

REAL ESTATE
IN CAMBODIA

2025

Table of Contents

1.	Introduction	3
2.	Real Property Rights	5
:	2.1 Type of Land Use Rights	5
;	2.2 Family Land Privatization Scheme	7
;	2.3 State Land	7
:	2.4 Commercial/Industrial	7
:	2.5 Residential/Condominium	8
:	2.6 Agriculture	9
;	2.7 Leases	10
;	2.8 Foreign Ownership Restrictions	11
3.	Acquisition of Ownership	14
:	3.1 Perfecting Ownership	14
	3.2 Asset Acquisitions	15
4.	Zoning and Planning Permissions	17
	4.1 Land Use Zoning	17
	4.2 Environmental Code	19
	4.3 Real Estate Development License	21
	4.4 Real Estate Services Licensing	24
5.	Construction	26
!	5.1 Legal Framework	26
!	5.2 Construction Authorization Documents	27
!	5.3 Licensing Requirements	29
!	5.4 The Special Program to Promote Investment in Preah Sihanouk Province 2024	32
6.	Hospitality	34
(6.1 The Law on Tourism	34
(6.2 Required Licenses and Registration	36
7.	Tax	40
•	7.1 Transfer Tax	40
	7.2 Tax on Immovable Property (TIM)	41
	7.3 Tax on Unused Land (TUL)	43
	7.4 Immovable Property Rental Tax	43
	7.5 Tax on Capital Gains	44
8.	REIT (Real Estate Investment Trust)	47
9.	Real Estate Finance	49



CHAPTER 1

1. Introduction

Cambodia, a Southeast Asian gem, continues to captivate investors with its dynamic real estate market. As the country's economy steadily grows, fueled by robust tourism and government investments, the real estate sector presents a wealth of opportunities.

A key driver of Cambodia's economic growth is its favorable position in the ASEAN region. The country is ranked third in terms of GDP growth for 2024, behind Vietnam and India. With a projected GDP growth of 5.8% in 2024, Cambodia positions itself as a regional economic powerhouse. The government's commitment to streamlining regulations, such as the digital land registration platform and updated tax policies, has further enhanced the investment climate.

While the construction sector has experienced a temporary slowdown, the real estate market remains resilient across various segments. The condominium market is thriving, with a surge in high-end developments catering to both local and international buyers. The industrial sector is also expanding, driven by the growth of special economic zones and the country's increasing appeal as a manufacturing and logistics hub.

This comprehensive guide delves into the intricacies of Cambodia's real estate landscape, providing valuable insights into property rights, acquisition processes, zoning regulations, construction procedures, tax implications, and financing options. Whether you're an experienced investor or a newcomer to the market, this guide will empower you to make informed decisions and seize the opportunities that Cambodia's thriving real estate sector offers.





CHAPTER 2

2. Real Property Rights

2.1 Type of Land Use Rights

Cambodia is a developing market with a young population, rich in land, and a growing middle class, and it holds significant opportunities for investment and development of the real estate market. Land may be privately owned and state-owned. Private land may be owned in perpetuity by Cambodian individuals or Cambodian registered entities without restrictions. Land is protected from expropriation by the Constitution and the Land Law dated 30 August 2001 ("2001 Land Law"), which only permits expropriation of land when in the "public interest" and if such expropriation is "fair" and "just compensation" is given to the owner in advance.

The Law on Expropriation 2010 provided Cambodia's first regulatory framework for the 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.

Nearly all investments in Cambodia involve investment in immovable property of some sort. For foreign investors, land investments are usually in the form of: (i) a long-term lease (also known as a perpetual lease with a duration of 15 years to 50 years), (ii) a minority interest (up to 49%) in a Cambodian company that owns land, coupled with secured lending using land as collateral, (iii) by trust arrangement pursuant to the current development of trust regulations and (iv) an economic land concession granted by the government.

The Law on the Provision of Ownership Rights over Private Units of Co-Owned Buildings to Foreigners on 24 May 2010 ("Foreign Ownership Law") allows foreign 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 not on the ground level or below.

2.1.1 Current Land-Ownership Situation in Cambodia

Cambodia's current system and rules for land registration, titling, ownership, and transfer of land are in a state of transition.

The 2001 Land Law as amended by the Law on Implementation of the Civil Code dated 31 May 2011, Inter-Ministerial Prakas No. 30 concerning Real Rights Registration Procedure Pertaining to the Civil Code issued by the Ministry of Land Management, Urban Planning and Construction and the Ministry of Justice where all the articles of which came into force on 29 July 2013 ("Joint Prakas 30") and various regulations set procedures in place for the transfer and registration of land in Cambodia.

Official certificates of title that evidence ownership of immovable property is currently available, with the number of landowners in Phnom Penh and other urban centers and provinces who have obtained such titles continually increasing. Landowners can obtain a certificate of title through either sporadic registration or systematic registration conducted by the Municipal or Provincial Departments of Land Management Urban Planning Construction

and Cadastral ("DLMUPC"). The MLMUPC has also introduced a new format for certificates of title, which contains a QR code that can be used to access the information on the certificate of title, including the registered owner encumbrances. Similarly, the MLMUPC has introduced new online access to the certificate of cadastral called service (https://mlmupc.gov.kh/electronic-cadastralservices/). This platform provides easy access to the title information, including the registered owner and encumbrances.

According to the July 2023 Report of MLMUPC, dated 10 August 2023, there are 1,821 visitors having access to the QR code of certificates of title containing the QR code.

Before an investor deposits any money toward the purchase of land, such an investor 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.

2.1.2 Land Ownership Reform

The status of private immovable property ownership in Cambodia has been as tumultuous as Cambodia's modern history. Before 1975, private landownership 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 communist-style ownership structure was put in place, with the state as the owner of all immovable properties. During this period, the 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 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 ("**State**") for various population control purposes, and which named the family and its address.

In 1989, the State promulgated and implemented a number of legal measures aimed at facilitating the transfer of state land into private land. 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.

2.2 Family Land Privatization Scheme

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 a valid title to be passed on, the signature of both husband and wife, as well as those of all their children aged 18 years or older, is mandatory on all transfer documents. Innumerable land cases have ended up in court because this rule has often not been followed.

2.3 State Land

The new Law on Management, Use and Disposal of State Property ("State Property Law") dated 12 November 2020. This State Property Law was issued pursuant to Article 58 of the 1993 Constitution which stipulates that "state property includes land, underground, mountains, seas, seabed, undersea, under-seabed, beach, air spaces, islands, rivers, creek, lakes, tributaries, forests, natural resources, economic and cultural centers, national defense bases and other buildings as determined as state-owned properties. The management, use and disposal of the state-owned properties is determined by Cambodian law.

Under the State Property Law, property belonging to the State is classified either as state public property (public property of the state), public property of a public entity, and state private property (private property of the state).

2.4 Commercial/Industrial

The land in Cambodia can be developed for a commercial/industrial zone depending on its location. The investor may invest in an industrial zone or special economic zone ("SEZ") for multiple purposes with special treatment or incentives from the government. The foreign investor may lease the land from a private owner, or the government based on the location and status of the land for the establishment of a SEZ. Alternatively, the foreign investor can set up a landholding company (in which at least 51% of the voting shares are Cambodian-owned and 49% of the shares are owned by a foreigner) to acquire the ownership of land for the establishment of SEZ.

The legal framework for SEZs is now governed by Sub-Decree No. 148 on Establishment and Management of Special Economic Zones dated 29 December 2005 ("SEZ Sub-Decree"), followed by the amendment to this SEZ Sub-Decree by Sub Decree No. 18 on Amendment of Article 4 (4.1 and 4.3) of this SEZ Sub-Decree, dated 22 February 2008. The SEZ Sub-Decree sets out the procedures and provisions related to the establishment and management of SEZs in Cambodia. It provides for two types of SEZ: general industrial zones and export processing zones (wholly dedicated to exports).

All SEZs must be approved for establishment by the Council for the Development of Cambodia ("CDC"). Below are the basic terms for SEZs which are detailed in the SEZ Sub-Decree:

- must be 50 hectares of land or more in size;
- must be fenced on all sides:
- anti-flooding systems, 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 waste, environmental protection measures and other related infrastructure must be provided. 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 under the New Investment Law and other regulations. The registration procedures are detailed in the SEZ Sub-Decree.

According to the CDC, as of November 2024, there are 49 SEZs and 26 are under operation in Cambodia with 782 total investment projects a total investment capital of USD 10,002,777,256 and creating more than 180,000 jobs in the SEZs.

2.5 Residential/Condominium

There is a general restriction that land in Cambodia cannot be owned by foreigners (regardless of whether they are corporate entities or individuals).

An exception now exists for co-owned buildings pursuant to the Provision of Ownership Rights over Private Units of Co-Owned Buildings to Foreigners on 24 May 2010 ("Foreign Ownership Law") and Sub-Decree No. 82 on the Determination of the Proportion and Methods for Calculating Private Units that Can Be Owned by Foreigners in Co-Owned Buildings ("Sub Decree 82"). Under these laws, foreigners may own up to 70% of total surface area of all private units in coowned buildings or condominiums, excluding ground and underground floors. It should be noted that specific formalities have to be adhered to in order for foreigners to successfully register co-ownership titles. The aforementioned regulations apply to both newly constructed coowned buildings and existing buildings to be converted into co-owned buildings.

In addition to the development of co-owned buildings, residential allotments such as gated

communities are referred to as "Boreys" in Cambodia.

MLMUPC is the authority in charge of the registration and issuance of the Borey's land lot ownership certificates. Sub-Decree 39 on Management of Borey dated 10 March 2011 ("**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.

Following the applicable regulations management and use of co-owned buildings and due to the absence of specific regulations on registration of private units of co-owned buildings constructed before 1997, the Royal Government of Cambodia through the MLMUPC issued a new Prakas No. 050 dated 19 July 2024 the Procedures and Formalities for Registration of Private Units of Co-Owned Buildings Constructed before 19 December 1997 ("Prakas 050"). This Prakas aimed to ensure the protection of the legal rights of private unit owners of co-owned buildings constructed before 1997 and sets out procedures and formalities to register those private units.

Note that the Prakas 050 specifically applies to any private units of co-owned buildings that were constructed before 19 December 1997 only ("Scope of Application"). However, for any private units of co-owned buildings that were constructed after this Scope of Application, other applicable regulations on management and use of co-owned buildings and land registration system remain applicable.

Owners of private units of co-owned buildings must submit several documents as required by the MLMUPC, including among others as required from time to time by the MLMUPC:

- One original of the registration application form (standardized template by the MLMUPC with full complete information and proper execution);
- Two copies of identification documents of the owners such as ID card for Cambodians and passport for foreigners;

- Two copies of documents confirming the legal possession or ownership of the private units such as the existing current certificate of title, form of ownership transfer issued by the relevant local authorities; and
- Original payment receipt of the public official fees will be determined by a joint Prakas of the MLMUPC and the Ministry of Economy and Finance ("MEF").

The procedure is more straightforward compared to registration of other types of immovable properties. Unlike other co-owned buildings that were constructed after the Scope of Application, the Prakas 050 does not require submission of additional documents required by the previous regulations, such as construction related permits, architectural drawings and internal rules of the co-owned building.

Even that said, the Prakas 050 does not clearly stipulate the circumstances or criteria the MLMUPC is entitled to reject the application/approval. In practice, more detailed required documents/information would be required by the MLMUPC to complete their review process.

In terms of execution, the private unit owners must affix their blue right thumbprints and/or blue signatures on the application form directly. In case the owner is a corporate entity, the application form must be executed by its authorized corporate representative evidenced by a standardized power of attorney ("**POA**") or a board resolution properly signed per the procedure indicated in its articles of incorporation) and affixed with the corporate seal. This applies to other types of applicants being corporate entities. However, the POA is not required for the applicant to be the sole proprietor.

Prakas 050 also makes clear that the procedures for systematic land registration under Sub-Decree No. 46 dated 31 May 2002, and its subsequent Sub-Decrees will apply the same to the private units' registration under this Scope of Application. However, for private units of co-owned buildings

constructed before the Scope of Application but have not been registered through the land systematic registration process, they may be registered based on additional sporadic registration process in accordance with their respective applicable regulations.

This mechanism allows individual owners to register their private units independently without requiring all owners of the co-owned building to register all units simultaneously.

The owners of the private units of the co-owned building must provide the original current certificates of title or other proof of legal possession or ownership of their private units to the cadastral administration to exchange them for new certificates of title for such private units.

2.6 Agriculture

Investors may consider investment in agricultural land by way of an economic land concession ("**ELC**") granted by the Cambodian government.

State land may be subject to concessions, including an economic land concession and a social land concession. According to Article 52 of the State Property Law, ELC involves the use of state private land pursuant to a contract where the land is used by the concessionaire in order to pursue agricultural and agro-industrial activities. A social land concession is, however, a form of legal transfer regarding state private land for social purposes in order to provide aid to the poor who have no land for residential and farming purposes.

The term of ELC must not exceed 50 years. The size of ELC must not exceed 10,000 hectares. A person may receive a land concession spread over various locations. The granted ELC covering various locations with a total area exceeding 10,000 hectares to various individuals and/or legal entities that are under the control of the same individual or entity is prohibited.

The concessionaire shall not be granted ownership rights over land that is subject to ELC unless the land also qualifies as a social land concession. ELC may be subject to succession for its remaining term.

The concessionaire shall be liable for the land area granted under the concession agreement and be responsible before the law for any loss or degradation of any part of the land area mentioned in the agreement.

The rules and procedures for economic and social land concessions are to be determined by Sub-Decree. As noted above, investors may have interests in state private property through economic concessions.

For foreign investors (particularly those with businesses that might involve so-called protected land) it is important to understand the different types of protected land and know which is the competent authority that manages the various categories of land in Cambodia.

2.7 Leases

2.7.1 Perpetual Leases

A perpetual lease is a lease with a minimum duration of 15 years and a maximum of 50 years and is renewable (see Article 244 and Article 247, Civil Code). A perpetual lease may include the rights to sub-lease or transfer/assign the lease rights to another party with or without consideration, including without limitation the successors or heirs of the lessee. A perpetual lease can also be used as security for financing.

A perpetual lease is not enforceable against third parties unless it is registered with the relevant MLMUPC (Article 246 of the Civil Code). Registration results in the lease being enforceable to third parties and ensures that any acquirer of the leased property would be aware of the lease as it would be noted on the land certificate of title.

Upon registration of a perpetual lease, a certificate of perpetual lease is issued by the relevant land office to the lessee. A perpetual lease agreement must be executed in Khmer (signed and thumb-printed and sealed with a corporate stamp if any party to the lease is a corporate entity), in the presence of a district official or a Cambodian notary. A perpetual lease must be registered with the relevant land office in order for it to be upheld against third parties. A perpetual lease can only be registered on a

certificate of title (hard title). The perpetual lease certificate can be subject to hypothec registration for any financing purposes.

2.7.2 Lease of State Immovable Property

A state-private immovable property may be subject to a lease through a written agreement for a maximum term of 50 years. The term of any lease agreement involving a state private property with a term exceeding 50 years shall be reduced according to the Civil Code Implementation Law. A lease agreement of state private property must also be attached with a specification book determining the rights and obligations of the lessee, and both must comply with the minimum rules determined by MEF Prakas.

The lease of state private immovable property with a term of over 15 years shall confer perpetual rights to the lease and upon the lessee (i.e., right to assign the lease, to sublease, to grant a pledge or hypothec, succession rights, or other disposal with or without charge.)

The exercise of the above rights is subject to approval by the State Property Trustee Authority and the State Property Management Authority. The rules and procedures for the lease of state public property and state private property are to be determined by a Sub-Decree.

Furthermore, the state public immovable property can be leased pursuant to a lease arrangement provided that: (i) it shall not change the manner in which the property is used or cause damage to the property; and (ii) it shall not disrupt their function of serving the public interest or usage of the land for public services.

The leasing of state public property must be made through a written agreement that has been approved by the MEF. The lease agreement shall be attached with a specification book determining the rights and obligations of the lessee. The lease term of any lease of state public property shall not exceed 15 years, and such lease shall be entered into for public interest and public service.

A lease of public property may be revoked at any time if it is deemed necessary by the state, and such a lease must comply with the minimum rules determined by a Prakas of the MEF.

2.8 Foreign Ownership Restrictions

It is key that any investor should 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 over 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.

There is a general restriction against foreigners owning land in Cambodia, which is encapsulated into the Constitution and the Land Law.

However, regarding foreign ownership of coowned buildings, a major step forward took place through the promulgation of the Law on the Provision of Ownership Rights over Private Units in Co-Owned Buildings to Foreigners ("Foreign Ownership Law") on 24 May 2010. Under the Foreign Ownership Law (described above) foreigners may own up to 70% of private units in co-owned buildings or condominiums, excluding ground and underground floors.

Specific formalities have to be adhered to in order to apply for co-ownership titles whereby foreigners' rights to co-owned buildings or condominiums may be registered.

This law applies to both newly constructed of the co-owned buildings and existing buildings to be converted into co-owned buildings.

Most private units in Cambodia are not registered as "co-owned" property at the Land Registry.

Noting that under Cambodian law, only Cambodian citizens or Cambodian entities can legally own land (and properties built on that land). Cambodian entities are defined as those in

which 51% or more of the voting shares are held by Cambodian citizens or entities with a registered address in Cambodia.

There is no entirely risk-free way for foreigners to own land in Cambodia without obtaining Cambodian citizenship or investing in co-owned buildings in accordance with the Foreign Ownership Law.

One method that investors employ in order to mitigate legal risks relating to investments is the use of landholding companies. Provided 51% of the voting shares of a private limited company registered in Cambodia are owned by either a Cambodian citizen (or a Cambodian company), then such a company is deemed to be Cambodian.

A Cambodian company may invest in land, and a foreign investor may secure its ownership interest in land by registering a security interest in the land by the registration of a hypothec.

Another option for the foreign investor to invest in land is through a trust arrangement. The Trust Law was promulgated on 2 January 2019 by Royal Decree Nº NS/RKM/0119/002 ("**Trust Law**"). Trust Law (and implementing sub-decrees) represent a promising legal development for investors in Cambodia.

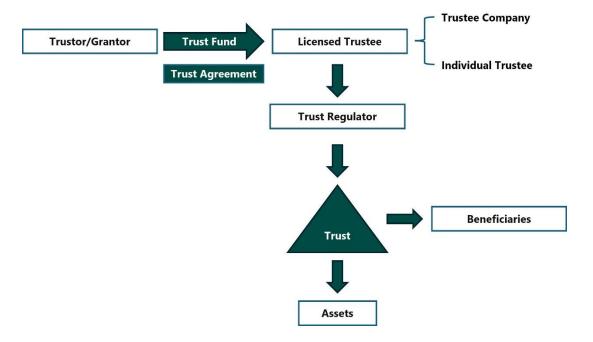
Under the Trust Law, a trust may be created by a trustor or by applicable regulations. If the trust is created by the trustor, the trustor must transfer its property or funds to the trustee through the trust instrument by specifying the specific purpose of the trust and/or the identity of the beneficiary. The Trust Law sets out the role, rights, and responsibilities of the trustor (who establishes the trust), the trustee (the registered owner of trust property), and the trust's beneficiaries (who benefit from the trust).

Sub-Decree 114 on Registration of Trust dated 2 August 2019 ("**Sub-Decree 114**") followed by Prakas No. 003 dated 26 January 2022 on Rules on the Management, Establishment and Functioning of Trust ("**Prakas 003**") sets out the rules, conditions and procedures relating to trust establishment and registration and the grant of licenses/permits to trustees.

A trust agreement must have three parties: a trustor, a trustee and a beneficiary. Under a trust agreement, the trustor transfers property or funds to the trustee. The trust agreement must be registered with Trust Regulator.

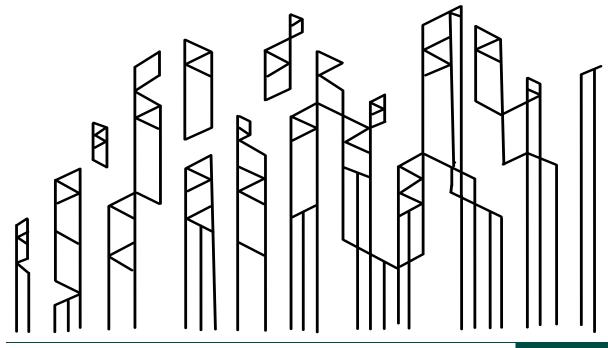
All trusts must be approved by the Trust

date of its first registration). The appointed trustee(s) shall proceed with the process to apply for an approval to form a trust and, on behalf of trustor or grantor, register the trust with the Trust Regulator (Article 54 of Prakas 003). A trust is valid from the date of registration with the Trust Regulator.



Regulator. The trustor or grantor must propose the appointment of trustee(s), duly licensed by the Trust Regulator, for the Trust Regulator's approval (Article 8 of Prakas 003). Upon the registration of a trust, a certificate of trust registration will be provided by the Trust Regulator (which is valid for five years from the

A trustee can be a legal entity (trustee company) or individual person (individual trustee). A trustee must first be licensed and/or approved by the Trust Regulator. The individual trustee can be licensed to act as: (i) an independent individual trustee; or (ii) an individual trustee of a trustee company.

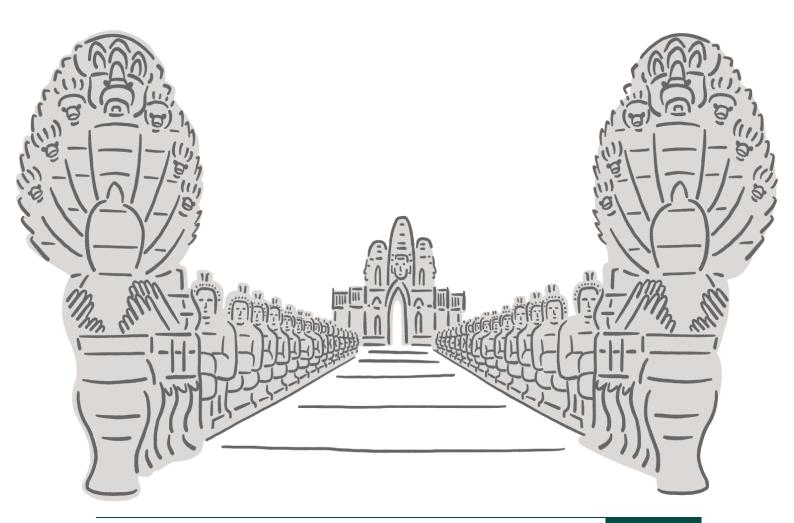


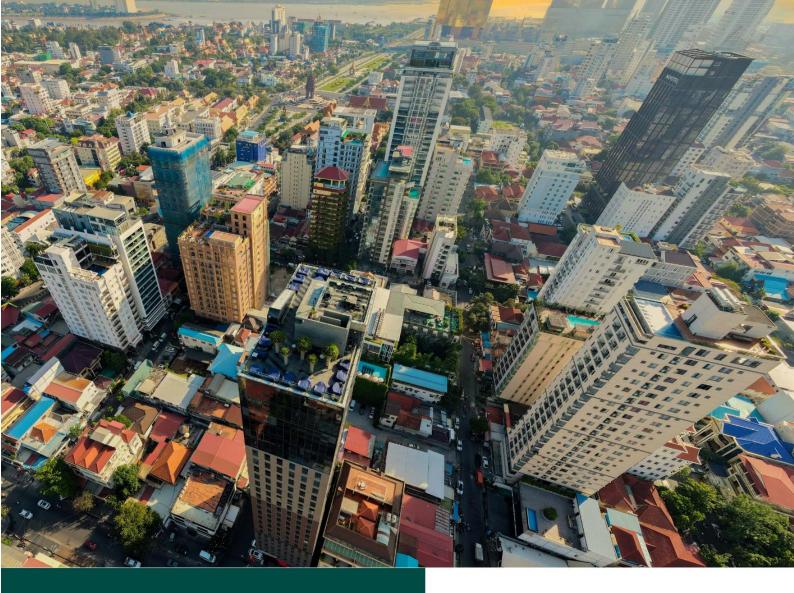
At the time of writing, the practical application of the law remains largely untested in the context of real estate investment.



CASE STUDY

A Cambodian landlord wishes to sell to a foreign-owned entity incorporated in Cambodia ("FOE") a plot of land where a factory has been built. What are the options for the FOE to acquire the garment factory? The FOE is prevented from owning land and the factory itself, as per the Cambodian Constitution and the 2001 Land Law. From a legal perspective, the factory cannot be separated from the land on which it is erected. Further, only natural and legal persons of Cambodian nationality have the right to own land in Cambodia. The FOE may establish a land holding company ("LHC") in Cambodia to own the land. To be considered as having the Cambodian nationality, the LHC shall have at least 51% of the total shares held by one or several Cambodian shareholders (entity or individual). The 49% shares can be held by the FOE. The LHC could then lease the land and the factory to the FOE for its operations. Separating the land ownership and the operation of the business ring-fences the liabilities of the operating company's business from the liabilities of the entity that owns real estate, but tax rules on transfer pricing should be taken into account. The FOE can also implement trust with a licensed trustee who will hold the land and the factory.





CHAPTER 3

3. Acquisition of Ownership

3.1 Perfecting Ownership

According to the Civil Code, ownership over an immovable property may be acquired by a contract (aka sale and purchase contract). Article 336 (2) of the Civil Code further provides that a contract in which one of the parties bears a duty to transfer or to acquire ownership of an immovable property shall come into effect only when such a contract is made by a notarial document. Notarial documents here refer to the notarization by the notary/competent authorities.

The Civil Code also provides that the transfer of title by agreement pertaining to an immovable property shall come into effect only when the transfer of rights is registered in the land registry book at the MLMUPC. Upon registration, it is presumed that such rights belong to the person to whom it is registered.

The process of the immovable property ownership transfer will include the execution of the Vente Definitive and the land transfer application form (land office's standard format) and registration with the relevant land authorities. The ownership transfer process will also involve the tax authorities for payment of the stamp duty tax, which is at a rate of 4% based on the market value. The market value is determined as a higher value of the value on the contract or prescribed value determined under the MEF's schedule, whichever is higher. Such a tax must be paid before the land office approves the transfer of ownership of the land (or the change of the owner of the property on the land title). Also, it is important to note that any construction erected on the land will be included in the basics used to calculate the tax payable for the transfer of ownership.

For a share acquisition, the registration shall be made by filing the application and required documents with Ministry of Commerce as stated in Law on Commercial Enterprises, promulgated on 30 May 2005, as amended on 29 January 2022 by the Law on Amendment of Law on Commercial Enterprises, the Law on Commercial Rules and Commercial Register dated 26 June 1995, as amended on 18 November 1999 and Prakas No. 142.

3.2 Asset Acquisitions

The Civil Code distinguishes between five ways in which real estate ownership may be lawfully obtained:

- Sales: a transferor (or seller) transfers legal ownership of land to a buyer in exchange for the buyer paying the seller money;
- Exchange: the transferor transfers ownership of land to a buyer in exchange for the buyer transferring some object or services to the seller (other than money);
- Gift: the transferor gratuitously (i.e., without payment or exchange) offers to transfer land as a gift to another and that other person accepts that transfer of

land;

- Succession: the transferee obtains ownership of land by virtue of the application of succession laws (broadly equivalent to inheritance), noting that a landowner obtaining their land under succession will be liable for debts that are secured by that land (assuming such debts were perfected); and
- **Prescription:** а person obtains ownership by virtue having of "peacefully" and "openly" possessed land for a continuous period without objection from another party. A person who peacefully and openly possesses land for a continuous period of twenty years may obtain ownership of that land by prescription (where their ownership has not been contested in those 20 years). A person who peacefully and openly possesses land for a continuous period of ten years may obtain ownership of that land by prescription (where their ownership is held in good faith and without any negligence of applies to private another). This ownership land and not state land.

3.3 Share Acquisitions

Any person (whether a natural person or legal entity) may indirectly acquire ownership rights to land by virtue of such a person indirectly controlling land through their ownership of shares in a company. There is a tax implication for the transfer of the share of any person as a transferor in the company.

3.4 Other Acquisition Rights

The Civil Code permits the use of both moveable and immovable property as security for payments of debts (and/or the discharge of other obligations) by any person, including debts or obligations of legal entities.

A person (whether a natural person or legal entity) may acquire ownership of land as a result of the enforcement of a security right over immovable property.

There are two common forms of security interest over land: a hypothec and a pledge.

The owner of the land is also the borrower of money (or the obligor) from the creditor, and then the hypothec agreement or pledge will have only two parties (i.e., the creditor and the hypothecator - in the case of a hypothec).

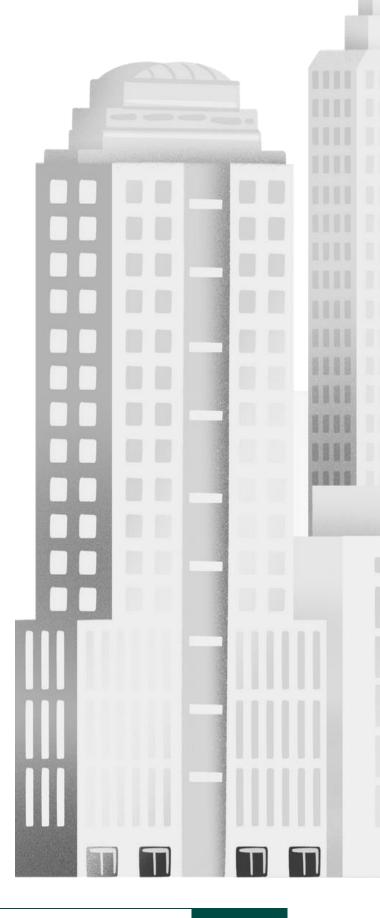
The key difference between the hypothec and pledge is the possession right afforded to the debtor during the term of the pledge/hypothec.

A hypothec is an agreement creating a security interest pursuant to which possession of land is retained by the debtor (who may also be the hypothecator) until the debt or obligation has been discharged. In contrast, under a pledge agreement, the pledgee (or lender) will take physical possession of the land until the debt or other obligation owed to the pledgee has been discharged.

In practice, a hypothec agreement is the usual form of securing obligations where land is used as collateral. This is because it offers the landowner the right to continue to enjoy possession of the land while that land simultaneously acts as security for the hypothee.

In either case, if a pledger or hypothecator defaults on their obligation to the pledgee or hypothee, then the hypothee or pledgee must submit a written request to the Court for so-called "compulsory execution". If the Court grants an order of compulsory execution, then the Court will issue an order for the sale of the land which is the subject of the hypothec/pledge, and the proceeds of that sale will be used to discharge the outstanding obligation that was secured pursuant to the hypothec/pledge (Article 447 of the Code of Civil Procedure of Cambodia).

Note that a hypothee or pledgee will be treated as a secured creditor and shall have the right to receive the performance of their claim prior to other unsecured creditors.





CHAPTER 4

4. Zoning and Planning Permissions

4.1 Land Use Zoning

On 3 April 2015, the government adopted regulations on land use planning and zoning being Sub-Decree No. 42 on Urbanization of Capital, Municipalities, and Urban Areas ("Urbanization Sub-Decree"). 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: (i) areas where development is permitted and (ii) controlled areas.

Various restrictions are imposed on developments, such as minimum numbers of car parking spaces, building height, and the requirement to obtain a certificate of compliance or conformity of urban planning and construction before obtaining a construction site closing permit or a certificate of occupancy. In short, every form of construction must be in accordance with the provisions of the Urbanization Sub-Decree and Construction Law and regulations.

As of 21 January 2022¹, the following master plans of land use and land management planning exercise have been completed and put into use:

- At capital/provincial levels: Master landuse plan for Phnom Penh and land management planning for Battambang, Preah Sihanouk and Mondulkiri Provinces.
- At city/urban levels: Master land-use plans including Battambang city, Preah Sihanouk city, Takhmao city, Kampot city, Kep city, Bokor city, Koh Rong urban area, Siem Reap city, Khemarak Phoumin City, Poipet city, Bavet city, Steung Treng City, Daun Keo city, Preah Vihear city, Tbong Kmom provincial capital urban area, Chrey Thom urban center and other urban areas.
- At Khan levels: Master land-use plan for Khans in Phnom Penh, including Khan 7 Makara, Khan Prek Pnov, Khan Toul Kork, Khan Russey Keo, Khan Chroy Changvar, Khan Sensok, Khan Mean Chey, and Khan Daun Penh.

As part of the annual plan for 2022 regarding the development of the legal framework I land and urbanism sector, MLMUPC is working on the finalization of some pending draft regulations, including:

- the master plan of land use for Kratie Province for vision of the year 2030 and Kampong Cham for the vision for the year 2035;
- procedure on the establishment of a plan of land management in the province, region, and national levels;
- sub-decree on management and development of coastal area in Cambodia;
- law on land management and urbanization; and
- New land law.

The MLMUPC is actively working on new land laws to align with the evolving trends in Cambodia's real estate market and current digitalization.

There is no indication as to when those pending regulations will be adopted.

To align with the Royal Government of Cambodia's first phase of the Pentagon Strategy for Economic Development and Digitalization and the broader goals outlined in the Cambodia Digital Government Policy 2022-2035, the MLMUPC issued a notification on 13 August 2024, on the trial launch of certain public services through an online platform. On 5 August 2024 and on 6 January 2025, the MLMUPC introduced a trial launch of online public services, including exclusive sale, exclusive gift, hypothec, pledge, number registration automated administrative number via an online system), and consolidation, land division without transferring ownership, land division with exclusive sale, land division with exclusive gift, conveyance of strata title (or registration of private unit) of a co-owned building, and division of ownership over a coownership property in Phnom Penh. The trial launch has been initiated in response to Cambodia's ongoing efforts to digitalize and enhance the public services in line with the development of its society, economy, and cultural landscape.

Online launch is a pivotal step in modernizing the provision of public services, enhancing efficiency, and making these services more easily accessible and streamlined for citizens. As part of the trial run, applicants can now apply for these services MLMUPC's official portal https://mlmupc.gov.kh/ or https://cadastral. mlmupc.gov.kh/login by filling in the required information and attaching the relevant documents during the process. Upon completion and verification, the applicants may submit their requests directly via online system for MLMUPC's review. To date, there is no clear written guideline about whether this process can be done 100%

¹ Based on the annual report of the Ministry of Land Management, Urban Planning and Construction dated 21 January 2022.

online without the need to physically visit various land authorities.

The MLMUPC also issued on 6 June 2018 the Decision of the Architectural plan regarding the construction on Sidewalk and Bicycle Lane for publics and handicapped people which will apply to roads of the capital and cities of every province with the purpose to guaranty the public esthetics and traffic by the welfare and convenience of publics especially handicapped people.

Foreign investors should familiarize themselves with the applicable zoning rules and regulations before moving forward with acquiring an interest in land. Investors should also familiarize themselves with the various land use permits and committees that exist both at the local and national levels. For example, in Siem Reap, the Apsara Authority has been established 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.

4.2 Environmental Code

On 29 June 2023, the Environmental and Natural Resources Code ("**Environmental Code**") was promulgated by Royal Kram Nº NS/RKM/0623/007. The Environmental Code sets out the rules and procedures to strengthen, modernize, and improve the management of environmental protection, conservation and restoration of natural resources, biodiversity, and ecosystem functions to support sustainable economic development in Cambodia.

The lengthy Environmental Code contains 12 books and 865 articles which include a variety of activities relating to environmental and natural resources protection mechanisms and responsible institutions. The key elements of the Environmental Code are noted below.

The first book of the Environmental Codes covers the general provisions, the objective and scope of the Environmental Code, role and responsibility of ministries relevant to the environment and natural resources and legal policy development. The second book consists of 11 contents including the provisions related to environmental

management and sustainability mechanism, natural disaster risk management and reduction, climate changes, biodiversity resources management for sustainable development and biosafety. This book also includes the provisions related to land use planning in which environmental consideration is required and sustainable city and green building together with general provisions and responsible institutions for these related matters.

In addition, this second book of Environmental Code mentions responsible electrical energy, including the general provisions and responsible institutions for the responsible electrical energy strategy planning and type of energy and electrical energy framework. Interestingly, the 11th content of this book also describes the responsible extractive industries, which refers to oil, gas, mining, and other metal industries with the general provisions and responsible institutions.

The third book of the Environmental Code focuses on environmental protection restricted by its general principles. This book provides details on the following matters:

- inspection of hazardous substance emission;
- solid waste management;
- hazardous waste management;
- liquid waste management;
- air noise and vibration disturbance/pollution management; and
- management of substance which impacts ozone layer, cooling substance, other products made of substance or containing substance that impacts ozone layer.

The fourth book of the Environmental Code focuses on the management of natural protective zones and management of beach, coastal areas and sea.

The Environmental Assessment is provided under the fifth book of this Environmental Code which includes the Environmental Assessment Strategy and Environmental Impact Assessment ("**EIA**") with following main provisions:

- General provisions;
- Responsible institutions;
- EIA principles;
- EIA process;
- Additional EIA;
- Public participation for EIA;
- Environmental protection plan and project monitoring;
- Environmental audit; and
- Rights to access information and the national environmental list.

Books 6 and 7 determine the provisions related to the liability for the impact on the environment and natural resources by the project owner and the environmental education and awareness.

Book 8 of the Environmental Code provides the rules for the environmental economy, finance, fees, and the management of social and environmental funds. It also determines the following fees:

- environmental fee, or premium;
- payment and management of social and environmental fund;
- establishment and management of environmental trust; and
- financial grant or environmental management plan.

Book 9 of the Environmental Code also provides the mechanism and procedures for dispute resolution if there is any dispute related to environmental and natural resources dispute.

The penalty provisions are stated in book 10 of the Environmental Code, whereby those penalties are related to any violation of environmental and natural resources, environmental management, environmental protection, natural resource management, and environmental assessment.

Although the Environmental Code was adopted on 29 June 2023, it is to be implemented one year after its effective date (29 June 2024). Once the Environmental Code is implemented, this code will end the effect of related existing laws, including Law on Environmental Protection and Natural Resource Management dated 24 December 1996, Law on Natural Protection Area dated 15 February 2008, and Law on Biosafety dated 15 February 2008.

Article 863 of the Environmental Code provides that the existing regulations related to the environmental and natural resources remain in full force until the new regulations come to replace those existing regulations except for those provisions which are contrary to this Environmental Code.

To date, we are not aware of any new regulations to implement provisions of the Environmental Code.

4.2.1 Environmental Impact Assessments

Environmental impact assessments ("EIAs") are required for some projects depending on their nature, size, activity, etc., as specified in Sub-Decree No. 72 on Environmental Impact Assessment Processes dated 11 August 1999 ("Sub-Decree 72"). Sub-Decree 72 contains an Annex that lists all projects that require an EIA to be conducted. There are two types of EIA: (i) initial environmental impact assessment report ("IEIA"), environmental and (ii) full impact assessment/environmental and social impact assessment report ("Full EIA"). A Full EIA is a detailed study on the environmental impact of the project and is required to be conducted when a project is deemed to have a serious impact on the environment and public welfare.

The Department of Environmental Impact Assessment shall examine the project site and determine whether the project requires an IEIA or a Full EIA. Once done, each EIA must be submitted to the Ministry of Environment ("MOE") for approval before commencing any project. In addition to the EIA, the project investor will be required to execute an environmental protection agreement with the MOE ("EPA"). An EPA contains undertakings to implement the conditions prescribed in the Full EIA and comply with environmental laws and regulations, in particular, those related to waste management, air and noise

pollution, biological environment, socioeconomic environment, and the requirement for the submission of the environmental monitoring report(s), as well as cooperating with the MOE officials for any authorised inspection of the project site.

4.3 Real Estate Development License

With the rapid growth of the real estate market, the Royal Government of Cambodia aims to maintain a balance between promoting investment and ensuring sustainable and legally compliant development. For developers, compliance with the real estate-related regulations is key to operating successfully in Cambodia's real estate sector.

On 2 March 2023, the Royal Government of Cambodia issued Sub-Decree No. 50 on the Management of Real Estate Development Business ("**Sub-Decree 50**"). Sub-Decree 50 was issued to determine the rules and procedures for managing and inspecting the real estate development business in Cambodia to ensure the effectiveness and transparency of management and control of the real estate development business, equity and balance of interests between developers and buyers, attracting investors and trust to the public preventing any financial risk in the real estate sector, and contributing to preventing money laundering activity in the real estate development sector.

There will be a number of new Prakas or implementing regulations are to be issued under this Sub-Decree 50 which we note that detailed procedures on granting business licenses or permits and the mechanism on management of business operation will be determined by the joint Prakas between the MEF and Non-Bank Financial Service Authority ("FSA"). Furthermore, the mechanism on inspection of real estate development business, the dispute resolution procedures, rules-procedures and on administrative penalties and breach will be determined by separate regulations.

The Sub-Decree 50 contains 31 articles and 9 chapters which also provides the new competent authority to regulate the real estate development business in Cambodia and to manage and control

the real estate development business to the Real Estate Business & Pawnshop Regulator ("**RPR**") of FSA and the Provincial/Municipal Department of Economy and Finance ("**PDEF**") that is the Etat Major of the RPR.

The Sub-Decree 50 categorizes the business licenses and permits in three categories:

- Category 1: License or permit for housing development business;
- Category 2: License or permit for coowned building development business;
- Category 3: License or permit for land lot development business.

In addition, the licenses or permits under Category 1 (housing development business) and Category 2 (co-owned building development business) above are divided into two sub-types of licenses and permits:

- Type 1: license and permit to be granted to any developer who has completely finished construction prior to announcement for sales and leases; and
- Type 2: license and permit to be granted to any developer who, at the same time, starts construction and announces gradual sales or leases.

The detailed rules and procedures to obtain the above licenses or permits will be determined by a joint Prakas between the MEF and the FSA.

Pursuant to this Sub-Decree 50, the term "real estate development business" has been defined to include the business or investment activities for developing housing, co-owned building or land-lot for sale or lease".

The "lease" was determined under the Sub-Decree 50 as the lease of land or building of a developer with a term of at least 10 years.

From a general view of the Sub-Decree 50, it provides the main provisions covering the real estate business operation, inspection, reporting, dispute resolution, and penalties for violation of Sub-Decree 50's provision.

• Real estate business operation: Under the provision of the real estate business operation of Sub-Decree 50, the developer with a license or permit is required to fulfill their obligations under the sale and purchase or lease contract of which sample has been submitted to the RPR.

In addition, under Sub-Decree 50, the developer has to apply for the property management license or cooperate with a licensed property management company after handing over the house or coowned building to the buyers. The developer needs to inform the RPR or PDEF on the name of the real estate agent who cooperatively sells the project of the developer.

According to the Sub-Decree 50, we do not see the provisions related to the buyer's obligations. Those are stipulated in Prakas 089, which is placed by a new Prakas No. 047 on Rules and Procedures for Real Estate Development Business License dated 26 September 2023.

Sale and Purchase Agreement or Lease Contract ("SPA or Lease"): The Sub-Decree 50 requires a number of terms and conditions to be included in the SPA or Lease, for instance, the parties, name of the project, project location, size of the property, date of construction commencement and completion, obligation of ownership transfer and liability in case of default and the list of the materials to be included in the house co-owned building (etc.). or

The same Sub-Decree 50 further provides that if the signatory of the SPA or Lease is not the legal owner or a lessee, the signatory is required to obtain a power of attorney from the owner or the lessee.

 Business Guarantee: The developer who wishes to obtain the license/permit under type 2 needs to deposit the business

- guarantee pursuant to the joint Prakas to be issued by MEF and FSA.
- Developer's Account: The Developer must open a developer's account in order to receive all kinds of deposit pursuant to the SPA or Lease; and this account can be closed until the development project has been completed and permitted by the RPR.
- Suspension and completion of the project: The licensed or permitted developer who wishes to suspend or finish the project has to file a written application to the RPR or PDEF. Detailed procedures will be determined by the joint Prakas between the MEF and the FSA.
- Inspection: The RPR or PDEF is entitled to nominate a competent authority to investigate or prevent any project from being carried out without any license or permit and to inspect any project under operation with a license or permit. Likewise, the developer has to provide any report or documents required by the RPR. The detailed mechanism for such inspection will be determined by a separate regulation.
- Reporting: The licensed or permitted developer is required to provide an audited annual financial report to the RPR no later than 3 months after each fiscal year and any other report as required from time to time by a separate regulation.
- dispute Resolution: If there is any dispute related to the real estate development business, any party is entitled to file a complaint to the RPR before the dispute is referred to an arbitration or competent court, except for the criminal case. A detailed procedure for dispute resolution will be provided in separate regulations.
- Penalty: Any developer that violates the provision of the Sub-Decree 50 or any

relevant regulations is subject to the administrative penalties as stated below:

- a written warning;
- prohibition from conducting operation or restriction for certain activities;
- temporary suspension of the license or business permit for from 6 (six) months to 1 (one) year;
- revocation of the issued license or permit or principle permit;
- freezing the real estate development account;
- freezing the business security deposit;
- making a public announcement about violation of the provisions of this Sub Decree 50;
- possible monetary fines; and
- taking any other action measures in accordance with the existing laws and regulations.

The Sub-Decree 50 does not provide any specific amount on the monetary fines while the details of rules-procedures on administrative penalties and breach will be determined by a separate regulation.

We note that the Sub-Decree 50 is effective from 2 March 2023, and a number of new parkas and separate regulations are to be issued in order to implement many provisions of this Sub-Decree 50.

Prakas 047: To implement Sub-Decree 50, FSA issued a new Prakas No. 047 on Rules and Procedures for Real Estate Development Business License dated 26 September 2023 ("**Prakas 047**").

This new Prakas 047 outlines the rules and procedures for issuing real estate development business licenses/permits and replaces Prakas No. 089 dated 20 January 2020, on the Management of Real Estate Development Business ("**Prakas 089**").

Prakas 047 aims to enhance the effective management of real estate development businesses and introduces two types of licenses or permits for different types of real estate development activities:

- Residential development or co-owned building development business licenses/permits; and
- 2) Land parcel development business licenses/permits.

For residential development or co-owned building development, projects ranging from 3 to 30 houses, villas, or units require a prior permit from the relevant Capital-Provincial Department of Economy and Finance ("**DEF**"). A development project with a size exceeding 30 houses, villas, or units must obtain a prior license from RPR of the FSA, which is the current competent authority replacing the MEF, entrusted in the previous Prakas 089.

Land parcel development projects with a total area below 10,000 square meters (or 1 hectare) must obtain a prior permit from the DEF, while projects exceeding 10,000 square meters require a prior license from the RPR.

Developers wishing to conduct housing or coowned building development must fulfill conditions outlined in Article 9 of Prakas 047, including meeting capital equivalent to 100% of the construction cost for developer license 1, and a minimum of 20% of construction costs for developer license 2.

For the developer license 2, it is required to have a letter of business security guarantee, as part of the required application dossier for submission to the RPR. Article 20 provides that the developer who applies for the license must make a deposit of 2% of the total construction cost/phase-by-phase construction cost in the account of the RPR; or a confirmation letter of business security guarantee issued by a licensed bank in Cambodia.

For land parcel development, developers must meet the conditions in Article 17 of Prakas No. 047 and have a minimum capital of 40% of total infrastructure costs. For this license, it requires a letter of business security guarantee as part of the supporting documents during the application process with the RPR. Article 21 also provides that the developers who apply for the license must make a deposit of 5% of the total land investment cost/phase-by-phase land investment cost in the account of RPR or a letter of business security guarantee issued by a licensed bank in Cambodia.

Failure to fulfill obligations under sale and purchase or lease agreements by a developer may result in the freezing of the business security guarantees by RPR/DEF.

The detailed conditions and requirements to obtain the licenses or permits are prescribed under Articles 10 and 18 of Prakas 047. To obtain the licenses/permits, the developers need to pay the public service fees and administrative fees. The additional fees also cover the store or office space in the co-owned building. In addition, the developer also needs to pay the real estate and pawnshop development fund on top of the aforementioned fees.

The RPR/DEF has the right to issue or reject a license/permit application within 30 working days from the date of receipt of all required documents. The RPR/DEF also has the right to suspend a license or permit validity for a pending business and revoke a license or permit for a closing business.

Besides, Prakas 047 specifies serious monetary fines on certain cases, for instance, operating a project without a developer license/permit or without a valid license/permit. The monetary fines range from a minimum of KHR 500,000 (approximately USD 125) to a maximum of KHR 500,000,000 (approximately USD 125,000).

Existing licenses/permits issued before the issuance date of Prakas 047 remain valid until their expiration date.

Based on the Real Estate Business & Pawnshop Regulator, the regulator has granted licenses to 573 developers for housing and co-owned building development projects and to 283 companies for real estate services.

4.4 Real Estate Services Licensing

The operation of any business involving real estate management, real estate valuation, or real estate agency requires accreditation from the RPR of FSA. Previously, Prakas 636 on the management of businesses providing valuation services and immovable property services dated 29 June 2017 ("**Prakas 636**") required all

individuals or entities who wish to provide real estate valuation or other real estate services to hold business licenses or professional certificates issued by the MEF. On 27 December 2022, the FSA issued Prakas 064 on Real Estate Service Business ("**Prakas 064**"), replacing Prakas 636, to strengthen management and control of the real estate service business in Cambodia.

Prakas 064 provides legal entities performing real estate management, real estate valuation, or real estate agency services to hold a valid license issued by the RPR. Individuals performing real estate valuation or real estate agency services, whether as an individual or through a company, must hold a valid professional certificate issued by RPR.

The license or certificate is valid for a period of one year and is renewable.

Prakas 064 describes the qualifying criteria that must be satisfied in order to obtain a license or certificate and the renewal process. Prakas 064 outlines various ongoing compliance obligations, which include the preparation and submission of monthly, quarterly, and annual reports.

The license and administration fees for a company and individual, which are payable to the RPR in order to obtain the license or certificate, are summarized in Article 16 of Prakas 064. The license fee for a company to obtain the real estate business license is KHR 500,000 (approx. USD 125) per license with an administrative fee of KHR 140,000 (approx. USD 35) while the certificate fee is USD 200,000 (approx. USD 50) per certificate with an administration fee of KHR 60,000 (approx. USD 15).

Besides the fee for the license/certificate, the real estate company and individual need to pay the annual real estate and pawnshop development fund to RPR. A company holding the license is required to contribute KHR 140,000 (approx. USD 35) per year, while an individual holding a certificate is required to contribute KHR 60,000 (approx. USD 15) per year. A company operating real estate services/doing any advertising activities without the relevant license is liable to a fine from KHR 5,000,000 (approx. USD 1,250) to KHR 10,000,000 (approx. USD 2,500) and may also

be required to stop its business operation/such advertising activities immediately.

The PRP is also entitled to impose administrative sanctions on any company/individual who is in breach of Prakas 064 which sanctions may include:

- the issuance of a warning letter;
- suspension/closing down of business operations;
- suspension/withdrawal of the business license/certificate;
- publishing the breaching activities; and
- taking any other action permissible by the law.

It should be noted that notwithstanding the introduction of Prakas 064, licenses or certificates that were previously issued to a legal entity or individual prior to Prakas 064 coming into force shall continue in full force and effect (until the relevant expiration date of such license or certificate).

Prakas 052 issued by the FSA on 3 November 2022 sets out the applicable conditions and procedures that a valuation company or valuation specialist (individual) must obtain in respect of valuation services for trusts and the ongoing requirements, e.g., the preparation and submission of valuation reports to the Trust Regulator.

The Trust Regulator may apply administrative sanctions to a valuation company or valuation specialist in the event of non-compliance with the terms and conditions of accreditation.

The potential sanctions include:

- warning;
- a rectification instruction;
- a restriction on accreditation;
- suspension;
- revocation of accreditation; and
- monetary fines.

Following the implementation of Prakas 064 and its subsequent announcements in 2023, the Royal

Government of Cambodia now moves a huge step to online licensing procedure as part of its Cambodia Digital Government Policy 2022-2035 issued on 28 January 2022.

The RPR issued a notification on the Procedure of Application for Professional Certificates and Licenses of Real Estate Services via the Information Technology System Portal dated 24 July 2024 ("RPR Notification").

The RPR Notification notes that it will launch a procedure for applying for professional certificates and licenses for real estate services for parent companies and branch offices via an information technology portal from 1 August 2024 onwards. This will make the licensing procedure more straightforward, less time-consuming, and effective compared to the old licensing procedure.

Based on the RPR Notification, the physical hard original submission will thus no longer be required. Applicants who wish to apply for professional certificates or licenses for their real estate services will be able to submit their application dossier to https://realestate-service-business.rpr.gov.kh via App: CamDigik



CHAPTER 5

5. Construction

5.1 Legal Framework

The Law on Construction entered into force on 3 November 2019 ("Construction Law"). The Construction Law establishes the regulatory framework to ensure quality, security, and safety in this sector, boost efficiency, and enhance investor confidence in the real estate market. To this end, the MLMUPC is empowered as the competent authority that is responsible for managing the construction sector in general. The Construction Law includes various provisions relating to authorizations such as construction permits, demolition permits, repair permits, and certificates of occupancy.

Following the adoption of the Construction Law, the Royal Government of Cambodia issued Sub-Decree No. 224 ANKr.BK dated 30 December 2020 on Construction Permits ("**Sub-Decree 224**"), which laid out, among others, the conditions and procedures on the issuance of construction permits, repair permits, demolition and construction site opening permits and renewal of those permits under the sole supervision of the MLMUPC.

Sub-Decree 224 applies to all types of constructions, except for the types of constructions that are governed by separate regulations.

This Sub-Decree 224 superseded and replaced the previous Sub-Decree No. 86 ANKr.BK issued two decades earlier in 1997. Please note that the permits which were issued to construction owners prior to the date Sub-Decree 224 came into effect are still valid and enforceable until the expiration date of those permits.

In short, Sub-Decree 224 provides for provisions mainly to regulate: (i) the category of constructions, repairs, or demolitions that require prior permit from MLMUPC or capital/provincial governor or Khan and district governor, (ii) category of constructions, repairs or demolitions that do not require the relevant permits and (iii) conditions and procedure to issue and renew those permits.

5.2 Construction Authorization Documents

5.2.1 Construction Permits

Before carrying out any construction on land, the owner and the person legally occupying the land are obliged to apply for a construction permit, except for some works listed by Sub-Decree 224, which do not require a construction permit. This exception falls under the small-scale construction with a total floor area of less than or equal to 12 square meters and a maximum height of five meters. Construction permits are also not required if the work is urgently necessary, e.g., following an emergency or disaster in order to save or protect lives or prevent serious impact or damage to health or property. If there is an ongoing or pending dispute over occupancy rights to the land, MLMUPC will not issue a construction permit to the applicant. The competent authority to review and approve construction permits (the Minister of MLMUPC, the Governor of Capital-Provincial or District administrations) depends on the nature and particularly the size and height of the construction.

Construction permits must also now be obtained for non-building structures such as antennas, electrical poles, towers, gates, stupas, downstream construction activities, etc. which previously had been exempted from these permit requirements.

In order to apply for the construction permit, various specified application documents in Khmer must be submitted detailing the planned construction. The construction plans must be signed by the landowner and drawn by an architect, or a construction company duly registered with/licensed by MLMUPC.

Following the submission of all complete supporting documents, it may take 45 working days to complete the review process if the decision is taken by the Minister of MLMUPC, 25 working days if it is taken by the Governor of the Capital/Provincial and 15 working days if it is taken by the Governor of the City/District Administration.

Any failure to respond to a permit application by the competent authorities within the stipulated timeframes will be deemed as an implicit approval by the authorities.

Construction must begin within one year after the permit is issued (if not, the construction permit may be revoked by MLMUPC at its sole discretion), although one extension is allowed.

5.2.2 Demolition Permits

Like construction work, any demolition of an existing building requires a demolition permit in advance. The relevant application documents must be filed by the construction owner. If there is a dispute related to the ownership of a building, a demolition permit cannot be issued. Like construction permits, a demolition permit is not required if the demolition work is urgently required in the wake of an emergency or disaster to save or protect lives or prevent serious impact or damage to health or property. The conditions and formalities on the issuance of demolition permits are governed by Sub-Decree 224.

5.2.3 Repair Permits

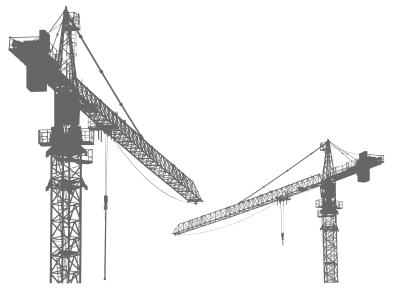
The Construction Law and Sub-Decree 224 create a new kind of permit called a "repair permit." This repair permit is required when repair or renovation work needs to be performed on an existing building.

A repair permit is not required if the repair work does not affect the load-bearing structure, construction components, original state, and exterior aesthetics of the construction and if it does not affect security, safety, and public order. Like construction permits, the repair permit will be revoked if the work fails to start within one year of the issuance of the permit, although one extension is allowed. The conditions and formalities relating to the issuance of repair permits are governed by Sub-Decree 224.

5.2.4 Construction Site Opening Permits

Prior to the commencement of construction, renovation, installation, or demotion work, a construction site opening permit must be obtained. If construction is suspended for more than one year after the work starts, a renewal of the site opening permit must be secured prior to resuming activities. Construction site opening permits will also lapse if work does not start within one year from the issuance of the permit, although one extension is allowed.

The conditions and formalities relating to issuance of construction site opening permits are governed by Sub-Decree 224.



5.2.5 Certificates of Occupancy

Following the Construction Law that requires construction owners to obtain a certificate of occupancy, RGC issued a new sub-decree 226 ANKr.BK dated 30 December 2020 on Conditions and Procedures on the Issuance, Suspension, and Revocation of Certificate of Occupancy ("Sub-Decree 226") to determine conditions and procedures to grant, suspend, and revoke certificates of occupancy.

According to Sub-Decree 226, all types of construction that require construction permits must obtain a certificate of occupancy once construction is completed and before it is used or leased or before the owner does business on the constructed structure. It simply means that without the certificate of occupancy, the constructed building cannot be subject to use, lease, or doing business. However, constructions that are not required to obtain construction permits as prescribed under Sub-Decree 225 are exempted from the certificate of occupancy requirement. Please note that the use of the building without duly obtaining a certificate of occupancy may attract a monetary fine of up to KHR 80 million (approximately USD 20,000) and other legal action as may be pursued by the construction inspector. The details of the conditions and procedures to grant, suspend, and revoke a certificate of occupancy are provided in Sub-Decree 226.

This certificate of occupancy is valid permanently regardless of changes in ownership. However, when there is a change of building function, a new certificate of occupancy will be required.

The construction owner may apply for a temporary certificate of occupancy for a portion of construction which is already built and safe to use. The template certificate of occupancy is valid until a final certificate is issued.

In the event that a certificate of occupancy is suspended or revoked, use of the building is also prohibited.



TIP!

For buildings over which a site closing permit has been obtained prior to the issuance of Sub-Decree 226, this construction site closing permit may implicitly serve equally as a de facto certificate of occupancy.

If the investor wishes to develop the land to build a factory on the land with a construction area of more than 3,000 square meters, the investor needs to verify the certificate of title and the type of land with the DLMUPC. If the type of land is noted as agricultural land on the certificate of title, it needs to be converted into constructible land. Then, the investor needs to apply for the relevant permits including the Construction Permit and Construction Site Opening Permits before the commencement of the construction and an occupancy certificate upon the completion of the construction site from the MLMUPC. The application documents will be filed with MLMUPC.

5.3 Licensing Requirements

5.3.1 Blueprint Design License and Construction Licenses

Under the Construction Law, construction professionals (including engineers and architects) and companies performing construction activities in Cambodia must be licensed by MLMUPC or permitted by the capital or provincial authorities as relevant to the respective business. The conditions and procedures for the issuance, suspension or revocation of the blueprint design license and construction license are governed by Prakas 75 on the Management of Blueprint Design and Construction Companies and Enterprises dated 2 September 1999 as amended on 8 October 2007 ("**Prakas 75**") and Circular No. 002 dated 10 July 2000.

As of now, there are four categories of construction business licenses and three categories of blueprint design business licenses. While Prakas No. 75 does not clearly provide the reasons behind the classification of construction and architectural companies, in practice, each category determines the size of construction/design that a company may engage in. Once issued, the licensees are required to comply with ongoing obligations, including reporting to MLMUPC

These licenses are valid for three years from the date of its issuance, renewable within 30 days prior to the expiration date indicated in the licenses.

5.3.2 Surveyor Licenses

On 5 December 2019, MLMUPC issued Prakas No. 175 on the formalities and procedures for provision, suspension and revocation of surveyor license ("**Prakas 175**").

The particular various criteria to obtain these licenses depend on the type and level of each license such as minimum registered capital ranging from KHR 100 million to KHR 1 billion (approximately USD 25,000 to USD 250,000), minimum year of experience from 10 years to 20 years for a technical director, minimum numbers of engineers or architects and professional liability insurance issued by a Cambodian company. Professional insurance insurance may be undertaken with a minimum deposit by the applicant at the National Bank of Cambodia, depending on the type and level of each license, ranging from KHR 50 million to KHR 500 million (approximately USD 12,500 - USD 125,000).

Under Prakas 175, individuals who intend to conduct surveying work must obtain a surveying license from MLMUPC. However, ASEAN-qualified surveyors may conduct surveying work in Cambodia without obtaining a surveyor license from MLMUPC.

There are three levels of surveyor license depending on the educational qualifications and technical experiences of each surveyor. The conditions and formalities relating to the surveyor license are governed by Prakas 175. Each of these licenses is valid for five years and shall be renewed within 30 days prior to its

expiration.

5.3.3 Construction Certification Licenses

On 30 December 2020, RGC issued Sub-Decree No. 225 ANKr.BK on Construction Certification Conditions and Procedures ("**Sub-Decree 225**") in order to regulate the activity of construction certifiers. Sub-Decree 225 determines the types and levels of licenses for the purpose of endorsing the construction, along with the conditions and procedures for the issuance, renewal, termination, suspension, and revocation of such licenses.

Under this Sub-Decree 225, there are four types of construction certification license:

- Construction certifier license for general construction (two levels);
- Construction certifier license for architectural work (three levels);
- Construction certifier license for structural work (three levels); and
- Construction certifier license for mechanical/electrical/water systems (three levels)

Foreign architects, engineers, or companies have the right to perform this business activity in Cambodia, but they must fulfill the conditions and criteria detailed in Sub-Decree 225.

Each of these licenses is valid for three years from the date of its issuance, and renewals must be applied within 30 days before their expiration. It is a one-off issued process. If the original license is lost, broken, or damaged, a new duplicate license may be requested from MLMUPC.

The granting, renewal, or termination of a license must be done in compliance with Sub-Decree 225.

The holder of a license that has already expired may continue to exercise their obligations under the service contract created under the license validity period but cannot enter into a new service contract. The licensee can voluntarily cease to carry out their profession or business before its expiration date but is required to confirm in

writing to MLMUPC that all obligations under the service contract have been fulfilled.

Even though the license is terminated, the licensee is not released from liability for loss or damages caused to customers or third parties because of defects in their inspection and certification works.

Following Sub-Decree 225, MLMUPC has issued some Prakas to implement and clarify the provisions of Sub-Decree 225. Those Prakas are listed below.

Prakas 033 on formalities and timeframe licensing, issuing new license paper, termination and renewal of the construction certifier licenses dated 21 January 2021 ("Prakas 033")

Like its name, Prakas 033 sets forth the formalities and timeframe for licensing, issuing new license papers, termination, and renewal of the construction certifier licenses ("Certifier License"). The Certifier License is required for any professional, including individual and corporate entities, who wishes to carry out construction certification activities. The application for a Certifier License must be submitted to MLMUPC via its one-stop service.

Among other conditions, individual professional applicants must have a foreign work permit and residency permit, which is valid for at least twelve months. For corporate applicants registered under the foreign jurisdiction, they must have a power of attorney ("POA") appointing an authorized representative to apply for the Certifier License, and the POA must be duly signed by the company's president.

Please note that the supporting documents requested by MLMUPC must be in Khmer. If they are in a foreign language, they must be translated into Khmer and certified by a qualified notary public. A copy of such documents must also be notarized or certified by the city, provincial hall, or Khan Office.

Upon successful registration, a Certifier License may be issued within 20 working days from the

date of submission of the completed documentation to MLMUPC, except if it requires more items or additional information.

As part of ongoing obligation, a licensed professional must notify MLMUPC of any change of information listed in the application. However, for a corporate licensee, the notification is required for any change of the corporate information such as directors, business location, telephone number, email address, insurance certificate, deposit amount, information listed in the articles of incorporation. However, if a technical director or technician is changed, an approval from MLMUPC must be obtained. In such a case, a new Certifier License will be issued with the new person appearing on the license.

The new Certifier License replacing the old one will have the same validity and may be requested in case of a loss or damage, change of their name, registered office, or company president.

The Certifier License is valid for three years from its issuance date and may be renewable within at least 30 days before its expiration date. According to inter-ministerial Prakas No. 492 of MLMUPC and the MEF dated 10 August 2021, the government fees for such a license application (corporate licensee) depend on the category of the license, ranging from KHR 3 million (approximately USD 750) to KHR 6 million (approximately USD 1,500). For individual professionals, the license fee is up to KHR 800,000 (approximately USD 200).

Prakas 109 on formalities of certification work of architectural design and structural design dated 22 November 2021 ("Prakas 109")

This Prakas regulates the formalities of inspection and certification works to implement Sub-Decree 225. According to Prakas 109, the inspection and certification of the drawings are required for construction in which the construction permit is issued by the minister of MLMUPC and the Capital/Provincial Governor. However, religious buildings for which the construction permit is issued by the Capital/Provincial Governor, or construction for which the permit is issued by the Governor at Khan/District levels are not required

to have an inspection and certification, but inspection is up to the voluntary basis of the building owner.

For inspection and certification on architectural designs, these are required before applying for a construction permit, repair permit, demolition permit or a new occupancy certificate.

For inspection and certification on structural designs, these are required before applying for a construction site opening permit for new construction, modification and demolition works or before applying for a repair permit for the repair work.

In doing so, the construction owner may need to engage a qualified licensed inspector and certifier by signing a service contract (some minimum terms and conditions of contract are provided by sample contract in Prakas 109's annex).

Upon completion and all inspection and certification requirements are fulfilled, the inspector and certifier shall provide a report of inspection and certification together with a certificate of compliance to the construction owner.

Prakas 126 on formalities for inspection and certification of construction and demolition dated 30 December 2021 ("Prakas 126")

This Prakas sets forth the formalities of certification of construction and demolition works for architectural and structural designs following Sub-Decree 225.

According to Prakas 126, inspection and certification works are required for all construction types in which the construction permits are issued by MLMUPC and the Governor of Capital/Provincial levels. It does not apply to inspection or demolition of mechanical, electrical, and plumbing works, which would be subject to separate Prakas.

To carry out inspection and certification work, the construction owner shall engage a qualified certifier licensed by MLMUPC. The inspection and certification work shall be carried out during

construction or demolition works to ensure compliance with design plans, technical construction regulations, and other applicable regulations.

Once the inspection and certification works are complete, the certifier shall provide the construction owner with a report and certificate of compliance if all inspection and certification requirements are met. In case of damage caused by the certification works, the construction owner has the right to file a complaint to the Dispute Settlement Committee for Construction under MLMUPC, and then the complaint is referred to court for settlement.

In compliance with the Construction Law, the government has issued the new Sub-Decree No. 103 ANKr. BK on Organization and Functioning of the National Council for Building Technical Regulations dated 31 May 2022 and Sub Decree No. 104 ANKr.BK on Organization and Functioning of Secretariat General of the National Council for Building Technical Regulations dated 31 May 2022.

Currently, the Sub-Decree on the organization and functioning of the National Construction Laboratory is under draft in order to be in line with Article 22 of the Construction Law with respect to recognition and certification requirements for the construction materials, construction equipment, and construction products.

5.4 The Special Program to Promote Investment in Preah Sihanouk Province 2024

Preah Sihanouk Province is a favorable place for tourism development and a high potential location for attracting investment with some existing big special economic zones and main infrastructure including deep-sea ports, airports, and expressways to serve for the investment. However, Preah Sihanouk Province still faces some challenges that require the Royal Government to pay attention and provide solutions such as many constructions that have not been finished or some others finished but unable to do business (unfinished buildings), additional infrastructure, and coordination for

attracting investment. In order to effectively address the challenges of Preah Sihanouk Province, the Royal Government has decided to launch the Special Program to Promote Investment in Preah Sihanouk Province 2024, which sets out measures and mechanisms that are characterized as packages, interconnected, sharp, and simple.

In the past, the Royal Government introduced a series of measures to resolve stagnant investment projects in Preah Sihanouk Province, namely, investment projects that were constructed and suspended, postponed or stopped, and/or no investment or business activities in Preah Sihanouk Province from 2016. Nevertheless, based on the practical experience, these measures have given positive signals and increased confidence for investors, but it limited to stalled investment projects, while investment and business activities are facing challenges such as high taxes and other fees payment, unlicensed or unpermitted constructions, constructions without quality and safety inspections, high real estate pricing, lack of additional investment capital, and disputes arisen between construction owners and landowners so on and so forth. In this sense, the Royal Government really needs to put in place additional measures to encourage investment in those buildings by introducing the following measures:

- Exemption of income tax, prepayment of income tax and minimum tax for an additional 3 years for Qualified Investment Projects (QIP) and taxregistered small and medium enterprises.
- Exemption of income tax for 3 years, minimum tax for 3 years, and prepayment of income tax for 3 years for any investment projects or business activities that are not listed under the Law on Investment of the Kingdom of Cambodia.
- Exemption of Value Added Tax at the rate of zero percent for self-assessed enterprises that supply local goods or services to stagnant projects or business activities in Preah Sihanouk Province to

finish the construction and renovate the unfinished buildings.

- Exemption of withholding tax on rental property for 5 years.
- Exemption of property tax and administrative penalties (additional tax and interest) from 2016 to 2025, and this exemption does not have a retroactive effect on the tax with administrative penalties (additional tax and interest) already paid.
- Waive for payment of public service fees and excessive fees of the land use index for applying for a construction permit, construction site opening permit, closing construction letter, or certificate of occupancy.
- Facilitate the procedures and formalities for applying for a permit from the competent authority related to construction work involving reducing the time for applying for a construction permit or certificate of occupancy.
- Facilitate the grant of exemption of the inspection and certification fees of architectural plans, construction machinery layout, and fees for construction quality and safety and inspection certification in collaboration with ministries, institutions, private sector. landowners, construction owners.
- Facilitate the investment and business formalities and procedures, including applying for licenses, certificates, and permits, as well as QIP and business registration and
- Promote the use of Out-of-Court dispute resolution mechanisms in accordance with legal provisions for investmentrelated disputes.

In addition, to promote the implementation of investment projects or business activities that can start immediately in Preah Sihanouk Province including procedural facilitation, investment and business incentives, and flow of investors and tourists, and ensure the security and safety as well as strengthen the reputation of Preah Sihanouk

Province in 2024, the Royal Government has set out the following key measures:

- Facilitate investment and business formalities and procedures such as applying for licenses, certificates, and permits, as well as QIP and business registration.
- Provide special incentives and exemptions, including import taxes, patent tax, signboard tax, withholding tax on rental property, registration fees, and so on and so forth, to enterprises that come to invest or do business in Preah Sihanouk Province.
- Provide incentives by exempting income tax, prepayment of income tax, and minimum tax for an additional 3 years for the QIP and tax-registered small and medium enterprises.
- Allow zero percent of VAT for small and medium enterprises registered for tax for the purchase of domestically produced inputs.
- Provide a special 3-year visa for the longterm purchase or rental of property in Preah Sihanouk Province that costs over USD 100,000. This type of special visa shall be determined by a separate Subdecree.
- Organize "Safe City" campaign, events, and programs to restore and strengthen Preah Sihanouk Province's reputation on the international stage and
- Expedite the approval and promulgation of the master plan to transform Preah Sihanouk Province into a multi-purpose model special economic zone.



CHAPTER 6

6. Hospitality

6.1 The Law on Tourism

6.1.1 Purpose of Law on Tourism

The Law on Tourism was promulgated on 12 June 2009 ("Law on Tourism") having the following purposes:

- To govern the development of the tourism sector in a sustainable manner effectively and qualitatively and to reduce poverty;
- To protect and conserve the natural resources, culture and customs, which serve as the foundation of the tourism sector;
- To ensure and promote the quality of tourism services in the Kingdom of Cambodia through the introduction of a quality assurance system by providing security, safety, and comfort and by increasing tourists' satisfaction;
- To minimize negative impacts and maximize positive impacts of the tourism sector;
- To seek markets and enhance publicity with participation of both the public and private sectors;

- To develop human resources in the tourism sector; and
- To contribute to the development of international friendship and understanding through the tourism industry.

The Ministry of Tourism ("**MOT**") has the jurisdictional authority in leading and governing the tourism sector and shall effectively perform all the roles and functions required of a national tourism administration in accordance with international best practice (Article 9 of the Law on Tourism).

The MOT shall have primary responsibility to regulate the core areas of the tourism industry where are necessary or expedient for the effective implementation of the Tourism Development Plan. The primary areas are composed of the following:

- Promoting tourism promotion in and out of the Kingdom of Cambodia;
- Ensuring the quality of tourism sector;
- Tourism standards;
- Tourism Licensing;
- Tourism business activities;
- Conduct of tourism information; and
- International cooperation in the tourism sector with neighboring countries and the world.

According to Article 30 of the Law on Tourism, tourism businesses are categorized as follows:

- Category 1: Tourism business activities in the primary responsibility;
- Category 2: Tourism business activities in the shared responsibility; and
- Category 3: Tourism business activities in responsibility with consultation.

Classification of Hotel and Tourism Accommodation

The MOT shall establish systems for the classification of hotels and tourism accommodation services and other services in

accordance with international standards adapted to the conditions of best practices in Cambodia.

The classification systems of hotel and accommodation services shall be determined by a Sub-Decree. The classification systems for other tourism services shall be determined by a regulation (Prakas) of MOT.

Sub-Decree No. 16 dated 11 June 2004 on Classification of Hotel and Tourism Accommodation Services ("Sub-Decree 16")

All hotels shall have a standard classification system determined by the MOT under the annexure of the Sub-Decree 16.

The hotel classification shall be determined by the star, from 1 star to 5 stars, which is the highest level of the standard classification.

The main principles for evaluating the hotel ratings and tourism accommodation include:

- Location, architecture, and overall aspects, including quality and building exterior conditions spectacle, public building, and guest rooms;
- Equipment materials including rug, wall, curtain, electrical lighting, electric utility system, furniture, information and telecom;
- Hygiene and maintenance, including guest rooms, bathrooms, public places, and entertainment;
- Services and quality service, including uniform, staff behavior to the guest, and the relationship between staff and guests, guest security and safety;
- Catering service with quality local products and hygiene, including restaurant, food serving in the room, food quality, number of food, table arrangement, and other programs; and
- Traditional music and Khmer dancing.

With Article 8 of the Sub-Decree 16, hotels and tourism accommodation could have the classification unless they obtain the valid tourism

license and have fulfilled the following conditions:

- having registered with the Ministry of Commerce;
- having a construction permit;
- having an insurance certificate;
- the building shall ensure security, safety, and the fire prevention system;
- compliance with environmental protection;
- good hygiene; and
- compliance with the law and regulations.

6.2 Required Licenses and Registration

No person shall be able to operate a tourism business without a license required by the MOT or Provincial–Municipal Department of Tourism.

Under the Law on Tourism, where a person has more than one branch of a tourism business, each branch must be licensed.

An application for the grant of or renewal of a tourism license shall be made by the operators of the tourism business and shall be in the form and accompanied by the supporting documents and other information as required by Prakas of the MOT.

An applicant of a tourism license must pay the license fees determined by an inter-ministerial Prakas of the Minister of the MOT and Minister of the MEF.

A license issued under the Law on Tourism is subject to the conditions as stated below:

- Comply with all planning and foundation norms of building, fire safety, health, food, hygiene, labor, tax, and other laws and regulations relating to the activity, premises, equipment, employees, and operation of the tourism business;
- Comply with the standards and requirements issued by the MOT;

- Comply with the classification systems issued by the MOT;
- Comply with the quality assurance measures issued by the MOT under Article 28 of the Law on Tourism and not falsely represent that the business has a label, logo, accreditation, award, or incentive that it does not have;
- If the tourism business has been awarded a classification level under a scheme referred to in Articles 24 and 25 of the Law on Tourism, the level awarded must be displayed in a permanent position at the place of business of the licensee and must be specified in all marketing, advertising and correspondence;
- Comply with any Code of Conduct and Code of Ethic issued by the MOT or issued by a Tourist Industry Association and approved by the MOT for that type of tourism business;
- Notify the MOT or Provincial-Municipal Department of Tourism in writing within 14 (fourteen) days of any change;
- Promptly provide the MOT or Provincial-Municipal Department of Tourism with any statistical and other information related to the tourism business upon request, as determined by the MOT or Provincial-Municipal Department of Tourism:
- At all times, display the license in a position at the place of business of the licensee; and
- Ensure that registration numbers and types of tourism licenses are specified in all correspondence with stakeholders and commercial partners. Such other special conditions required for each type of license shall be determined by a Prakas (regulation) of the Minister of the MOT.

6.2.1 License Renewal

Article 42 of the Law on Tourism, a licensee must submit an application for renewal at least 30 (thirty) days before the expiration date of the license accompanied by the license fee and supporting documents and other information as specified in Prakas of Minister of the MOT.

6.2.2 Transferable License

Any license issued under this MOT shall be transferable subject to the following conditions:

- The licensee shall file an application to the MOT or Provincial-Municipal Department of Tourism
- The transferee of license must fulfill all conditions and requirements on licensing of the MOT;
- The transferor has fulfilled all tax obligations and resolved other matters with their stakeholders, and the transferee has agreed in writing to fulfil the tax obligations; and
- Where the license is a provisional license, the transferee shall provide to the MOT or Provincial-Municipal Department of Tourism a written undertaking to carry out the outstanding work within the remainder of the period originally fixed.

6.2.3 Compliance and Penalties

All tourism business operators and their agents, employees, and contractors shall comply with the following obligations:

- Comply with the Law on Tourism and regulations in force on standards, codes of conduct, codes of ethics, and conditions of tourism license:
- Comply with all other laws and regulations affecting or affected by tourism, including laws and regulations on land use, construction, safety, fire, security, public order, environment, health, hygiene, food, tax obligations, accounting and finance, protection of cultural and natural heritages, and traffic law;
- Safeguard national interests and tourists' interests and contribute to maintaining natural resources, protecting the environment and cultural heritage, arts,

- customs, and traditions of the Khmer people in all of its tourism activities;
- Report to the nearest Tourist Police, authorities in-competence or tourist authority, in case of having known or suspected the offences of drug trafficking and usage, human trafficking and confinement, child trafficking and sexual exploitation/prostitution, disseminations of pornographic pictures and materials or other criminal offences;
- Any manager of the hotel and tourist accommodation service must register the identity and other information of all guests upon the beginning of their stay; and
- Comply with any conditions as stated in the Law on Tourism.

Article 65 of the Law on Tourism states that any person who operates a tourism business without a tourism license shall be subject to a minimum transitional fine for a sum of KHR 2,000,000 (two million Riels) and a maximum transitional fine of KHR 20,000,000 (twenty million Riels). The scale of transitional fine for each type of tourism business shall be determined by a Prakas of the Minister of the MOT.

On 29 August 2024, the MOT and the MEF issued a Joint Prakas 537 on the Penalties under the Authorities of the MOT ("Joint Prakas 537") setting out a list of penalties in relation to violation of the Law on Tourism and related tourism regulations that are under the authorities of the MOT. This Joint Prakas 537 came into effect on 1 October 2024, abrogating previous Prakas such as Joint Prakas 160 on Tourism Related Penalties dated 17 February 2020. The penalties under Joint Prakas 537 include monetary fines (to be paid by a specified deadline) and subsequent fines on late payment of up to KHR 20 million (approximately USD 5,000). We note that this new regulation provides clarity, particularly with respect to the delegation of authority to the capital and provincial administrations and some changes regarding the monetary fines in comparison to the previous Prakas.

The table below highlights some of the key offenses and penalties:

Offenses		Fines		
Of	tenses	In KHR	In USD	
General offenses regarding tourism licenses to be				
issued by MOT				
1.		300,000	75	
	advertisement regarding			
	tourism			
2.	No list/menu indicating	350,000	87.5	
	the price of each service,			
	food or beverage.			
3.	Changing of address	600,000	150	
	without noticing the			
	MOT in writing during			
	the validity period of			
_	license	1 000 000	250	
4.	Not cooperating with	1,000,000	250	
	filing complaint or immediately report to			
	immediately report to the competent authority			
	about the activities of			
	tourists or activities			
	happened to tourists			
	which are forbidden by			
	law			
).	Entering into agreement	1,000,000	250	
	between the natural or			
	legal person that is under			
	the competent authority			
	of the MOT without			
	tourism license			
ŝ.	Obstructing the	1,000,000	250	
	competent authority			
	from inspecting the			
	business activities			

Se	parate offenses (such a	as in the case of ab	sence			
Separate offenses (such as in the case of absence of license, expired license, and other offenses set						
out in this Prakas which will be imposed per						
offence on case-by-case basis based on form,						
grade and size of the business)						
1.	Tour operators and	2,000,000	500			
''	travel agents	2,000,000	300			
2.	Hotel businesses and	2,000,000 to	500 to			
-	accommodation	6,000,000	1,500			
	services	0,000,000	1,500			
3.	Restaurants and	2,000,000 to	500 to 600			
J.	canteens	2,400,000	300 10 000			
4.	Karaoke, discotheque	500,000 to	125 to			
	and health massage	6,000,000	1,500			
	(including offenses	0,000,000	1,500			
	related to the					
	absence of a price list					
	for each service and					
	permitting minors to					
	enter adult					
	entertainment					
	premises)					
5.	Tourism sport	2,000,000 to	500 to			
	,	12,000,000	3,000			
6.	Meeting hall, MICE,	2,000,000	500			
	conference hall and					
	exhibit hall					
7.	Tourism resort	2,000,000 to	500 to			
		6,000,000	1,500			
8.	Tour guide (including	20,000 to	5 to 500			
	the offenses related	2,000,000				
	to not wearing the					
	uniform or any sign					
	that approve by MOT,					
	take tourists to the					
	forbidden place by					
	authorities, provide					
	misleading					
	information, not					
	adhering to the ethic					
	of the tour guide, and					
	consume alcohol					
	while working).					
9.	Translator from the	2,000,000	500			
	tour guide					

NOTE: The amount in USD is an approximate value based on an exchange rate of KHR 4,000 = 1 USD.

In light of the above, we recommend business operators adhere to the requirements set out in the Law on Tourism and check the expiration date of their licenses or obtain a new license, if necessary, as failure to do so may result in monetary fines as specified in this Prakas.



TIP!

An investor that intends to operate a hotel in Cambodia is required to register a company via a unified online system with the Ministry of Commerce, General Department of Taxation, Ministry of Labour and Vocational Training, National Social Security Fund, and MOT for the specific tourism license.

The investor is required to select specific business objectives relevant to the hotel operation, for instance, short-term accommodation activities and hotel and resorts hotels (where applicable) for the registration purposes.





CHAPTER 7

7. Tax

7.1 Transfer Tax

7.1.1 Transfer of Legal Title

Transfer tax, also referred to as registration tax or stamp duty, is a 4% tax imposed when there is a transfer of legal ownership of immovable property. The seller of the immovable property must pay the transfer tax within three (3) months of the legal transfer of the immovable property. By law, the 4% transfer tax is the legal obligation of the purchaser of the immovable property; however, as the tax is typically declared and paid by the seller to the authorities, it is often included in the consideration paid for the immovable property as set out in the sale and purchase agreement.

On 31 December 2024 the MEF issued Notification No. 020 on exemption and relief of stamp tax on transfer of ownership or right of possession of real estate for first-time home buyers and/or transfer of ownership (first-time home buyer) to be implemented from 01 January 2025 to 31 December 2025.

Notification 020 states that the first-time home buyer (Borey or Condominiums) before 2025 from the licensed Borey/housing development companies and transfer ownership or possession of the property for the first time at the Tax Administration in the year 2025, will be exempted from the stamp tax on the transfer for properties valued less than or equal to USD 210,000.

In addition, the relief for stamp tax is for property valued at more than USD 210,000 for the first-time buyer, will be allowed to deduct of USD 210,000 from stamp tax base.

However, for the second and subsequent homes with a value of more than USD 21,000 the amount of USD 70,000 is allowed to deduct from stamp tax base.

This tax exemption and relief shall apply **until the** end of 2025.

This tax benefit applies to both first-time buyers and those making a subsequent housing purchase in a Borey or condominium in 2025, provided they have not previously received this tax benefit.

The above benefit applies to both first-time buyers, and to those making a subsequent housing purchase for Borey or condominiums in 2025, who have not received this benefit before. The purchase must be from licensed Borey or housing development companies.

Noting that the tax exemptions/relief do not apply retroactively to taxes or penalties already paid.

7.1.2 Transfer of Shares

Historically, the transfer of shares in a Cambodian legal entity that held immovable property was subject to a 0.1% transfer tax. The 0.1% transfer tax was calculated on the higher of the consideration paid for the shares under the share purchase agreement, the par value of the shares being transferred, or the net asset value of the company in which the shares were transferred. The transfer tax is payable by the Cambodian legal entity in which the share transfer took place,

as proxy for the purchaser of the shares, within three (3) months from the approval of the Ministry of Commerce of the share transfer.

A new Law on Taxation (LOT) was introduced in Cambodia in May 2023. The LOT revised the rate of transfer tax for the transfer of all/part of the shares in an Immovable Property Company from 0.1% to 4%.

The 4% transfer tax would apply to an established market value of the immovable property at the time of the transfer.

The LOT defines an Immovable Property Company as any company that directly or indirectly holds immovable property that makes up more than 50% of the total assets of the company.

7.1.3 Exemptions

The LOT also provides a range of exemptions with respect to transfer tax as follows:

- Acquisition of ownership or possession of land in the form of a government concession.
- Acquisition of ownership or possession of immovable and movable property to be recorded in the inventory of state institutions of Cambodia.
- Acquisition of ownership or possession of immovable and movable property by foreign diplomatic or consular missions, international organizations, and agencies of technical cooperation of other governments.
- Acquisition of ownership or possession of immovable property within a Relative Member.

With respect to the last point above, the LOT defines a Relative Member as follows:

- Between parents and biological children,
- Between a husband and wife,
- Between grandparents and grandchildren,

- Between siblings and siblings,
- Between parents-in-law and children-inlaw,
- Between grandparents-in-law and children-in-law.

7.2 Tax on Immovable Property (TIM)

TIM is imposed at the rate of 0.1% on the value of the immovable property that exceeds KHR 100 million (approx. USD 25,000). The definition of immovable property includes land, houses, buildings, and other construction.

The tax base on which TIM is calculated is based on the immovable property's value as determined by the Immovable Property Assessment Committee.

The owner, occupant or final beneficiary of the immovable property must register, declare and pay TIM by the due date of 30 September each year.

Notification 014, dated 9 October, provides an exemption from TIM, including administrative penalties (additional tax and interest) for immovable property or any part of immovable property that relates to agriculture where people are cultivating agriculture and any construction that directly and permanently serves the agricultural activities. The exemption relates to immovable property located in provincial centers without the need for the immovable property to have a permit or certificate allowing agricultural use and only requiring reference to the immovable property being agricultural land on the title deed.

However, for immovable property that is considered agricultural land that is located in the capital and provincial cities, if some part of the land is used to build houses, buildings, or other structures that do not directly and permanently serve agricultural activities, the part of the land that does not directly and permanently serve agricultural activities will not be exempted from TIM.

For immovable property that is considered as residential land and located in the capital and provincial cities, where the land is used for agricultural cultivation, that land shall be exempted from TIM but requires a permit or certificate of agricultural land use from the local authority.

For immovable property that has been registered where the TIM has been determined but the owner of the immovable property has not complied with the TIM calculation, the TIM is exempted from re-assessment, including administrative penalties (additional tax and interest) from the year of filing until 2024. From 2025 onwards, the TIM implementation shall follow the laws and regulations in force.

For immovable property (with or without title) that has not been registered and where TIM has not been declared in the past, owners will be allowed to register and pay TIM from the year of occupancy, and for immovable property that has been registered and where TIM has been declared in the past but not for all years there will be an exemption from administrative penalties (additional tax and interest) until the end of June 2025.

7.2.1 Exemptions for TIM include immovable property that is:

- Valued less than or equal than KHR 100,000,000 (approximately USD 25,000).
- Used as agricultural land.
- Owned by the Royal Government of Cambodia and ministries/institutions thereof, Owned by any organization/person established exclusively for religious, charitable causes where there is no private interest.
- Owned by a foreign diplomatic or consular mission, international organization, and technical cooperation agencies of other governments.
- Infrastructure such as roads, bridges, fresh water/electricity, airports, ports, railway stations – inclusive of buildings/offices that are directly involved with infrastructure activities.

- Immovable property severely damaged by force majeure.
- House, building, or construction that is less than 80% completion and has not been used.
- Located in Special Economic Zones, which is solely used for production and service activities.

7.3 Tax on Unused Land (TUL)

TUL is imposed on unused land with construction and without construction. Unused land tax is an annual tax that is levied at the rate of 2%.

Under Notification 014, TUL has been suspended until the end of 2024, meaning that the owner or occupant, or final beneficiary has no obligation to declare TUL until the end of 2024.

The MEF issued Prakas 573 on Unused Land Tax on the 19th of September 2024 (Prakas 573). Prakas 573 takes effect from 1 January 2025.

Prakas 573 defines Unused Land as Constructed or unconstructed land that is not utilized.

Prakas 573 defines Agricultural Land as land that is used for agricultural production such as farmland, industrial land, industrials, forestry, animal production, and salt farmland.

The tax base for TUL shall be based on the land value as assessed by the Land Evaluation Commission. An owner, occupant or final beneficiary shall be allowed to deduct five (5) hectares from the TUL tax base for each plot of land.

The owner of unused land is required to notify the GDT using the prescribed tax forms in respect to a change of owner of unused land, change of size, of building/construction, of unused land.

Unused land comprising more than five (5) hectares shall be exempt from TUL in accordance with any of the following conditions:

- a) Agricultural land that is currently cultivated with the approval of the committee or sub-committee of land valuation for TUL.
- b) Land that is currently used for the economic activities of a physical person or legal person that has been registered with the GDT.
- c) Land, with or without construction, under a lease agreement.
- d) Land that is in the possession of the Royal Government or government institutions.
- e) Land that is the possession of the community.
- f) Land under an economic concession which is leased from the state, or government institutions.
- g) State-owned land which is leased to any physical person or legal person for other economic activity as per contract or as per agreement between the two parties.
- h) Land in a Special Economic Zone that directly serves agricultural, industrial, and/or service activities.
- i) Land that has been registered as an asset of an enterprise in the field of education and vocational training serving the educational and vocational training purpose of the enterprise. In case this land has been sold or does not serve the above purpose, tax obligations shall be fulfilled as per the prevailing laws in force.

For Unused Land that is below 5 hectares for one plot of land, the taxpayer does not have an obligation to declare and pay tax.

For Unused Land that is more than 5 hectares, the taxpayer must declare and pay TUL by 30 September of each year.

7.4 Immovable Property Rental Tax

Immovable property rental tax (IPRT) is imposed on immovable property rental in the Kingdom of Cambodia. IPRT applies to rental income that is received by the owner or beneficiary of immovable property who is not registered as a taxpayer under the self-assessment taxation regime. IPRT is levied at 10% of the immovable property rental (defined as the gross amount agreed between the property's owner and lessee based on market value).

An owner or beneficiary must register with the tax administration in the Khan where the immovable property is located fifteen (15) days from the date of signing the lease or from the date of any contractual changes to the lease agreement.

A rental bill must be issued to the tenant for each payment. The owner or beneficiary must submit a property rental tax declaration to the tax administration no later than the 20th day of the following month in which the contract requires monthly payment, or no later than the 20th day of the following month in which a pre-payment for a period longer than one month is received.

For the purpose of determining IPRT "immovable property" is defined to include:

- Buildings and other constructions such as houses, factories, hotels, offices with its appendix.
- Manual tools are equipped with industrial institutions.
- Industrial and commercial installation is established in place, large building, or warehouse.
- Floating houses used as accommodation or doing miscellaneous business.
- Free land (land without buildings).

Exemptions for IPRT include rental income that is received from:

- Immovable property owned by the Royal Government of Cambodia and ministries/institutions thereof,
- Immovable property owned by any organization/person established exclusively for religious, charitable causes where there is no private interest.
- Immovable property owned by a foreign diplomatic or consular mission, international organization and technical

- cooperation agencies of other governments,
- The amount of refundable deposit that is paid by a lessee,
- Rental income that has already been subjected to withholding tax by a lessee who is a self-assessment taxpayer.

7.5 Tax on Capital Gains

The LOT imposes a capital gains tax at the rate of 20% on a physical (an individual) resident taxpayer who receives capital gains within or outside of Cambodia. The definition of capital includes the transfer of immovable property or a lease. A non-resident taxpayer, either a physical or legal person, is also required to pay capital gains tax on gains made from the transfer of immovable property or a lease within Cambodia.

7.5.1 Immovable Property

Capital gains tax is triggered with respect to immovable property when:

- Immovable property is sold or transferred.
- At the time the transfer of ownership is registered with the authorities in Cambodia or
- At the time a decision is made to transfer ownership of the immovable property through a court judgment.

When determining the amount of gain that would be subject to 20% capital gains tax on the sale or transfer of immovable property, first the sale/transfer value of the immovable property needs to be determined.

The revenue received from the sale/transfer of immovable property is based on the price indicated in the sale and purchase agreement of the immovable property and other supporting documents. If the GDT determines that the price indicated in the sale and purchase agreement is lower than the market price, the GDT can reassess the sale/transfer price of the property in accordance with:

- The market value; or
- The value attributed to the immovable property based on its location and characteristics as detailed in the Annex attached to the Prakas on the Transfer of Ownership or Occupancy Right over Immovable Property; or
- A value determined by the committee for the evaluation of capital gains tax on immovable property.

Once the sale/transfer value of the immovable property is determined then a taxpayer can choose to deduct expenditure from the sale/transfer value based on two methods:

Once the sale/transfer value of the immovable property is determined then a taxpayer can choose to deduct expenditure from the sale/transfer value based on two methods:

(1) Determination-based Expense Deduction

Under this method, a taxpayer can deduct 80% from the revenue received from the sale or transfer of the immovable property without needing to provide supporting documentation for the expense.

(2) Actual Expense -based Deduction

Under this method, a taxpayer may deduct expenses actually incurred in acquiring, holding, and transferring the immovable property that qualifies as deductible expenses, i.e., expenses that have occurred, that relate to the property and can be evidenced with invoices or other supporting documents.

The costs that fall under an actual expense-based deduction can include:

- The cost of the property and expenses incurred during its purchase, occupation, and subsequent sale/transfer, including but not limited to:
 - 1. Consulting fees;
 - 2. Registration tax paid when the property was purchased;

- 3. Expenses relating to cadastral administration or land management fees:
- 4. Expenses relating to commercial advertising of the property for sale;
- 5. Commission fees;
- 6. Property evaluation fees;
- 7. Expenses on administrative fees to obtain a loan to purchase the property;
- Interest expenses relating to a loan used to purchase the property paid during the occupancy of the property;
- 9. Property maintenance and renovation; and
- Expenses on the creation or protection of property occupancy rights.

Instruction 014 provides that the postponement of the implementation of capital gains taxes on real estate for physical persons will continue until the end of 2025.

7.5.2 Exemptions with respect to Immovable Property

Capital gains tax is exempted on the sale/transfer of:

- Immovable property owned by a public institution.
- Immovable property owned by a diplomatic mission, foreign consul, international organization or technical cooperation agency of other governments.
- The residence which is the principal place of residence for a taxpayer for at least five (5) years prior to the sale/transfer. If the taxpayer has more than one residence or a taxpayer and their spouse have different residences, only one residence shall be permitted as a principal residence.
- The transfer of immovable properties among relatives as stated in the transfer

tax regulations, excluding the transfer of ownership or the right to occupy immovable properties between biological brothers/sisters, parents-inand children-in-law and grandparents-in-law and grandchildrenin-law.

Immovable properties sold or transferred for the public interest in accordance with the Law on Expropriation.

7.5.3 Tax Declaration

Taxpayers are required to submit a prescribed tax return and pay capital gains tax to the GDT within three (3) months after the capital gain has been triggered as outlined above. It is important to note that the transfer of legal title or occupancy rights of immovable property shall be null and void if the capital gains tax has not been paid on the sale or transfer.

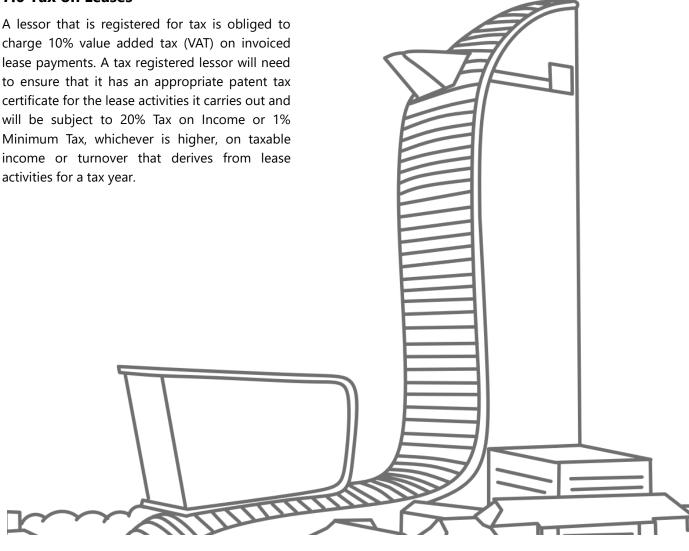
7.6 Tax on Leases

charge 10% value added tax (VAT) on invoiced lease payments. A tax registered lessor will need to ensure that it has an appropriate patent tax certificate for the lease activities it carries out and will be subject to 20% Tax on Income or 1% Minimum Tax, whichever is higher, on taxable income or turnover that derives from lease activities for a tax year.

A tax registered lessee that makes lease payments to a lessor that is not registered for tax or that issues an invalid VAT invoice is obliged to withhold and declare 10% withholding tax to the GDT at the earlier of when it expenses or physically remits the lease payment.

Instruction 33000 issued on 18 September 2024 provides:

- A lease agreement may contain a specified period when lease payments are not paid due to construction, design, repair or improvement.
- Lease payment free periods are limited to ten percent (10%) of the total lease period stipulated in the lease agreement.
- In the event that the lessor wishes to include a lease free or lease reduction period, the lessor must submit the lease agreement to the General Department of Taxation within thirty (30) days from the signing of the lease agreement.





CHAPTER 8

8. REIT (Real Estate Investment Trust)

8.1 Introduction

A REIT is a type of collective investment scheme defined under Prakas 003/18 on Licensing and Managing of Collective Investment Schemes dated 29 May 2018. In REIT, investors make investments in specific real estate portfolio having income. A REIT can be formed subject to an approval of the Securities and Exchange Regulator of Cambodia (SERC) and its investment must be managed by a fund management company licensed by the SERC. In addition, the property of a REIT must be retained by a trustee company licensed by the SERC and the Trust Regulator. The trustee company will not undertake any investment as its principal purpose is to protect the interest of the investors in the trust. On the other hand, the fund manager will carry out portfolio investment using the trust funds to get returns for the investor.

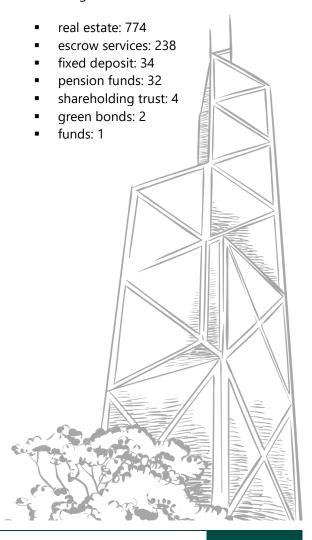
In Cambodia, the context of REIT is quite new, and we are not aware that a REIT has been set up and approved by the SERC.

Then, the Trust Law was promulgated on 2 January 2019 which aims to govern all trusts created in Cambodia. As mentioned in the above section, a trust may be created by a trustor or by applicable regulations. If the trust is created by the trustor, the trustor must transfer its property or funds to the trustee through the trust instrument by specifying the specific purpose of the trust and/or the identity of the beneficiary. Trust must have lawful purposes and not be contrary to public order. Under Trust Law, trusts are classified as follows:

- **1. Public Trust:** It is established for the benefit of Cambodian citizens;
- 2. Social Trust: It is established when a trustor contributes their property to the trustee for general social purposes such as cultural, educational, human, religious or scientific purposes;
- 3. Personal Trust: It is created by trustor or trust creator for the interest of trustor/person specifically determined by trustor in order to transfer their asset or fund to trustee to manage, administrate or safe keep instead of the trustor. Personal Trust binds the right, obligation and responsibility between trustor, trustee and beneficiary by a trust instrument; and
- **4. Commercial Trust:** It is established for the purpose of seeking the profit for the benefit of the contributor to the trust or of any specific individual determined by the contributor to the trust. The

properties or funds that 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 fund back to the third party upon the occurrence of certain events. The Commercial Trust includes pension funds, education funds (or other similar funds), employee share scheme, and commercial trust for other purposes. It also includes retention services such as the retention of property or fund by a notary office or law office, or accounting company, or a property holding or deposit fund for the benefits of the investor, the restate buyer and for other commercial operation.

Based on information provided by the Trust Regulator on 13 December 2024, 1,107 trusts were registered in Cambodia with a total investment fund of USD 1.7 billion and the commercial trusts accounted for the majority of registration having 1,085 trusts with the total investment fund of USD 1.2 Billion. The commercial trusts which were registered contain the following data:





CHAPTER 9

9. Real Estate Finance

9.1 Permitted Finance

Investors whose properties (movable-immovable properties or tangible-intangible property) are in Cambodia may use them as collateral given to local or foreign lenders for securing their loans. The immovable properties include land, buildings, and all fixtures attached to the land. The land ownership rights or perpetual lease rights (for a term of 15 to 50 years) over the land may also be used as collateral to secure the borrower's repayment obligations in any project finance in Cambodia.

Under the Civil Code, the security rights are classified as: (i) right of retention, (ii) preferential right, (iii) pledge and (iv) hypothec (aka mortgage) and (v) security interest by transfer/assignment¹.

The hypothec (mortgage) has been known as one of the most commonly used securities in real estate finance.

9.2 Mortgage

Under the Civil Code, a real security right must be established in order to secure an existing or future debt, if it can be specified. When the holder of a real security right does not receive satisfaction of the secured claim, the right holder may enforce the real security right in accordance with procedures established by the applicable regulations. The registration mechanisms for the aforementioned security rights have been put in place in accordance with the Joint-Prakas 30.

Under the Civil Code, lenders may hold a hypothec (similar to a mortgage) over the land or the perpetual lease rights.

The registered land with a hard title is subject to the hypothec where the registration process would take place at the Municipal/Provincial Department of Land Management Urban Planning Construction and Cadastral ("**DLMUPC**") where the land is located. It is critical that lenders conduct a proper due diligence on a hypothecator's land to ensure that it holds a valid title, and the hypothec is registrable.

With regard to the legal regime governing hypothecs, a hypothee (or a creditor) 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 without transfer of possession. A perpetual lease or usufruct may also be the object of a hypothec.

A hypothee may not assert the hypothec against a third party other than hypothecator (debtor) 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 forms part of the land comprising the object of the hypothec when the hypothec was created, including buildings and things attached to the land after its creation. In the event of a failure to perform on a debt, a hypothee may apply to the court for compulsory sale of all the hypothecated land with one exception. This is where buildings owned by a third party, attached to the hypothecated land are subject to a perpetual lease or leasehold agreement registered in the land registry. In such a case, the hypothee may not demand the compulsory sale of the building together with the hypothecated land. Based on the Civil Code, multiple hypothecs over immovable property are permissible. In case of multiple hypothecs have been created on one immovable property in order to secure multiple debts, the order of their property shall be based on the order of their registration date.

9.3 Other Security Interests

A pledge is one of the security rights which also applies to real estate finance. Under a pledge, a pledgee is entitled to hold possession of the item they have received from the debtor or a third party as security for their 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 property (i.e., land) may use and receive profits of the land in accordance with its ordinary use, pay the costs of management thereof, and will bear all other charges pertaining to such land, and may not demand interest on the secured claim. The pledge of the land cannot exceed five years and is renewable.

The registration process of a pledge over the land is determined under Joint-Prakas 30 of which matters to be included in the application form are at least: (i) debtor's name, (ii) term, (iii) principal amount and (iv) compensation of damage, and (v) conditions attached to secured claim, if any.

A security over movable property may be governed either by the Civil Code or the Law on Secured Transactions, dated 24 May 2007 ("**LST**"). 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 requirements they often entailed. The LST, on the other hand, provides creditors with a robust and efficient framework within which they may take security over movable property.

Subject to some restrictions, movable property that may be given as collateral under the LST includes both tangible and intangible assets/properties such as rights, claims, instruments, accounts, and secured sales

contracts, and a security interest may secure one or more obligations. Security Interests over movable property may be created and perfected by filling initial notice against the relevant collateral and securing parties with the Secured Transactions Filing Office ("STFO") at the MOC.

The STFO was established under the provision of the LST, under the direction and supervision of the MOC. Security interests over movable property may be registered, amended, extended, corrected, and terminated in accordance with the LST and the Joint Prakas No. 315 on Provision of Public Service of Ministry of Commerce ("Joint Prakas 315").

Nonetheless, the LST cannot be used to take security over immovable property, and the Civil Code remains the primary governing legislation in this respect.

9.4 Foreign Lender Restrictions

Presently, there is no specific regulation to restrict any overseas lender from granting a loan to a local borrower in Cambodia. The facility agreement may be governed by any regulations besides Cambodian regulations; however, those provisions of the facility agreement shall be ensured to be applicable and enforceable under Cambodian laws. Most investors may reach out to a local lawyer to review the drafted facility agreement if it is governed by a foreign law.

With respect to the security over immovable properties (i.e., hypothec), a foreign lender can be registered as the lender on a hard title with the relevant DLMUPC. To ease enforcement of security (hypothec) over immovable properties in Cambodia, a local bank is assigned to be the security agent for the enforcement process with the Cambodian court.

In case of any default on the part of the hypothecator/borrower, the hypothee or lender may apply to the court for compulsory sale of the hypothecated immovable properties. The procedures for the compulsory sale are specified under the Code of Civil Procedure of Cambodia. However, without the process of compulsory execution by the court, the foreign lender may not have direct ownership over the immovable properties of the hypothecator.



CASE STUDY

An investor wishes to borrow funds from a bank to raise funds for investment in a business. Can real estate be used as collateral for loaned funds?

Yes. An individual or legal entity may enter into a loan-for-consumption agreement and a hypothec creation agreement with the lender, which uses real estate as collateral to secure repayment of the loan. This applies to real estate that is freehold-owned as well as real estate that is subject to a perpetual lease (Article 843, Civil Code). If the borrower is the perpetual lessee of the leased land (with a lease term of 15 years and with a lease certificate), the borrower can hypothecate his/her leasehold right in favor of the lender as the hypothee. Moreover, a hypothec cannot be enforced against a third party unless the hypothec creation agreement has been notarized and registered with the land registry (Article 845, Civil Code). The hypothec application documents will be filed with the land office where the land is located.

THANK YOU!

process our appreciation to The council for the Development of Cambodia (CDC), Trust Regulator, Real Estate Business & Pawnshop Regulator, Ministry of Land Management, Urban Planning and Construction (MLMUPC), and U.S. Embassy in Cambodia for supporting this publication.

THANK YOU!



We would like to extend our appreciation to IPS Cambodia for providing the latest images of Phnom Penh's development and realestate.com.kh for being our media sponsor and to support this Cambodia Real Estate Investment Guide 2025.

KEY CONTACTS



Paul VolodarskyPartner, Head of Regional Real
Estate and Hospitality Practice
paul.volodarsky@dfdl.com





Davy KongPartner, Co-Head of Cambodia Real
Estate and Construction Practice

<u>davy.kong@dfdl.com</u>





Leung SengCo-Head of Cambodia Real Estate and Construction Practice
leung.seng@dfdl.com











ABOUT DFDL

Leaders in Southeast and South Asia

DFDL was established in 1994 and founded on a unique vision: to create an integrated legal and tax advisory firm, with in-depth knowledge of the developing jurisdictions in which we are based. Our dedicated professionals exhibit the acumen and insight necessary to assist you in navigating the legal and tax complexities and challenges. Drawing on a wide-ranging industry experience and finely tuned local knowledge in the countries we operate in, we strive to provide concise, commercially focused, and innovative advice, staying true to our original motto One Region. One Firm.

DFDL has 12 offices including collaborating firms, in Bangladesh, Cambodia, Indonesia, Lao PDR, Malaysia, Myanmar, Philippines, Singapore, Thailand and Vietnam.

Our Solutions

We are constantly adapting in fast-changing environments. As a full-service and fully integrated legal and tax firm, we remain focused on our fundamental mission: to bring you successful solutions and add value to your projects across Southeast and South Asia. We are committed to our clients' success and to providing them with commercially focused legal solutions that help them overcome their business challenges.



