customs Duty calculation

The General Department of Customs issued Notification 11825, dated 18 December 2017, on Modification of the procedure for determining Specific Tax and Value Added Tax on Imported Goods.

This Notification amends the formula by which a Cambodian importer must calculate the Specific Tax (also known as Excise Tax) or VAT where they have benefited from a reduced Import Duty rate on goods imported into Cambodia under an FTA.

Before the introduction of Notification 11825, the tax base on which an importer would calculate the Specific Tax included the value of the imported goods (cost, insurance, and freight, or “CIF”) plus the value of Import Duty imposed, excluding VAT.

Consequently, if an importer were to take advantage of a reduced Import Duty rate under an FTA, this would also impact the calculation of the Specific Tax.

Under Notification 11825 however, an importer benefitting from a reduced Import Duty rate under an FTA must now use the standard Import Duty rate (which would have applied in the absence of an FTA) when calculating Specific Tax and VAT.

#### 14.18 National Single Window

In July 2019 the MEF last week launched the National Single Window (“NSW”) aiming to facilitate import and export activities.

According to a statement dated 25 June, NSW is a facility that allows parties involved in trade and transport to lodge standardized information and documents with a single entry point to fulfill all import, export, and transit-related regulatory requirements.

Authorized agencies are allowed to register for information submitted electronically and individual data elements will only be submitted once, the statement read.

The GDCE will manage the planning, development, and implementation of the NSW in accordance with the government’s policy and directions, the implementation plan of the AEC 2015, and the ASEAN Single Window (“ASW”).

The ATIGA e-Form D, the certificate of origin for exports and imports used within ASEAN can be issued via the NSW. Its objective is to expedite the cargo clearance process, reduce costs, save time, and enhance trade efficiency and competitiveness among ASEAN members through the ASW.

The ASW for customs clearance connects and integrates the National Single Windows of ASEAN member states to expedite the electronic exchange of customs data.



## Chapter 15

# IMMIGRATION AND NATURALIZATION





# Chapter 15

## Immigration and Naturalization

### 15.1 Visas

Foreigners wishing to enter Cambodia may apply for a visa at a Cambodian embassy or consulate outside the country. There are various categories of non-immigrant visas, as follows:

- Diplomatic Visa (Category A);
- Official Visa (Category B);
- Courtesy Visa (Category C);
- Transit Visa (Category D);
- Ordinary Visa (commonly referred to as a “Business Visa” or Category E);
- Long Term Ordinary Visa (Category E1, E2 and E3);
- Special Visa (Category K);
- ACMECS Visa (Category KHM);
- Tourist Visa (Category T); and
- Long Term Tourist Visa (Category T1, T2, and T3).

The Ordinary Visa is the visa that most businesspeople use to enter Cambodia.

Tourist Visas and Ordinary Visas may be issued at most Cambodian ports of entry, including the international airports. However, Diplomatic and Official visas must be obtained through the Ministry of Foreign Affairs and International Cooperation (“**MOFA**”), via a Cambodian embassy outside the country.

Extensions of non-tourist visas are possible upon application to the appropriate department of the Ministry of Interior or to the MOFA for United Nations staff and those employed by humanitarian organizations.

Extensions can be obtained for most categories of visas for up to one year. Repeated extensions are permitted for certain categories such as Ordinary Visas for businesspeople. For foreigners employed in Cambodia, the individual must present his/her work permit as issued by the MLVT, as well as proof of employment contract to receive a visa E extension, with multiple entries for up to one year.

The Cambodian Investment Board (“**CIB**”) has an office to assist investors in obtaining long-term Ordinary Visas for their employees. However, it is also possible to obtain the visa directly from the Ministry of Interior. The fee will vary depending on the length of the extension.

At present, it is not possible to obtain a long-term Ordinary Visa outside Cambodia as the required paperwork is only available in-country. The required documents include the work permit discussed in Chapter 16 (“**Labor and Employment**”), and employment contract as well as a health certificate issued by the Health Department of the MLVT. These requirements must be met regardless of whether the employee obtains a visa through the CIB office or from the Ministry of Interior.

The MOFA has launched an “e-Visa,” which enables foreigners to apply for a Cambodia Tourist Visa online. An e-Visa can be obtained by completing the online application form at [https://www.evisa.gov.kh/application\\_new](https://www.evisa.gov.kh/application_new) and paying by credit card. A person applying for an e-Visa must have a passport valid for more than six months at the time of entry, a recent passport-size photo in digital format and a valid credit card to pay the visa fee. Furthermore, the e-Visa system is only available for those applying for Tourist Visas. Applications for Ordinary Visas must go through the Ministry of Interior.

## 15.2 Official Fees for Visa Extensions

Tourist Visas are initially granted with three month validity with one month validity of stay for an official fee of USD 30. The official fee for extending a Tourist Visa is USD 30 for one time only with a validity period of one month.

Official Visas, Diplomatic Visas and Courtesy Visas are initially granted with three months' validity. Official Visas and Diplomatic Visas can be extended for one to twelve months or until mission termination at the latest. Courtesy Visas can be extended for one to twelve months. Extensions of Official Visas, Diplomatic Visas and Courtesy Visas are free of charge.

Transit Visas are initially granted with seven days' validity and cannot be extended except in cases of force majeure. The official fee is approximately USD 15.

Special Visas are granted to persons whose original nationality is Cambodian and who hold foreign travel documents. The validity period lasts until the expiry date of the passport.

Ordinary/Business Visas are initially granted with three months validity for an official fee of USD 35. The Ordinary/Business Visas holder can stay in Cambodia for one month. Ordinary/Business Visas can be extended for one month (single entry), three months (single entry), six months (multiple entry) and one year (multiple entry) at the Immigration Department of the Ministry of Interior.

## 15.3 Visa Exemptions

Countries	Type of Passport			Duration			
	PD (1)	PS (2)	PN (3)	PD (1)	PS (2)	PN	(3)
Brunei Darussalam	PD	PS	X	14 days	14 days	<b>14 days</b>	
Indonesia	PD	PS	PN	14 days	14 days	<b>30 days</b>	
Lao PDR	PD	PS	PN	30 days	30 days	<b>30 days</b>	
Malaysia	PD	PS	PN	30 days	30 days	<b>30 days</b>	
Myanmar	PD	PS	X	30 days	30 days	<b>14 days</b>	
Philippines	PD	PS	PN	30 days	30 days	<b>21 days</b>	
Singapore	PD	PS	PN	30 days	30 days	<b>30 days</b>	
Thailand	PD	PS	PN	30 days	30 days	<b>14 days</b>	
Vietnam	PD	PS	PN	30 days	30 days	<b>30 days</b>	

### Remarks:

\* (1) Passport Diplomatic (PD)

\* (2) Passport Service (PS)

\* (3) Passport Normal (PN)

Further Information for other countries is available at [www.evisa.gov.kh](http://www.evisa.gov.kh)

## 15.4 Cambodian Citizenship

Cambodian citizenship may be obtained through marriage to a Cambodian citizen or through a naturalization process whereby citizenship is granted by the state. The requirements for such naturalization are specified in the Nationality Law. In addition, sub-decrees detailing the specific procedures were issued in 2018.

Cambodian law recognizes dual citizenship, and therefore does not require a person to surrender his or her citizenship upon attaining citizenship of another state. A person may only “lose” their Cambodian citizenship if they decide to voluntarily surrender it.

The following chart lists the criteria required for a foreigner to become a Cambodian citizen:

Requirement	Possibility of Waiver
Good attitude and ethics, with a certificate issued by the municipal office where residing.	No possibility of waiver specified.
No criminal record.	Waiver specified.
Certificate of permanent residence for seven years (three if born in Cambodia).	Waived for certain investors and donors.
Resident in Cambodia while applying for naturalization.	Waived for certain donors.
Speaks and writes Khmer, knows Cambodian history, can “live peacefully” with Khmers and respect Cambodian traditions.	No possibility of waiver specified.
The physical and mental abilities of the applicant do not cause danger or encumbrance to the nation.	Waiver specified.

A foreigner investing from KHR 4 billion (about USD 1 million) or more can become a Cambodian citizen without satisfying the seven-year Cambodian residency requirement, but must still satisfy all other requirements and must have stayed in Cambodia at least 12 months. A foreigner who donates from KHR 12 billion (about USD 3 million) or more to the state budget can obtain Cambodian citizenship without satisfying either the seven-year residency requirement or the requirement that the applicant be resident at the time of applying for citizenship. He or she must nonetheless satisfy all other requirements.

## Chapter 16

# LABOR AND EMPLOYMENT



## Chapter 16

# Labor and Employment

The 1997 Labor Law (“**Labor Law**”) is the primary legislation governing all employment activities in Cambodia. It is enforced and implemented by the Ministry of Labor and Vocational Training/MLVT. Within the MLVT, there are specific Departments of Labor and Vocational Training (“**DLVT**”) for Phnom Penh and each province. The determination of whether a new enterprise is under the authority of the MLVT or DLVT is dependent upon its sector and location. Each and every newly established enterprise located in Phnom Penh and engaged in the nine listed sectors will fall under the jurisdiction of the MLVT. The nine sectors are: (1) garment, textile and footwear manufacturing; (2) industry; (3) offshore recruitment; (4) NGOs; (5) construction; (6) hotel; (7) banking; (8) aviation; and (9) maritime. All others sectors are under the jurisdiction of the DLVT. For the enterprises located outside of Phnom Penh, the responsible labor authority is the DLVT of the respective province where the enterprises are located in. Currently, the MLVT delegates some of its authority to municipal and provincial governors to sign, on behalf of the MLVT, documents relating to four public services that the DLVT are providing: (1) provision of work permit and employment card for Cambodians, (2) issuance of letter to recognize shop steward election, (3) registration and certification of formalities for enterprises/establishments and (4) permit for overtime.

The Labor Law replaced the 1992 Labor Law, and together with the 2016 Law on Trade Union, it strengthened employees’ rights to bargain collectively, form unions and strikes – which enables this law to meet certain international standards. By meeting international standards, the changes in the Labor Law also meet the requirements of the United States for granting MFN and GSP status. Although the current law contains significant changes from the 1992 Labor Law, it has retained some of the socialist-style provisions from the previous law.

The Labor Law is probably the most prescriptive law in force at this time in Cambodia. With an increasing awareness of employee rights and employee organizations such as trade unions, a working knowledge of the Labor Law and its practical application is essential for any commercial enterprise in Cambodia, regardless of the size of its workforce.

Foreign-owned companies have relatively unrestricted access to Cambodia’s labor force as there are essentially no restrictions on employing Cambodian laborers with proper documentation. However, certain restrictions do exist for employing foreigners. The MLVT and Ministry of Interior (“**MOI**”) have recently taken steps to more strictly enforce the laws concerning the employment of foreign nationals in Cambodia. Recently, the MLVT and MOI issued Joint Prakas 719 on Inspection of Foreign Workforce in the Kingdom of Cambodia dated 19 February 2018 to remind the owners of the enterprises, establishments, casinos and entertaining clubs as well as foreign nationals and investors who comes to do business/work in Cambodia to apply for foreign employee quota and work permits. Only the inspection team comprised of officials from the MLVT and MOI has the duty to conduct inspections on foreign employees at enterprises, establishments, casinos and entertainment clubs. Failure to comply with the foreign employee quota and work permit requirements could result in fines for each offence of up to USD 630 by the MLVT and/or up to USD 900 by a court. Furthermore, Chapters 5 and 6 of the Law on Immigration provide for a term of imprisonment for up to three months and/or deportation orders that may be issued to the foreign employees concerned.

### 16.1 Local Employees

Enterprises are required to apply for an employment card together employment identification card for each local employee. Employment cards for local employees are only issued once at the commencement of their employment at an enterprise. A local employee is required to undertake a health check and obtain a health certificate from the Labor Medical Department of the MLVT, one time upon the commencement of their employment at a new enterprise.

## Foreign Employees

The employment of foreign nationals is regulated by the Labor Law. Only foreigners satisfying the following conditions may be lawfully employed;

- hold a work permit issued by the MLVT;
- have entered Cambodia legally;
- have the right to reside in Cambodia;
- hold a valid passport;
- have a good reputation and be of good character;
- have the physical qualifications for the job; and
- have no contagious diseases.

Enterprises employing or intending to employ foreign employees are required to apply for a quota through the MLVT's online system. Under the quota system, a maximum of 10% of an employer's workforce may be foreign, comprised of; office employees (3%); skilled labor employees (6%); and unskilled labor (1%). This quota may be increased, at the discretion of the MLVT, if the enterprise requires employees with specific skills that are currently unavailable in Cambodia. All subsequent quota applications must be submitted by 30 November each year and upon receipt of approval.

After obtaining the quota approval, enterprises are required to apply for a work permit for each foreign employee via the MLVT online system. Regardless of when the work permit is issued by the MLVT/DLVT, it is only valid for one year, with validity up to 31 December in the year of issuance. Normally work permits for foreigners must be renewed on an annual basis. To extend the work permit, both the employer and each foreign employee must apply for an extension via the MLVT online system by 31 March of each year.

Employers are required to submit necessary documentation (including a written employment contract and work permit) in order for the MOI to issue long-term visas (Category E Regular Visas or commonly known as Business Visas) to foreign workers. There are no limitations on appointing foreign workers to higher-level positions. However, employers are restricted in the numbers of foreigners they employ in accordance with the quota approval discussed above.

## 16.2 Reporting Requirements

According to the Labor Law, enterprises must submit an opening declaration with the MLVT/DLVT before they commence operations. An exception applies to enterprises employing fewer than eight employees that do not use machinery – whereby such an enterprise may submit its declaration with the MLVT/DLVT within 30 days following the commencement of operations. The Labor Law does not provide any indication as to what constitutes 'commencement of operations', however, as a matter of practice, the MLVT or DLVT generally requires registration upon receipt of a patent tax certificate, issued upon completion of registration of an enterprise with the GDT (see the Tax section in Chapter 7 for further details).

Together with the declaration of the enterprise opening, the employer is also required to submit to the MLVT/DLVT a declaration of employees, establishment book and payroll ledger. With approval from the Labor inspector, an enterprise may decide to create a payroll ledger through a different method (including by electronic means) as long as it contains the same basic information as described in the relevant MLVT Prakas.

When hiring or terminating employees, enterprises are required to file a declaration of staff movement with the MLVT/DLVT within 15 calendar days after the date of hiring or termination of employment. For a Cambodian employee, the enterprise is required to record the commencement of employment and departure of the employee in the employee's employment card and obtain a stamp from the MLVT/DLVT within seven days of the employee's date of commencement or departure. For a foreign employee, the enterprise is required to de-register the employee from the MLVT's online system. Upon approval from the



MLVT/DLVT, the enterprise must maintain these documents at its place of business for inspection by the labor inspector.

Enterprises employing eight or more employees are required to hold elections for shop stewards (i.e. staff representatives) and submit the election minutes to the MLVT/DLVT within eight days following the date of election. The requirements for the number of shop stewards will vary depending upon the precise number of employees in the enterprise. The election procedures must be in accordance with the Labor Law and the Law on Trade Unions.

In addition, each enterprise with eight or more employees must establish “internal work rules” that address issues such as application procedures, salary information, leave policies, disciplinary matters, and the like. These internal rules must be consulted upon with shop stewards and approved by a labor inspector. The adoption of internal rules is an important procedure as it enables the employer to regulate in further details regarding working conditions including the suspension and termination of employment.

Furthermore, all enterprises employing more than 60 employees must train apprentices based on the follow quotas proportional to the enterprise’s total workforce;

- (1) 10% for enterprises that employ between 61 to 200 employees;
- (2) 8% for enterprises that employ between 201 to 500 employees; and
- (3) an additional 4% for every further 500 employees at enterprises that employ from 501 employees, provided that a maximum of 110 apprentices may be trained by an enterprise in one year.

The MLVT issued a notification in November 2015 to remind all enterprises employing more than 60 employees to conduct annual training of apprentices with the above percentage.

### 16.3 Employment Contracts

In Cambodia, employment is usually governed by a contract, although in some instances a letter of engagement may be used instead. Both written and oral employment contracts are valid under Cambodian law for Cambodian nationals although, problematically, the Labor Law does not expressly define labor contracts or the necessary terms, beyond stating that it is “a contract, which creates relations between the employee and the employer”. However, under the Civil Code, which became effective on 21 December 2011, employers will specify provisions on salary, working hours and conditions to employees in the employment contract. In the case of implementation contrary to the conditions stated in the contract, an employee may terminate an employment contract immediately.

Under the Labor Law, contracts may be of either unlimited duration (“UDC”) or fixed duration (“FDC”). The latter must specify in writing when the contract ends or it is redefined as a UDC. Similarly, an FDC may not be longer than two years. A UDC, however, can be made verbally or in writing containing no end date and with or without a clear starting date. There is no limitation of duration for a UDC. It is possible for new employees to undergo a probationary period, although this cannot exceed one month for non-specialized laborers, two months for specialized laborers and three months for general employees.

A UDC may be terminated by either party if proper notice is given, subject to a number of exceptions detailed in the Labor Law. The employer must have reasonable cause to terminate the contract. The Labor Law sets out various notice requirements based on the length of employment, ranging from seven days to three months. An employee terminated without prior notice is entitled to compensation equal to the wages and benefits that he or she would receive during the notice period as set out in the law. A dismissed employee, except due to serious misconduct, is entitled to seniority payments: (i) outstanding new seniority payment and (ii) outstanding back pay of seniority payments.

- (1) New seniority payments: upon termination of a UDC, the employer must provide seniority payment to the employees whose remaining seniority period is from one to six months. One seniority payment is equal to seven days of wages and other benefits.

- (2) Back pay of seniority payments for past seniority prior to 2019: upon termination of a UDC, the employer must provide the total amount of outstanding seniority payment back pay which was not been provided to the employee via the instalment payment every six months.

Under an FDC, the employee is entitled to severance pay of at least 5% of the total wages paid during the contract. The employee may also be entitled to additional compensation for unreasonable (“wrongful”) termination, if so decided by a court.

Collective layoffs are permissible due to a reduction in business or an internal reorganization. Labor inspectors must be consulted on collective layoff procedures and criteria used. The Labor Law specifies the order in which employees may be laid off.

Finally, an employee must be issued an employment certificate upon termination describing the nature of the work performed.

## 16.4 Seniority Payments

The Labor Law Amendment 2018 and subsequent regulations of the MLVT on seniority payments provide that employees under UDC are entitled to seniority payments (both new seniority payment and back pay) 15 days per year based on their seniority. Employees who work at least one month to six months are entitled to 7.5 days of seniority payments. The Labor Law Amendment 2018 and relevant regulations of the MLVT also outline the scope and procedures to provide installments of the seniority payments for employees under the UDCs (including the new seniority payments from 2019 onward and back pay for past seniority prior to 2019). The provision of new seniority payments for all sectors and back pay of seniority payments for those in the garment, footwear and textile sectors will be implemented from January 2019 onward. However, provision of back pay for sectors outside of the garment, footwear and textile sectors will be implemented in December 2021. The payment of seniority payments are as follows:

- (3) New seniority payments from 2019 onwards: from 2019, 7.5 days of wages and benefits paid every June, and 7.5 days of wages and benefits paid every December; and
- (4) Back pay of seniority payments for past seniority prior to 2019: (1) For garment, textile and footwear sectors from 2019, 30 days of total seniority payments per year: 15 days of seniority payments every June and 15 days of seniority payments every December; and (2) for other sectors from December 2021: six days of the total seniority payments per year: three days of seniority payments every June and three days of seniority payments every December.

## 16.5 Law on Trade Unions

The Law on Trade Unions dated 17 May 2016 (“**Law on Trade Unions**”) is intended to: (a) provide rights and freedom for enterprises, establishments and persons governed by the provisions of the Labor Law and persons serving in air and maritime transportation and (b) set out the organization and functioning of professional organizations of employees and employers. This law includes provisions related to, among other things, the establishment, operation, dissolution, rights and obligations and dispute resolution concerning professional organizations of employees and employers. This law also addresses provisions related to shop stewards, employee unions with the most representative status, termination procedures of specially protected employees and negotiation of collective bargaining agreements (“**CBA**”).

The Law on Trade Unions introduces significant changes relating to the eligibility of staff to be representatives when compared to the Labor Law. Under this Law, an employee who is 18 years old, has employment seniority of three months and is able to read and write Khmer (additional qualification) is eligible to seek a position as a shop steward. Shop stewards may be elected from among candidates nominated by a local union or from among employees who, while not members of a local union, volunteer to be candidates. Effectively, this requires that any enterprise employing eight or more employees must now arrange for an election of shop stewards after the enterprise has been in operation for three months.

In addition, the Law on Trade Unions indicates that an employees’ union has three levels (a local union, a union federation and a union confederation), whereas the employers’ association has two levels (employers’ association and employer federation). The threshold to form a union is at least ten employees

for a local union at the enterprise level. The employee can be a member of only one union at a time. The registration of these unions and associations is under the jurisdiction of the MLVT. One of the significant requirements for registration is that the bank account information of employees' union or employers' association must be provided to the MLVT within 45 days after the registration date.

This law requires representatives of local unions to seek and obtain approval from the employer before entering the enterprise to perform their union duties. The employer must not withhold approval unless such approval may hinder the normal operation of the enterprise. Union management and administrators duly dismissed continue to have the right to enter the enterprise temporarily, limited to 60 days from the date of dismissal. This post-dismissal right to enter does not apply where dismissal is for serious misconduct.

The mechanism and procedures for special protection against termination under the Labor Law and relevant regulations are incorporated into the Law on Trade Unions, such that shop steward candidates, elected shop stewards, union leader candidates and the elected union leaders are entitled to protection against termination of employment. Local unions are now required, in addition to submitting a list of individuals entitled to special protection to the employer, to file the same list with the MLVT.

Furthermore, in order to obtain the most representative status, a union must be duly registered and request the certification of the most representative status from the MLVT. A union can obtain the most representative status when: (1) the number of its members is more than 30% of total employees in the enterprise (if there is only one union in the enterprise); and (2) it gets the most support from other unions and such support is from 30% of total employees in the enterprise (if there is more than one union in the enterprise). In the event that the previous two conditions are not met, an election must be held to obtain supporting votes equal to at least 30% of total employees in the enterprise. If the most representative status of the union cannot be obtained, the negotiation of the CBA must be done by the Union Negotiation Committee and the employer, the procedures of which will be determined by further regulations from the MLVT.

This law also address additional obligations to the employer such as the obligation to maintain and update monthly employees' list in relation to employees' name, status of employment contract and employment level for immediate review in the case that a union requests for the certification of the most representative status and to maintain all records related to the deduction of employees salary to pay union contribution fees or service agent fees.

Failure to comply with the Law on Trade Unions will result in written warnings or fines of between KHR 5 million (approximately USD 1,250) to KHR 10 million (approximately USD 2,500). For instance, employers are prohibited from retaliating against whistleblowers who report or provide testimony about an enterprise's compliance with Labor regulations. A breach of this restriction may result in a fine of up to KHR 5 million (approximately USD 1,250).

## 16.6 Wages

No minimum wage has been established by law except in the garments, textiles and footwear manufacturing industries, where the minimum wage for probationary employees is USD 177 per month, and for regular employees is USD 182 per month, effective from 1 Jan 2019. The minimum wage is subject to change every year in accordance with Labor regulations issued by the MLVT. Workers in the textiles, garments, and footwear manufacturing sectors are also entitled to other mandatory benefits specific to these sectors only, such as attendance bonuses, seniority bonuses, travel and accommodation allowances, and overtime meal allowances. Other than the sectors mentioned above, there is currently no mandatory minimum wage for other sectors in Cambodia, even though the law on minimum wage has already adopted since July 2018.

For all other employers, the wage must ensure "a decent standard of living compatible with human dignity" but no further specificity is provided. Wages must be paid directly to the employee during working hours (unless he or she accepts another method), and a wage slip issued. If wage payment falls on a day off, arrangements should be made to pay it in advance.

## 16.7 Mandatory Employee Benefits

The terms of employment pertaining to compensation, maximum working hours, vacation leave, maternity leave, family leave, employee complaint processes, night and holiday work, medical care, and special rules governing child and women employees, are stipulated by law.

Maximum working hours are normally eight hours per day and 48 hours per week, although some variation in the number of hours worked is permitted by regulation under certain circumstances, provided that rules on the maximum number of hours that can be worked per day are enforced.

Overtime is compensated at 1.5 to two times the normal wage, depending on the time at which the overtime is worked.

Annual leave is set at one and a half days for each month of employment, resulting in 18 days of leave per year with an additional day for each additional three years of employment.

Employers are required to provide maternity leave of at least 90 days, during which the employee receives half salary if she has worked one continuous year or more for the enterprise.

Special leave to meet family needs (such as weddings, funerals, etc.) is set at a maximum of seven days per year. These leave days can be deducted from the employee's annual leave (if such is available) or can be compensated for by extra hours of work by the employee, which are paid at the normal rate.

Long term sick leave for illness certified by a qualified doctor is allowed for no more than six months but can be extended until there is a replacement for the sick employee. At the discretion of the employer, sick leave may be permitted and compensated for, under the conditions set in the enterprise's internal work rules.

Employers employing 100 or more women are required to set up a nursing room and a day-care centre within or near their establishment. If an employer does not provide a day-care centre, the employer is required to assist female employees with the fees for outside day-care centres for children aged 18 months or older.

## 16.8 The National Social Security Fund

In September 2002, the government promulgated the Law on Social Security ("**Social Security Law**") with the aim of establishing a new social security regime applicable to all employees to whom the provisions of the Labor Law apply. However, the system was only recently put into force. The National Social Security Fund ("**NSSF**") scheme covers three pillars: (a) occupational risk (work-related accident and occupational disease) insurance; (b) health insurance; and (c) retirement pension. The NSSF has implemented the occupational risk insurance scheme since 2008, followed by the recent implementation of health care insurance from 2016. The pension scheme has yet to be implemented, although it is expected to be placed in this 2019.

The occupational risk insurance scheme covers employees and workers in case of a work-related accident or illness caused by the occupation (both are considered "Labor risks"). The employer is required to provide the employee or worker with certain benefits, care, and treatment, depending on the circumstances. An accident is considered to be work-related, regardless of the cause, if it happens to an employee or worker in the workplace or during the direct commute to and from the workplace. If the victim requires hospital treatment, he or she must be sent to one of the listed, approved hospitals. Relevant Prakas have set out the procedure for registering enterprises and their employees with the NSSF and have determined the rate of contribution to be paid with respect to the work-related injury component of the scheme.

According to Prakas 448 on the Registration of Enterprises and their employees with the NSSF for persons governed by the Labor Law, employers or enterprise owners employing one or more employees are obliged to register their business and its local and foreign employees with the NSSF within 30 days from commencing commercial operations. The enterprise must pay a monthly contribution in an amount of 0.8% of an employee's monthly average wages for the contribution applied (ranging from USD 0.40 to USD 2.40

per month per employee) to the NSSF under the occupational risk scheme. The enterprise will, in return, obtain from the NSSF work-related insurance for its employees. Each registered enterprise must report to the NSSF on the number of employees before the 20<sup>th</sup> of every month.

Recently, Cambodia introduced a health care scheme, pursuant to the Law on Social Security Regime, applicable to persons governed by the Labor Law. The benefits of the health care scheme include preventive health service, treatment and medical care service, and daily allowance during work suspension resulting from disease treatment or accidents other than occupational risk and maternity leave. These benefits are applicable to persons covered by the provisions of the Labor Law including spouse and dependent children of workers who are members of the NSSF and NSSF members who are receiving annuity resulting from the permanent disability and survivors. The enterprise must pay a monthly contribution in an amount of 2.6% of an employee's monthly average wages for the contribution applied (ranging from USD 1.30 to USD 7.80 per month per employee) to the NSSF for the employees' health care insurance.

## 16.9 Workplace Safety

Employers are required to keep all work areas clean and safe, and ensure workers' health. They must comply with a number of specific regulations governing the workplace, including the number and standard of toilets, infirmary requirements, seating, lighting and the provision of hygienic drinks.

If there are any workplace accidents, including disease caused by performing work, either at the work site or in a direct commute between the home and work site, the employer is responsible for arranging and paying for all medical care. However, an employee who suffers a work-related accident is not entitled to compensation if the employee intentionally causes the accident. The employer is required to report all workplace accidents to the MLVT/DLVT to enable an investigation of the circumstances and take measures to prevent such accidents from recurring. Employees registered with the NSSF will be covered by the occupational risk insurance scheme under the NSSF policy as discussed above.

## 16.10 Dispute Resolution

The Labor Law categorises Labor disputes as either "rights disputes" or "interest disputes". Rights disputes relate to rights guaranteed by the Labor Law or other Labor regulations, employment contracts or collective bargaining agreements. Interest disputes involve disagreements over desired benefits and entitlements that are outside the scope provided for under the Labor Law, regulation or contract. The procedures for resolving Labor disputes depend on the type of dispute (rights or interest) and on whether the dispute is an individual dispute or a collective dispute.

If the conciliator cannot identify a satisfactory solution for the parties, and they do not have, or cannot find, any agreement on dispute settlement procedure, the Minister of the MLVT will refer the case to the Arbitration Council for its decision which is required to be made within 15 days. The Council's decision can be implemented immediately if no party appeals to the Minister of the MLVT within eight days. The employer must post a copy of the Arbitration Council's award in the workplace and the office of the local Labor inspectorate. Both the conciliation and arbitration services mentioned above are provided free of charge.

Employees are permitted to strike only when the three forms of dispute resolution (negotiation, conciliation, and arbitration) have failed. The strike may be conducted only after a secret ballot of the concerned employees and seven days' prior notice must be given. It is illegal to strike in order to revise a collective bargaining agreement or arbitral award that is still in effect. Furthermore, based on the Law on Trade Unions, a union is considered to be performing their duties improperly if it leads a strike or demonstration that contravenes the legal procedures. Unlawful strike is defined by the Law on Trade Unions as the strike that is still continued by the striker(s) after the decision by the Labor court as an unlawful strike. Notwithstanding, the employers are also prohibited from obstructing the employees by any means to participate in a lawful strike.

Although the Labor Law provides for the creation of Labor courts with jurisdiction over Labor matters, such specialized courts have not yet been established. Until their formation, the provincial and municipal courts must be used as a final forum for adjudication of Labor disputes and issuance of Labor rulings.

### 16.11 Employment of Disabled Persons

In August 2010, the government issued a Sub-Decree on Determination of Rates and Procedures for Selecting Disabled Persons for Employment. This Sub-Decree extends to apply to state ministries' institutions and legal persons, which are obliged to select and recruit disabled persons who are qualified and capable of performing functions, roles and responsibilities.

A legal entity/person with a total of 100 or more employees must have at least 1% (of the total workforce) as qualified disabled persons who are capable of carrying out the required functions and performing roles and responsibilities according to types of work defined by the MLVT/DLVT. Failure to do so will incur a contribution amounting to 40% of the monthly minimum wage for disabled workers to the Disabled Persons Foundation. The payment will be determined by the Ministry of Social Affairs, Veterans and Youth Rehabilitation ("**MOSAVYR**") upon request by the board of directors of the Disabled Persons Foundation.

Additionally, enterprises employing 100 or more workers are required to submit a written report to the MLVT and MOSAVYR in January each year on the total number of full-time employees and the rate of employment of disabled persons performing various types of work in the enterprise.

Despite the Sub-Decree above, we find no regulations defining the types of work deemed suitable for disabled persons or to determine the penalty contribution requirement issued by the MLVT and MOSAVYR.

Failure to comply with the requirement above may lead to a fine of KHR 100,000 to 1 million (approximately USD 25 to 250) being imposed (Article 54 of the Law on Protection and Promotion of the Rights of Disabled Persons dated 3 July 2009).



## Chapter 17

# INTELLECTUAL PROPERTY



## Chapter 17

# Intellectual Property

In acceding to the WTO, Cambodia has now integrated with a fully developed matrix of intellectual property rights regulations. Bringing Cambodia's legislative framework up to WTO standards will still take a number of years however. Numerous new laws and regulations require enactment, and, crucially, an enforcement regime with sufficient resources to oversee the proper implementation of the WTO's exacting standards must be implemented.

In this region, investors will find that protection and enforcement of their intellectual property rights is an area of their business that merits close attention, particularly with the rapid growth in awareness of both the public and private sectors for the need to protect their branding for the future development of both local and foreign-owned businesses.

*Watching Brief – Key Developments expected:*

- Law on Protection of Undisclosed Information;
- Sub-Decree Implementing Special Border Measures in the Trademark Law; and
- Sub-Decree Implementing the Copyright Law.

### 17.1 Trademarks

In February 2002, the Law Concerning Marks, Trade Names, and Acts of Unfair Competition (Trademark Law) entered into force, although registration of trademarks was possible prior to then. This section sets out the legal regime under this law as well as other related ministerial regulations and practices currently in effect.

The Trademark Law is quite comprehensive in its scope. It covers the protection of trademarks and service marks, when an objection to registration may be made, and the priority given to the application when there has been a previous registration in another country (amongst other things). The protection given to trademark owners is also defined, as well as their right to assign, transfer and license their trademarks. Civil remedies, as well as administrative remedies, are made available under the Trademark Law. Key provisions of the Cambodian trademark system under the Trademark Law are discussed below.

#### Registration Procedure and Rights Conferred by Registration

Applications to register a mark are filed with the Department of Intellectual Property of the MOC. The application to the MOC must be accompanied by samples of the mark to be registered as well as proof of ownership of the mark. The registration process is complete when a certificate of registration is issued to the applicant and is published in the Official Gazette of the MOC. The registration is valid for ten years. An affidavit of use is required during the fifth year of registration in order to keep the registration valid for the entire ten-year period. A registration can be opposed within 90 days of publication in the Official Gazette. An applicant outside of Cambodia must be represented by a trademark agent residing and practicing in Cambodia.

### 17.2 Cancellation and Removal

A registered mark that is not used for a continuous period of five years is subject to cancellation unless the applicant or owner submits an affidavit of use/non-use.

#### Licensing of Marks

A mark can be licensed to a user through the use of a license contract. Such a contract must be filed with the MOC for the license to be enforceable as to third parties.

## Infringement and Remedies

Infringement includes the use of a registered mark in Cambodia by an unauthorized person and the unauthorized use of a sign identical to, or confusingly similar to, the registered mark or a well-known mark not registered in Cambodia.

Counterfeit of a trademark, service mark, collective mark or trade name registered in the Kingdom of Cambodia under Trademark Law by another person shall be subject to imprisonment from one to five years, a fine of KHR 1 to 20 million, or both.

Imitation of a trademark, service mark, collective mark or trade name registered in the Kingdom of Cambodia under the Trademark Law by another person in order to mislead the public into believing that it is the trademark, service mark, collective mark or trade name of another enterprise shall be subject to imprisonment from one month to one year, a fine from KHR 5 to 10 million, or both.

## Border Measures

The owner of any registered mark may apply to the customs or competent authorities or the court, to suspend clearance of goods suspected of being counterfeit by proving ownership. The Trademark Law authorizes interested persons to consult the register of marks and obtain extracts from it. All registrations, renewals, refusals or removals of the mark are registered in the Official Gazette published by the MOC.

On 4 October 1996, Cambodia entered into an agreement with the United States known as the Agreement on Trade Relations and Intellectual Property Rights Protection. This agreement was ratified in early 1997 by Cambodia's National Assembly. In this agreement, Cambodia agreed, amongst other things, to become a member of the Berne Convention for the Protection of Literary and Artistic Works, to protect all works encompassed by that convention and to ensure adequate enforcement measures to protect intellectual property.

### 17.3 Patents, Utility Model Certificates, and Industrial Designs

The Law on Patents, Utility Model Certificates and Industrial Designs (Patent Law) was promulgated in January 2003. This important law has, as its primary objectives; the encouragement of innovation; scientific and technological research and development; the stimulation and promotion of increased internal and external commerce and investment; the promotion of the transfer of technology to Cambodia in order to facilitate industrial activity and the development of the economy; and the protection of industrial property rights and to combat the infringement thereof from illegal business practices.

#### Patents

A "patent" is the title granted to protect an invention, while an "invention" is an idea of an inventor that provides a novel, industrially-applicable solution to a special problem in the field of technology. A patentable invention is one that:

- is new;
- involves an inventive step; and
- is industrially applicable.

Non-patentable inventions include:

- discoveries, scientific theories, and mathematical methods;
- schemes, rules, or methods for doing business, performing, purely mental acts, or playing games;
- methods (but not products) for treatment of the human or animal body;
- certain pharmaceutical products; and
- plants and animals.

The inventor is entitled to the right to the patent. However, the Patent Law recognizes the right of the

employer, not the inventor, where an invention is made pursuant to the execution of an employment contract.

In order to have a new invention protected, the inventor must file an application for a patent with the Ministry of Industry and Handicrafts (“MIH”). The Ministry will issue a patent to the applicant following its examination of the application and the required documentation and information. The patent is valid for 20 years, subject to the payment of an annual fee, and can be assigned or licensed.

### Utility Model Certificates

A utility model certificate is granted to protect a utility model, being an invention that is new and industrially applicable and may be or may relate to a product or process.

The key difference between a patentable invention and one for which the inventor may apply for a utility model certificate is that a patentable invention must include an inventive step. In addition, a utility model certificate expires at the end of its seventh year of registration and cannot be renewed. The Patent Law authorizes a one-time conversion of an application for a patent to the application for a utility model certificate, and vice versa.

The Patent Law provides for international applications to obtain a national patent or utility model certificate. This has the effect that an application under the Patent Cooperation Treaty, designating Cambodia as the application country, will be treated as an application under the Patent Law. Therefore, the Cambodian registration office must comply with the regulations of that treaty and the provisions of the treaty shall apply in the event of conflict with applicable Cambodian law.

### Industrial Designs

An industrial design is any composition of lines or colors, any three-dimensioned form or any material that gives a special appearance to a product of industry or handicraft and which can serve as a pattern for a product of industry or handicraft.

A protectable industrial design must be new. This means that it must not have been disclosed to the public within the 12-month period immediately prior to the date of applying for protection of the industrial design. Nevertheless, the disclosure will not be taken into consideration if it was by a person or in consequence of acts committed by the applicant or his predecessor in title or of an abuse committed by a third party with regard to the applicant or his predecessor in title. The Patent Law refuses registration of any industrial design that is contrary to public order.

The application for registering an industrial design must be filed with the MIH. Documentation specifying the design must accompany the application.

The registration of a design is valid for five years and can be renewed twice. The use of the registered design by a person other than the registered owner requires the owner’s consent. Any breach of the registered design or protest against it, will be within the jurisdiction of the competent court.

### Implementation and Registration

The Patent Law provides for the MIH to establish a registration department to handle the granting and administration of patents, utility model certificates and registration of industrial designs. On 29 June 2006, the Ministry of Industry Mines and Energy (MIME – the former name of the MIH) passed regulations setting out the procedures for the granting of patents and utility model certificates and the procedures regarding the registration of industrial designs. These regulations describe in detail the procedures for applying and the required documentation accompanying the application. This is a significant advancement, as previously the MIME was not able to accept applications for the registration of these classes of intellectual property rights. The MIH (as the MIME is now called) is still in the process of issuing additional regulations to put the law into effect.

## 17.4 Copyright and Related Rights

The Law on Copyright and Related Rights (Copyright Law) was promulgated on 5 March 2003 and aims to help secure the rights of authors with respect to works and to protect the works of authors, performers, phonogram producers and broadcasting organizations to ensure a just and legitimate exploitation of such cultural products.

### Works Protected by Copyright Law

In order to gain protection under the Copyright Law, the work in question must fall into one of the following categories:

- works of authors who are Cambodian nationals or habitual residents;
- works first published in Cambodia;
- audio-visual works, the producer of which is headquartered in, or is a habitual resident of Cambodia;
- works of architecture erected in Cambodia, and other artistic works incorporated in a building or other structure located in Cambodia; and
- works to which Cambodia is obliged to grant protection under international treaties.

### Copyright

The author of a work shall enjoy an exclusive incorporeal property right in that work, which shall be enforceable against all persons. This right includes moral rights and economic rights. The moral right of the author is perpetual, cannot be forfeited, cannot be seized to meet an obligation, and may not be subject to prescription. However, an author of a copyright work may waive its moral rights and they may be transmitted upon death to the heirs of the author. In the case of no heir, this right will be subjected to the administration and governance of the Ministry of Culture and Fine Arts (“**MCFA**”).

Essentially, the moral rights of the author are:

- the exclusive right to decide the manner and timing of the disclosure of the work; and
- the right to oppose all forms of distortion or modification of the content of the work, which would be prejudicial to the author’s honor or reputation.

The protection of economic rights in a work commences from the date of creation and ends 50 years following the author’s death. Economic rights cover the following acts in relation to a work:

- translation or adaptation;
- rental, sale, and distribution to the public of the original or a copy;
- importation into Cambodia of reproductions; and
- public performance, public display, broadcasting or other communication to the public.

Equally important to note are the limitations on the owner’s rights, which allow use of the work in the following instances (among others):

- importation for personal use;
- use for the purpose of education that is not for financial gain; and
- analysis, short quotations, and citations.

Contracts, such as license agreements, in relation to exploitation of economic rights must be in writing to be valid.

Although works are automatically protected, the owners of copyrights may deposit their works at the MCFA. Upon payment of a registration fee, the MCFA will issue a certificate of registration for the registered

work. Please note that registration of a work protected by copyright is voluntary and is not required for enforcement of the right against infringement by a third party.

## **Related Rights**

In addition to the rights of authors, the Copyright Law also protects the rights of performers, phonogram producers, video producers and broadcasting organizations, covering the recording, reproduction, sale, rental and communication to the public of performances, phonograms, videos and broadcasts. In particular, the Copyright Law provides that use of a phonogram recording for broadcasting or public performance entitles the performer and the producer to a single payment from the user.

The duration of protection for the performer will be 50 years starting from the end of the calendar year in which the performance was recorded in the phonogram or in the absence of such recording, from the end of the year in which the performance took place.

## **17.5 Collective Management of Rights**

The authors of works and related rights-holders can establish a collective management organization (“CMO”) to manage their economic rights. The establishment of a CMO of broadcasting rights must be authorized by the Ministry of Information.

## **17.6 Disputes and Penal Provisions**

### **Civil Disputes**

Persons suffering a violation of their copyright or related rights have the right to file a petition to the court to prohibit or stop the violation. The defendant may be ordered to pay compensation of damages, to redress moral injury, or to return the disputed equipment or material, as well as to return any benefits deriving from the violation.

### **Copyright**

Infringement of production or reproduction in violation of the author’s copyright is an offense punishable by imprisonment from 6 to 12 months and/or a fine of KHR 5 to 25 million. Double the penalty is applied in the case of a repeated offense.

### **Related Rights**

Infringement of performance or broadcasting to the public is punishable by imprisonment from one to three months and/or a fine between KHR 1 to 5 million. If the offense is committed several times, punishment will be multiplied by the number of offenses. Double the penalty for the previous case is applied in the case of repeated offenses.

## **17.7 Application of International Treaties**

The provisions of any treaties in respect of copyright and related rights to which Cambodia is a party shall apply to matters dealt with by the Copyright Law. In the case of any conflict with provisions of the Copyright Law, the provisions of such international treaties will prevail.

## **17.8 New Plant Varieties**

A new plant variety is governed by the Law on Seed Management and Plant Breeders’ Rights (Plant Variety Law), promulgated on 13 May 2008. A new plant variety may be protected upon registration with the Department of Industrial Property of the MIH, in compliance with the following requirements;

- the variety is new, distinct, uniform, and stable;
- the applicant will file with the MIH an application for registration of the new seed, which will be technically evaluated by the MAFF; and



- the applicant will be a Cambodian resident (Khmer or foreign) or a citizen of a member state of the International Union for the Protection of New Varieties of Plants (“UPOV”) or in any state that has the principle of reciprocity with Cambodia on such registration.

A new plant variety, upon registration, may be protected for 20 years, extended to 25 years for liana and trees. The authorization of the holder of the plant variety right shall be required for:

- production or multiplication;
- conditioning for the purpose of propagation;
- offering for sale;
- selling or other marketing;
- exporting;
- importing; and
- stocking for the purposes mentioned in the aforementioned items.

The plant variety right may be assigned or licensed subject to conditions and limitations.

Plant variety rights shall not extend to acts which are; i) done privately and for non-commercial purposes; ii) done for experimental purposes; or iii) done for the purpose of developing new varieties. However, if a variety is regularly used to produce propagating material of another variety, the authorization of the holder of the plant variety right shall be required. Note that the management and commercialization of plant varieties shall be under the authority of the MAFF.

## 17.9 Geographical Indications

Since early 2009, the protection of Geographical Indications (“GIs”) was governed by the Prakas on the Procedures for Registration (of Geographical Indications) However, it was only in January 2014 that the law on the Geographical Indication of Goods (GI Law) was adopted which provides the framework for registration of a GI as well as the scope of protection.

### What Is a Geographical Indication?

A geographical indication refers to a name, symbol or any other sign or image which represents a geographical origin and can identify goods as originating from that area as having a particular quality, reputation or other characteristic which is essentially attributable to coming from that area.

### The Purpose of GI Protection

The purpose of GI protection is to protect the intellectual property rights of procedures, operators and consumers of GI products from goods that do not conform to applicable standards. GI protection also serves to preserve and strengthen knowledge, traditional know-how and national identity in order to create jobs in rural areas, to develop communities, to reduce poverty and to attract tourists.

### Scope of GI Protection

GIs may be protected and registered in relation to:

- agricultural goods;
- foodstuff;
- handicrafts; and
- other goods that are produced or transformed in Cambodia in compliance with the provisions of the GI Law.

The GI Law lists four main types of GI that are not allowed to be protected and registered in Cambodia which are:

- an indication that does not comply with the GI Law, the value of morality, good tradition and religion or the public order;
- an indication that confuses the public as to the quality, specification or geographical origin of the goods or the manufacturing process;
- an indication that has become a generic term; and
- an indication that is used as the name of a plant variety or animal breed.

## GI Registration

An application must be filed with the Department of Intellectual Property at the MOC. The applicant needs to submit a book of specifications, specifying the geographical area of the goods in question, production conditions and the qualification process for the particular goods for which GI protection is sought. According to the GI Law, both domestic and foreign GIs can be registered.

In reviewing the substance of the application, the Department of Intellectual Property may invite the applicant or any related person to provide additional explanations or evidence.

When a GI is registered at the Department of Intellectual Property, producers and/or operators whose practices comply with the book of specifications will be provided the absolute rights to use the GI.

Even before the introduction of the GI law, the processes for registration of a GI were in place and notable products already registered as GIs in Cambodia include Kampot Pepper and Palm Sugar from Kampong Speu Province.

## Validity, and Revocation or Cancellation Process for GIs

Once registered, a GI is protected indefinitely from the registration date (subject to any request for cancellation). Any interested person can make a request of revocation or cancellation of a GI to the MOC. A registered GI can be cancelled by the Department of Intellectual Property for many reasons listed in the GI Law, such as:

- the registered GI's rightful owner makes a cancellation request;
- the goods bearing the registered GI loses its special qualification (i.e. becomes generic);
- the GI's owner does not comply with the condition stated in the application;
- the GI's rightful owner does not comply with the law or any regulation governing GI; and
- the applicant fails to provide additional documents or information to the Department of Intellectual Property in response to the opposition procedure stated in the article 17 of the GI Law.

It is important to note that all provisions relating to Border Measures stipulated in the Law concerning Marks, Trade Names and Acts of Unfair Competition are applied to GI as well. Therefore, GI rights holders may prevent importation or exportation of infringing goods.

## 17.10 Layout Design of Integrated Circuits

The Prakas on Registration of a Layout Design of Integrated Circuits was issued on 16 March 2011.

### What Is Layout Design?

Layout design means a three-dimensional disposition of the elements, at least one of which is an active element and some or all of the interconnection of an integrated circuit or such a three-dimensional disposition are prepared for an integrated circuit intended for manufacture.

### What Is an Integrated Circuit?

An integrated circuit means a product, in its final form or an intermediate form, in which the elements, at least one of which is an active element, and some or all of the interconnections, are integrally formed in,

or on, a piece of material that is intended to perform an electronic function.

### **What Layout Design of an Integrated Circuit Shall Be Registered in Accordance with the Prakas?**

A layout design of an integrated circuit can only be registered if it is original. A layout design of an integrated circuit may be the subject of an application for registration only if the layout design of the integrated circuit has never been commercially exploited or has been commercially exploited anywhere in the world for a period not exceeding two years.

Furthermore, the following acts will be unlawful if performed without the authorization of the rights-holder, namely:

- reproducing, whether by incorporation in an integrated circuit or otherwise, the protected layout design in its entirety or any part thereof, save for the act of reproducing any part that does not comply with the requirement of originality under the Prakas; and
- importing, selling or otherwise distributing for commercial purposes, the protected integrated circuit layout design or an Article incorporating such an integrated circuit by any other persons other than the rights-holder.

### **Where and How Does the Applicant Register the Layout Design of An Integrated Circuit?**

An application for the registration of a layout design of an integrated circuit shall be made in writing and will be filed with the Department of Industrial Property of the MIH. The Department of Industrial Property will receive and examine the application form for registration and ensure the effective registration administration.

### **Rights of a Layout Design of an Integrated Circuit**

The right to a layout design of an integrated circuit is the right of the creator of that layout design of an integrated circuit. Such a right will be assignable or transferable by succession. Where several persons have jointly created a layout design, then such right shall belong to them jointly.

### **Validity and Cancellation of a Layout Design of an Integrated Circuit**

The protection of a layout design of an integrated circuit will be for a period of ten years, commencing from the date on which the protection starts. Any interested person may apply for the cancellation of registration of a layout design of an integrated circuit on the grounds that:

- the layout design of the integrated circuit is not protected under the Prakas;
- the rights-holder is not entitled to protection; or
- where a layout design of an integrated circuit has been commercially exploited anywhere in the world prior to the filing of the application for registration and the application thereof was not filed properly within the time limit as prescribed in the Prakas.

An application for cancellation of the registration of a layout design of an integrated circuit will be made in writing and be submitted to the registrar for review and approval. Where the grounds for cancellation are established with respect to only a part of the layout design of an integrated circuit, only the corresponding part of the registration will be cancelled.

## Chapter 18

# DISPUTE RESOLUTION



## Chapter 18

# Dispute Resolution

Like much of the Mekong region, Cambodia's system of dispute resolution has traditionally been based on conciliation and mediation rather than on adversarial conflict. Duties are often emphasized more than rights. Compromise solutions representing a balance between social duties and relationships, on one hand and legal rights on the other, are the norm, even where "right" and "wrong" are clear. This traditional approach to dispute resolution continues to have a significant influence on judicial dispute resolution in the courts of Cambodia, particularly in civil and domestic matters.

### 18.1 Structure of the Court System

At present, the judiciary consists of a number of courts of first instance located in each province and municipality, one Court of Appeal, and one Supreme Court. The Court of Appeal reviews both questions of law and fact, while the Supreme Court only hears questions of law, with some exceptions. A Constitutional Council which is not part of the judiciary has been established to decide the constitutionality of laws and regulations.

The Phnom Penh Municipal Court of First Instance is the court most frequently used by commercial litigants. This court is generally regarded as being overburdened and at times suffers from a lack of clerks, prosecutors, and magistrates with substantial knowledge and experience in adjudicating commercial matters. Other courts are similarly overburdened and understaffed.

The lower courts preside over all types of legal matters, including civil, criminal, insolvency and commercial disputes. A dissatisfied litigant may appeal a municipal court's decision to the Court of Appeal, which will review both questions of law and fact. A final appeal may be taken to the Supreme Court, but generally only on questions of law. The Supreme Court will review questions of both law and fact only in exceptional and rare circumstances. Such a rare circumstance may occur when the Supreme Court sends a case back to the Court of Appeal for further action and the ensuing decision of the Court of Appeal is subsequently re-appealed to the Supreme Court.

A significant development that has provided much greater certainty as to civil proceedings in the courts of Cambodia was the adoption of the Code of Civil Procedures on 6 July 2006. Amongst other things, the Code of Civil Procedures contains provisions for the recovery of certain legal costs incurred during litigation and provides greater certainty on the rules of evidence including specific provisions relating to oral and documentary evidence, expert evidence and the discovery of evidence prior to trial.

Significantly, the Code of Civil Procedures also provides for legal recognition of sales in execution, enabling successful litigants to proceed against the assets of another party in settlement of the disputed claim.

Furthermore, rules relating to appeals are more specifically addressed. The Code of Civil Procedures provides for appeals from judgments of the court of first instance (*uttor* appeal), appeals from decisions of an appellate court (*satuk* appeal) and appeals from court rulings (*chomtoah* appeal). Court rulings are distinguished from judgments in that they are made by courts without reference to oral argument. The Code of Civil Procedures remains a relatively new body of legislation and the courts have yet to fully implement and interpret all of its provisions. Nonetheless, it represents a significant step forward in the development of Cambodia's civil litigation procedures.

### 18.2 The Constitutional Council and Supreme Council of Magistracy

The Constitutional Council was established in April 1998 under the Law on the Organization and Functioning of the Constitutional Council. The main responsibilities of the Constitutional Council are to ensure respect for the constitution, interpret the constitution, determine whether laws and regulations comply with the constitution, review judicial rulings dealing with constitutional issues and rule on election-related issues.



The Supreme Council of Magistracy was established in December 1994 under the Law on the Organization and Execution of the Supreme Council of Magistracy. This body is established to guarantee the independence of the judiciary, to discipline judges and to ensure the proper functioning of the court system.

### 18.3 Mediation and Commercial Arbitration in Cambodia

Historically, the courts were the only judicial or quasi-judicial means available in Cambodia for the resolution of commercial disputes. Certain ministries will act as a mediator on a case-by-case basis, but such mediation lacks judicial authority and therefore execution, authority, and becomes binding only if accepted contractually by the disputing parties. Even when a ministry has the legal authority to mediate a dispute – such as the MLVT in individual employment disputes or the MLMUPC through different cadastral commissions in relation to unregistered land disputes – a party dissatisfied with the result may bring the matter to court.

The government is making gradual progress on establishing other judicial and quasi-judicial forums, specifically for the resolution of commercial disputes. A law currently in draft form would create a commercial court having jurisdiction over commercial disputes.

Significant recent progress has resulted in the successful launch of the National Commercial Arbitration Center of Cambodia (“**NCAC**”). The Commercial Arbitration Law adopted on 6 March 2006 mandated the establishment of the NCAC. The purpose of the Commercial Arbitration Law is to facilitate impartial and prompt resolution of economic disputes in accordance with the wishes of the parties.

Related to the Commercial Arbitration Law, a Sub-Decree on the organization and functioning of the NCAC was adopted on 12 August 2009, establishing a process for the selection of the first arbitrators, under the oversight of a special committee of the MOC with the technical and financial support of the International Finance Corporation, a member of the World Bank Group. In accordance with Article 54 of the above-mentioned sub-decree, the NCAC has become a self-governing institution and complements the country’s already-successful Arbitration Council, which hears collective Labor disputes (see Chapter 16 – Labor and Employment, for a discussion on employment dispute resolution).

The first group of arbitrators of the NCAC was initially selected in January 2013 and completed their initial training in 2014. The NCAC adopted its arbitration rules and internal working rules in July 2014 and its Code of Conduct of Arbitrators in April 2015. The NCAC arbitration rules are generally aligned with the arbitration rules of many well-known, reputable arbitration institutions. Under the NCAC arbitration rules, the parties to a commercial dispute are free to select their arbitrators, decide on the applicable law, determine the number of arbitrators, the language of the arbitration proceedings and decide whether the arbitration proceedings are to be conducted with or without a hearing.

The awards of the NCAC are final and binding, and may only be reopened for reasons of correction, amplification, interpretation or addition. The proceedings are confidential and closed to the public unless the parties agree otherwise. The arbitral tribunal may publish redacted versions of its awards unless a party objects.

With respect to fees, the NCAC Arbitration Rules set forth a registration fee, an arbitrator appointment fee which applies if the parties request the NCAC to appoint arbitrators rather than appointing the arbitrators themselves, an administration fee and a tribunal fee. The registration fee and arbitrator appointment fee are fixed amounts regardless of the amount in dispute, whereas the administration fee and tribunal fee are based on a sliding scale, depending on the amount in dispute.

In addition to institutional arbitration through the NCAC, the Commercial Arbitration Law formally recognizes ad hoc arbitration as a form of dispute resolution. It closely mirrors the UNCITRAL model law and makes specific provision for the enforcement of ad hoc arbitration awards by the courts.

As a non-judicial body independent of any governmental entity, the NCAC does not have enforcement authority. As such, in order to enforce an arbitral award, the non-prevailing party must cooperate in such enforcement or failing such cooperation, the prevailing party may seek a court order to recognize and enforce the award. See section 18.5 below for a discussion on enforcement of arbitral awards.



## 18.4 Foreign Arbitration

Cambodia is a signatory to the 1958 New York Convention on Recognition and Enforcement of Foreign Arbitral Awards (New York Convention). Under the New York Convention, generally, arbitral awards properly issued by reputable arbitral tribunals in jurisdictions which are also parties to the New York Convention can be enforced in Cambodia. Prior to 2014 however, there had not been a successful attempt to enforce a foreign arbitral award in Cambodia. In 2014, the Supreme Court of Cambodia confirmed a decision of the Cambodian Court of Appeal which ruled in favor of recognition and enforcement of an arbitral award administered by the Korean Commercial Arbitration Board (“KCAB”) of Seoul, South Korea.

## 18.5 Enforcement of Arbitral Awards

In the absence of enforcement of an arbitral award through voluntary cooperation of the non-prevailing party, a court order recognizing and enforcing an award is necessary. Article 353 of the Code of Civil Procedures provides the mechanism by which such a court order may be sought. For arbitral awards issued domestically by the NCAC or through ad-hoc arbitration, a party may file a motion with the court having territorial jurisdiction over the debtor, and if no court is determined to have such jurisdiction, then with the court of first instance having jurisdiction over the territory in which the property that is the object of the claim or that can be attached, is located. The Court of Appeal has sole jurisdiction over motions seeking recognition and enforcement of foreign arbitral awards.

A party seeking a court order to recognize and enforce an arbitral awards must submit a motion seeking the same along with an authenticated original arbitral award or certified copy thereof and the original arbitration agreement or a certified copy thereof.

Article 353, clauses (3) and (4) of the Code of Civil Procedures, which mirrors the relevant provision of the New York Convention, sets out the grounds upon which a court may deny a motion to recognize and enforce an arbitral award. Those grounds are:

- a party to the arbitration was under some incapacity;
- the party against whom the award is invoked was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings;
- the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration;
- the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties or not in accordance with the law where the arbitral proceedings took place;
- the award is not final;
- the subject matter of the dispute cannot be settled by arbitration; or
- recognition or enforcement of the award would be contrary to public policy.

## 18.6 Investor-State Arbitration under the ASEAN Comprehensive Investment Agreement

Globally, under investment law, arbitration is often considered the primary option for foreign investors wishing to pursue claims against a host state. Provisions on investor-state dispute settlement mechanisms are incorporated within most international investment treaties and bilateral investment agreements.

The ASEAN member states have adopted the ASEAN Comprehensive Investment Agreement (“ACIA”) as part of the region’s ASEAN Economic Community (“AEC”), with the goal of transforming ASEAN into a single market, highly competitive economic region and achieving regional economic integration by 2015. The ACIA offers a range of protections for entitled investments which are ensured by a number of obligations imposed on member states. These include the obligation to provide fair and equitable treatment, national and most-favored nation treatment as well as full protection and security and the obligation to offer protection from expropriation.

In order to benefit from the protections, set out in the ACIA, an investment must be a “Covered Investment” as defined in Article 4 (a) of the ACIA. Specifically, a Covered Investment is an investment made by an investor of one-member state in the territory of another member state which have been admitted to its laws, regulations, and national policies, and where applicable, specifically approved in writing by the competent authority of the member state.

To qualify as a “Covered Investment”, the investment must fall under the definition provided in Article 4 (c) of the ACIA which states; “every kind of asset, owned or controlled by an investor”, including but not limited to; movable and immovable property, shares, stocks, intellectual property rights and claims of money, etc.

ACIA benefits apply to investors from member states (including both natural and juridical persons) and extends its protection to investors from outside ASEAN who set up a juridical entity in any of the member states, provided, however, that such entity must carry out substantial business activities in the ASEAN member state. A juridical entity which is established in a member state but does not carry out substantial business activities in that member state, can be denied the protections of the ACIA in the event that such a juridical entity invests in another member state (Article 19 of the ACIA). Benefits of the ACIA can also be denied if the investor is a juridical person of a member state but is controlled by an investor of a non-member state. According to Article 19 (3) of the ACIA, “a juridical person is “controlled” by an investor if the investor has the power to name a majority of its directors or otherwise to legally direct its actions.” These measures exist to deter the use of mere shell companies and to deter “treaty shopping” which consists of the use of a treaty contrary to its object or purpose.

The ACIA requires parties to an investment dispute to try to resolve the dispute by consultation and negotiation, prior to initiating a claim whether under local courts or arbitration. If the dispute has not been resolved within 180 days of the receipt by the member state of a request for consultations, the investor may submit their claim under host state courts or under arbitration

Under the ACIA, an investor may submit a dispute against a member state to the International Center for Settlement of Investment Disputes Convention (“**ICSID Convention**”), or in accordance with the United Nations Commission on International Trade Law (“**UNCITRAL**”) Arbitration Rules, or with the Regional Center for Arbitration at Kuala Lumpur, or to any other arbitration institutions agreed to by the parties.

## Chapter 19

# ANTI - MONEY LAUNDERING



## Chapter 19

# Anti-Money Laundering

There are three major anti-money laundering (“**AML**”) legal instruments (one law and two Prakas) that are generally applicable to money laundering prevention and enforcement in Cambodia. Due to transparency issues in the process of law enforcement and the court system, no estimate can be made regarding the frequency of enforcement actions regarding money laundering. However, evidence of an increased focus on AML policies are indicated by the 2012 creation of the National Coordination Committee on Anti-Money Laundering and Combating the Financing of Terrorism. The key role of the committee is to ensure effective implementation of AML laws, including compliance with the international Financial Action Task Force on Money Laundering (“**FATF**”) recommendations, the Asia/Pacific Group on money laundering recommendations and all United Nations anti-money laundering initiatives. The Royal Cambodian Government has stated its continued commitment to preventing money laundering and AML laws continues to develop.

### 19.1. Law on Anti-Money Laundering and Combating Terrorism Financing (30 April 2007) (the “**AMLCTF**”)

The AMLCTF provides the legal framework for money laundering and terrorism financing prevention. The AMLCTF (as amended, the amendment is discussed further below) defines, for the purposes of law, the act of money laundering and creates obligations for “reporting entities” and their employees in Cambodia. “Reporting entities” broadly includes banks, financial services institutions, money exchange and remittance services, dealers of precious metals and stones, real estate companies, casinos and professional services including lawyers and accountants (reporting entities may be referred to as a “**company**” or “**companies**”). Reporting entities who engage in the following business activities are subject to the AMLCTF:

- buying and selling real estate;
- managing client money, securities, or other assets;
- managing bank accounts;
- organizing contributions of company capital;
- forming legal entities for the purpose of buying or selling other entities; or
- acting in trust or as a company preparing for or carrying out transactions for a client, specifically:
  - acting as a formation agent of legal persons;
  - acting as or arranging for another person to as a director, partner, or similar position for a legal entity;
  - providing a registered address for another legal entity;
  - acting or arranging another to act as a trustee; and
  - acting as or arranging another to act as a nominee shareholder for another person.

Some of the most important obligations created by the AMLCTF are:

- the board of directors of a company must establish internal controls to prevent money laundering which includes appointing one or more management-level compliance officers;
- each compliance officer is responsible for establishing policies and procedures, including creating a manual for employees, to prevent money laundering and terrorism financing and ensure that the staff act in a manner consistent with the policies;
- a company shall provide training to its staff on anti-money laundering and terrorism financing policies, procedures, suspicious activities, and relevant law;

- a company must adequately identify its customers, identify the nature of its business relationship, identify the beneficiary of such business, and conduct on-going due diligence related to the same;
- a company shall maintain records of its customers' identification and transactions for five years;
- a company has the responsibility to report to the CAFIU (defined below) suspicious transactions, any transaction conducted by persons identified by the United Nations Security Council, any transaction of USD 10,000 or more in cash, or a series of small transactions whose aggregate cash transfer is more than USD 10,000, among other situations requiring reports; and
- a company that cannot identify who the customer is, or the beneficial owner of the relevant account or transaction is, or otherwise suspects money laundering or terrorism financing shall not conduct such business with the customer.

The Cambodian Financial Intelligence Unit ("CAFIU") is the regulator of anti-money laundering activities and terrorism financing prevention in Cambodia. CAFIU is responsible for analysing information submitted to it and sending relevant information to law enforcement authorities. The National Coordination Committee on Anti-Money Laundering and Combating Financing Terrorism is a sub-group of CAFIU.

The amendment to the AMLCTF amends the definition of the criminal offence of money laundering, its associated penalties, offences for knowingly violating other obligations created by the AMLCTF and the penalties associated with such violations. Updated violations include knowingly failing to report large cash transactions and suspicious transactions and "tipping off," which is the disclosure of a reporting entities' obligation to report a transaction to an unauthorized person. Penalties include confiscation of property, imprisonment and fines.

## **19.2. The Prakas on Anti-Money Laundering and Combating the Financing of Terrorism (30 May 2008) and the Prakas on Anti-Money Laundering and Combating the Financing of Terrorism Relating to All Reporting Entities Not Regulated by the National Bank of Cambodia (21 December 2010)**

Together, the two above-mentioned Prakas cover "reporting entities" that are regulated by the National Bank of Cambodia ("NBC") (the 2008 Prakas) and those that are not regulated by the NBC (the 2010 Prakas). The two Prakas are substantially similar and clarify the policies and procedures that are required by the AMLCTF. Notably, the Prakas:

- impose specific requirements for conducting business with "politically exposed persons";
- require reporting entities to have information management systems in place;
- require reporting entities to have a policy manual which contains the reporting entities' procedures to comply with the law;
- specify the acceptable types of identification and the procedures for identifying individual and corporate customers. For corporate customers, this includes conducting a corporate search and other due diligence regarding the identification of the beneficiaries when conducting business with a corporate entity;
- require the company to ensure its corporate customers are not in the process of being dissolved or wound up; and

prohibit doing business with shell entities that engage in no commercial business of their own regardless of whether the shell entity has the legal capacity to enter into such a transaction.



## Chapter 20

# ACCOUNTING AND AUDITING





## Chapter 20

# Accounting and Auditing

This chapter will give investors an overview of various accounting and auditing requirements which are applicable in Cambodia.

### 20.1. Financial Statements

The National Accounting Council (“NAC”) of Cambodia has adopted International Financial Reporting Standards for Small and Medium-sized Entities (“**CIFRS for SMEs**”) and Cambodian International Financial Reporting Standards (“**CIFRS**”) issued by the International Accounting Standard Board (“**IASB**”) effective for Financial Statements with the period beginning on or after 1 January 2010 and 1 January 2012, respectively. With the exception of non-profit organizations, publicly accountable entities are required to adopt CIFRS and non-publicly accountable entities that meet the audit requirements below are required to adopt CIFRS for SMEs or opt to use CIFRS, if necessary. Non-profit organizations established in compliance with the Law on Associations and NGOs are required to adopt Cambodian Financial Reporting Standards for Non-Profit Organizations (“**CFRSNPO**”).

On 25 February 2016, the NAC of Cambodia, at the request of the National Bank of Cambodia and the Department of Financial Industry of the MEF, issued an announcement approving a postponement in implementing CIFRS until 2019 for banking and financial institutions and general insurance companies.

### 20.2. Laws on Accounting & Auditing

The Law on Accounting and Auditing sets forth certain accounting requirements which include but are not limited to the following:

- Enterprises and not-for-profit organizations are required to prepare financial statements within three months following the year-end.
- Financial statements form the basis to fulfill tax obligations.
- Accounting records must be maintained, and the underlying transactions must be supported by proper documentation.
- Accounting records and financial statements should be in the Khmer language and denominated in Khmer Riel, and a second set of accounting records and financial statements may be prepared in a foreign currency and in English if the entity carries out its activities with foreign entities.
- Enterprises and not-for-profit organizations must maintain their accounting records for a period of ten years.

### 20.3. Book Year

Generally, the tax and accounting year is the calendar year. The tax and accounting year end does not need to coincide with the calendar year, although any change must be approved.

### 20.4. Auditing Requirements

All enterprises that meet two of the three criteria set by Prakas no. 643 of the Ministry of Economy and Finance, must submit their annual financial statements to be audited by an independent auditor (see the illustration below). The audit is to be carried out by an auditor registered with the Kampuchea Institute of Certified Public Accountants and Auditors (“**KICPAA**”).

QIPs registered with the CDC, in accordance with the Law on Investment, must submit their annual Financial Statements to be audited by an independent auditor registered with the KICPAA.

For non-profit organizations, these must submit their annual Financial Statements to be audited and lodge financial reports with the NAC.

Auditing Requirements	
Annual Turnover	above KHR 3 billion (approximately USD 750,000)
Total Assets	above KHR 2 billion (approximately USD 500,000)
# of Employees	More than 100

## Annex A

### Negative List

(Annex 1 of Sub-Decree № 111 ANK/BK, dated September 27, 2005.)

#### Section 1

##### Investment Activities Prohibited by the Relevant Law and Sub-Decrees

1. Production or processing of psychotropic substances and narcotic substances.
2. Production of poisonous chemicals, agriculture pesticide/insecticide, and other goods by using chemical substances, prohibited by international regulations or the World Health Organization, that affect the public health and environment.
3. Processing and production of electricity by using any waste imported from a foreign country.
4. Forestry exploitation business prohibited by the Law on Forestry.
5. Investment activities prohibited by law. (abrogated by Sub-Decree 34 of RGC dated 23 April 2007)

#### Section 2

##### Investment Activities Ineligible for Incentives

1. All commercial activity, import, export, wholesale and retail, including duty free shops.
2. Any transportation services by waterway, by road, and by air, except investment in the railway sector.
3. Restaurants, karaoke parlors, bars, nightclubs, massage parlors and fitness centers located outside international-standard hotels. However, although they are located in an international-standard hotel, if the investor leases the above locations to a non-QIP third-party lessee to conduct business, such an investor will not be entitled to profit tax exemption that is granted to the investor under the Law on the Amendment to the Law on Investment.
4. Tourism service providers, tourism agents, tourism information and tourism advertising.
5. Casino and gambling businesses and services of any kind.
6. Currency and financial business and services, including banking, financial institutions, insurance companies, and all kinds of financial intermediation.
7. Activity related to newspapers and media, including radio, television, press, magazines, movies, video production or reproduction, theatre, studios and related activities.
8. Professional services.
9. Living modified organisms (LMOs) that cause danger to biodiversity, human health and the environment.
10. Production and processing of wood products using wood from natural forests, with a legal domestic-supplying source as raw materials.
11. Production of tobacco products.
12. Production of food products and beverages with investment capital less than USD 500,000.
13. Production of products for the textile industry with investment capital less than USD 500,000.
14. Production of garments, textiles, footwear or hats with investment capital less than USD 500,000.
15. Production of furniture and fixtures not using natural wood with investment capital less than USD 500,000.
16. Production of paper and paper products with investment capital less than USD 500,000.
17. Production of chemicals, cement, agricultural fertilizers or petrochemicals with investment capital less than USD 1 million.

18. Production of rubber products and plastic products with investment capital less than USD 500,000.
19. Production of leather products and other related products with investment capital less than USD 300,000.
20. Production of all kinds of metal products with investment capital less than USD 300,000.
21. Production of electrical and electronic appliances and office materials with investment capital less than USD 300,000.
22. Production of toys and sporting goods with investment capital less than USD 300,000.
23. Production of motor vehicles, parts, and accessories with investment capital less than USD 300,000.
24. Clean water supplies with investment capital less than USD 500,000.
25. Supporting industry, which has its 100 percent production supplying the export industry, with investment capital less than USD 100,000.
26. International trade exhibition centers and convention halls with investment capital less than USD 8 million.
27. Construction of modern markets or trade centers with investment capital less than USD 2 million, with a size less than 10,000 square meters and having inadequate space for car parking.
28. Production of animal feed with investment capital less than USD 200,000.
29. Production of ceramic products with investment capital less than USD 300,000.
30. Training and educational institutes that provide training for skills development, technology or poly technology, that serve the industrial, agricultural, tourism, infrastructural, environmental, engineering, and scientific sectors, and other services, with investment capital less than USD 4 million.
31. Hotels below three-star grade.
32. Tourism complex centers with hotels containing fewer than 100 rooms or tourist inns of fewer than thirty housing units and resorts of multiple services with a size less than ten hectare.
33. Natural tourism and the creation of natural tourism sites with a size less than 1,000 hectares with investment capital less than USD 1 million.
34. Resort complexes, including hotels, theme parks, sports facilities or zoos with a size less than fifty hectare.
35. Car parking.
36. Warehouse facilities.
37. Hospital-polyclinics having fewer than fifty patient beds with no modern equipment, laboratories, surgical operations, X-ray, emergency, pharmacy rooms, elevators (for up to three-story buildings), no ambulances, or morgue, with investment capital less than USD 1 million.
38. Production of modern medicines with investment capital less than USD 1 million.
39. Production of traditional medicines with investment capital less than USD 500,000.
40. Agricultural production.
  - a. Paddy farming on less than 1,000 hectares.
  - b. All kinds of cash crops on less than 500 hectares.
  - c. Vegetables on less than fifty hectares.
41. Livestock production.
  - a. Cattle husbandry of fewer than 1,000 head.
  - b. Dairy farms of fewer than 100 cows.
  - c. Poultry farms of fewer than 10,000 head.

42. Aquatic production.
  - a. Fresh water aquaculture farm less than 5 hectares.
  - b. Seawater aquaculture farms of less than 10 hectares.
43. Timber plantations, tree plantations and wild animal farms.
  - a. Timber plantations of less than 1,000 hectares.
  - b. Tree plantations of less than 200 hectares.
  - c. Wild mammal husbandry of fewer than 100 head.
  - d. Wild bird husbandry of fewer than 500 head.
  - e. Wild reptile husbandry of fewer than 1,000 head.
44. Freezing and processing of aquatic products and cereal and crop products for export.
  - a. Freezing and processing of aquatic products for export with investment capital less than USD 500,000.
  - b. Processing of any kind of cereal and crop products for export with investment capital less than USD 500,000.
45. Provision of value-added services of all kinds of telecommunications services.
46. Real estate development.

### **Section 3**

#### **Investment Activities with Specific Characteristics which shall be Eligible for Custom Duties Exemption, but not Eligible for Profit Tax Exemption**

1. Telecommunication basic services.
2. Exploration of gas, oil and all kinds of mining, including supply bases for gas and oil activities.

# Cambodia Firm Profile

DFDL established its office in Phnom Penh in January 1995, as the first officially authorized foreign investment advisory and tax firm in Cambodia. DFDL is licensed as an investment company by the Council for the Development of Cambodia and the Cambodian Investment Board. We are also registered as a private limited company with the Ministry of Commerce. Under these licenses and registrations, we are permitted to provide business consulting, investment and tax advisory services of an international nature.

On 1 March 2016, DFDL and Sarin & Associates joined forces and established a commercial association and cooperation in order to form a new business transactions platform to serve clients with interests in Cambodia and across the expanding ASEAN marketplace.

DFDL and Sarin & Associates have worked together for over ten years in Cambodia. Sarin & Associates has long been recognized for its outstanding legal advice, providing advice to companies in Cambodia in several sectors, such as telecommunication, energy, retail, real estate, financial services, banking, etc.

Our clients are major international and Asian foreign investors in Cambodia, including large foreign and Asian financial institutions. We have been involved in major projects in Cambodia including electricity projects, aviation, telecommunications, infrastructure projects and large real estate projects.

## Contacts:

### **GUILLAUME MASSIN**

Partner; Managing Director, Cambodia,  
Head of Regional Real Estate Practice Group, DFDL  
guillaume.massin@dfdl.com

### **CHRIS ROBINSON**

Partner; Deputy Managing Director, DFDL  
Head of the Cambodia Corporate and Commercial Practice Group  
chris.robinson@dfdl.com

### **CLINT O'CONNELL**

Partner; DFDL  
Head of the Cambodia Tax Practice Group  
clint.oconnell@dfdl.com

### **SOKHENG SAY**

Partner; DFDL  
Head of the Regional Accounting Advisory Practice Group  
sokheng.say@dfdl.com

### **DENORA SARIN J.D.**

Senior Partner; Sarin& Associates  
dsarin@sarinlaws.com, sarin.associates@gmail.com



# DFDL in the Region

## BANGLADESH

### **DFDL Bangladesh**

5th Floor, House #153,  
Road #11 Banani, Block – E  
Dhaka, Bangladesh  
Tel: +88 02 9862510  
Fax: +88 02 9862502  
Email: bangladesh@dfdl.com

## CAMBODIA\*

### **DFDL Cambodia**

*in commercial cooperation with Sarin & Associates*  
No 30, Norodom Boulevard  
4th Floor BRED Bank Building  
Sangkat Phsar Thmey 3  
Khan Daun Penh (PO Box 7)  
120203 Phnom Penh, Cambodia  
Tel: +855 23 210 400  
Fax: +855 23 214 053  
Email: cambodia@dfdl.com

## INDONESIA\*

### **DFDL Indonesia**

*in association with Mataram Partners*  
Treasury Tower, 11th Floor, Units A & B  
District 8, SCBD Lot. 28  
Jl. Jend. Sudirman Kav. 52-53  
Jakarta 12190, Indonesia  
Tel: +62 21 5010 5700  
Fax: +62 21 5010 5701  
Email: indonesia@dfdl.com

## LAO PDR

### **DFDL Lao PDR**

Unit 01, House 004 Phai Nam Road,  
Xieng Yeun Village, Chanthabouly  
District (PO Box 2920)  
Vientiane, Lao PDR  
Tel: +856 21 242 068  
Fax: +856 21 218 422  
Email: laos@dfdl.com

## MYANMAR

### **DFDL Yangon**

No 134/A, Than Lwin Road, Golden Valley Ward  
(1)  
Bahan Township (GPO Box 729)  
Yangon, Myanmar  
Tel: +95 1 526 180  
Fax: +95 1 548 835  
Email: myanmar@dfdl.com  
**DFDL Naypyidaw**  
Plot No. 18, Ottarathiri Hotel,  
Hotel Zone (2), Oattarathiri Township,  
Nay Pyi Taw, Myanmar  
Tel: +95-67-435031  
Mobile: +95-67-435038  
Email: myanmar@dfdl.com

## PHILIPPINES\*

### **Ocampo & Suralvo Law Offices**

6th Floor, Liberty Center,  
104 HV dela Costa St.,  
Salcedo Village, Makati City, Philippines  
Tel: 63 2 625 0765  
Fax: +63 2 625 0997  
Email: info@ocamposuralvo.com

## **SINGAPORE**

### ***DFDL Singapore***

39 Robinson Road,  
#20-03 Robinson Point  
Singapore 068911  
Tel: +65 6323 0580  
Fax: +65 6325 0585  
Email: singapore@dfdl.com

## **THAILAND**

### ***DFDL Bangkok***

No. 3, Rajanakarn Building, AA Floor, South  
Sathorn Road, Yannawa Sub-District, Sathorn  
District,  
Bangkok Metropolis, Thailand  
Tel: + 66 2059 4090  
Fax: + 66 2059 4090  
Email: thailand@dfdl.com

### ***DFDL Samui***

17/10 Moo 1, Bophut  
Koh Samui  
Suratthani, Thailand  
Tel: + 66 7796 0757  
Fax: + 66 7796 0757  
Email: samui@dfdl.com

## **VIETNAM**

### ***DFDL Hanoi***

9th floor, BIDV Tower 194 Tran Quang Khai Street  
Hanoi, Vietnam  
Tel: +84 24 3936 6411  
Fax: +84 24 3936 6413  
Email: hanoi@dfdl.com

### ***DFDL Ho Chi Minh City***

Unit 2, 19<sup>th</sup> Floor, Green Power Building  
35 Ton Duc Thang Street, District 1  
Ho Chi Minh City, Vietnam  
Tel: +84 8 3910 0072  
Fax: +84 8 3910 0073  
Email: hcmc@dfdl.com

## About DFDL

DFDL was established in 1994 and built on a unique vision: to create an integrated legal, tax and investment advisory firm, with in-depth knowledge of the jurisdictions we work in, providing technical excellence across our core areas of expertise.

Over twenty years later, DFDL continues to build on its reputation as the obvious first-choice firm for sophisticated transactions in frontier markets across Asia and beyond.

As these markets continue to expand and thrive, so has DFDL and we are now uniquely positioned to help clients access investment opportunities in the world's most dynamic region.

With a diverse complement of over 140 local and foreign lawyers and advisers working within Asia, we provide versatile tax and legal services in a language that you understand. These services include:

- Banking, Finance and Technology
- Compliance and Investigations
- Corporate, Mergers and Acquisitions
- Employment and Labor
- Energy, Mining and Infrastructure
- Real Estate and Construction
- Taxation and Accounting

Since its foundation, DFDL has acquired an outstanding reputation for providing integrated and solution-oriented legal and tax services to establish, structure and protect our clients' business interests in dynamic and challenging markets. DFDL is also actively involved in developing the legal and regulatory environments of the frontier markets in which we operate.



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