

### I. Introduction

Ports and waterways are an important component of Cambodia's transport network and they play a considerable role in the conduct of trade in Cambodia. Cambodia is blessed with natural assets with the Mekong River system which crosses the country and direct access to the Gulf of Thailand, providing it with good water connectivity enabling it to service domestic and international freight trade. Maritime and fluvial navigation are extremely advantageous due to lower costs relative to other modes of transportation, the possibility to move heavy items, and the safety and flexibility of these modes of transportation.

However, to this day, most of the laws impacting transportation in Cambodia are scattered throughout various secondary pieces of legislation dealing with more general matters and do not cover the entire field of ports and maritime/fluvial transportation; leaving multiple gaps and uncertainties in the applicable laws and practice.

However, understanding that efficient transportation systems are vital for the development of the country, Cambodia has begun a noticeable progression in terms of building new infrastructure and improving the regulatory regime.

### History of ship registration

One of the first steps toward more complete regulations, happened in terms of ship registration. The first open registry system was implemented in 1993 with the primary aim of promoting the shipping industry in Cambodia and building an important fleet of Cambodian flagged vessels.

The term and concept of "*flag State*" originated from the ancient use of flags as a symbol of the nationality to which vessels belong. The flag has become an official symbol of the State and is the visible evidence of the nationality conferred by the State on vessels registered under its national legislation. The law and regulations of the flag State become applicable law with respect to the vessel as soon as the ship is registered.

The responsibility for registering vessels then belonged to a private company, Cambodian Shipping Corp. At the time, there were no restrictions imposed by the Royal Government of Cambodia (the "RGC") on the conditions and requirements to have a vessel registered under the Cambodian flag, which led to an increase from 249 registered vessels in 1999 to 817 registered vessels in 2007<sup>1</sup>.

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<sup>1</sup> The Study on the Master Plan for Maritime and Port Sectors in the Kingdom of Cambodia, August 2007, by JICA, OCDI, JMS and MPWT

The lack of rules led to a complete lack of standards for Cambodian ship registration. Often, Cambodian flagged ships were used for drug and illicit arms smuggling, illegal fishing, and human trafficking, with notorious consequences in international trade.

In 2002, Cambodia had about 450 registered ships, and out of this number 25 had suffered shipwrecks, 41 collisions, 9 fires and 45 arrests. Nine Cambodian-registered ships were deemed severely hazardous and banned from entering European ports. The same year, the Greek-owned, but Cambodian-registered ship the Winner was seized by French forces and discovered to be smuggling a large amount of drug.

In addition, the deficiency rate of Cambodian flagged vessels was two times higher than the global average, the detention rate three times higher than the global average and the average age of the Cambodian fleet was 28 years old<sup>2</sup> (while it is generally accepted globally that a vessel has a lifespan of between 16 to 20 years); during the Cambodian Shipping Corp.'s activities.

As a consequence, the RGC held an open bid in 2003 for the provision of a ship-registration system which was won by a private company: the International Ship Registry of Cambodia ("ISROC"). ISROC was once provided with the sole and exclusive authorization to register foreign-owned ships as Cambodian flagged vessels. ISROC adopted the same course of action as its predecessor with a simple registration system accessible through the internet and limited requirements regarding information to be provided and documents to be submitted. The registration of ships under ISROC has not been beneficial for Cambodia either since in 2013, the EU moved to ban fish imports from Cambodia, as a sanction for illegal fishing operations under flags of convenience.

The Cambodian flag was deemed internationally to be a flag of convenience which enables ship owners who registered vessels under it to avoid paying taxes or complying with more stringent regulations applicable elsewhere.

Inevitably, the RGC ended its agreement with ISROC in 27 August 2015 and notified the International Maritime Organization ("IMO") that "*any ship claimed to be under Cambodian flag after this due date [end of August 2016] is considered illegal and subject to applicable international law and regulations*"<sup>3</sup>. From that point in time, Cambodia ceased to accept foreign-owned ships for registration except for vessels owned by foreign nationals residing temporarily or permanently in the Kingdom of Cambodia.

Fortunately, it was not long until new responsible authorities were established and clear requirements regarding ship registration were implemented which are helping Cambodia to retain control on its ships and, on a larger scale, on its economy and international standing.

### **The new responsible authorities**

The Sub-decree No.216, dated 3 October 2016, on the Organization and Functioning of the Ministry of Public Works and Transport has established the General Department of Waterway-Maritime Transport and Ports (the "GDWMTP").

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<sup>2</sup> The Study on the Master Plan for Maritime and Port Sectors in the Kingdom of Cambodia, August 2007, by JICA, OCDI, JMS and MPWT

<sup>3</sup> Clarification by the Ministry of Foreign Affairs and International Cooperation dated 2 October 2017 on the Cambodian Ship Registration.

The GDWMTP oversees several departments with two such departments being in charge of ship registrations:

- the Inland Waterways Transport Department (“IWTD”) responsible for the registration of ships navigating on the rivers of Cambodia; and
- Merchant Marine Department (the “MMD”) responsible for the registration of ships navigating at sea.

## I. Registration of ships navigating on waterways

### (a) Responsible authorities

The applicable regulation is the Circular N.003 SRC/MPWT on Means of Waterway Transport Management dated 27 June 2007 (the “Circular 003”).

The IWTD and the Provincial/Municipal Office of Public Works and Transport (the “PMOPWT”) are both responsible for the registration of ships navigating on the waterways of the Kingdom of Cambodia. There are 25 PMOPWT spread in each province of the Kingdom.

The Circular 003 states that “*all boats navigating on the waterways of the Kingdom of Cambodia with a load capacity of 500 kilograms of more [...] shall have a boat identity card*”.

Each entity is the relevant authority for the registration of the following types of ships:

Inland Waterways Transport Department	Provincial/Municipal Office of Public Works and Transport
Ships with a load capacity of 40 tons or more or an engine capacity of 90 Horse Power (“HP”) or more	Ships with a load capacity of below 40 tons or with an engine capacity of less than 90 HP
Oil tankers	Passenger ships with a load capacity of below 50 seats
Passenger ships with a load capacity of 50 seats or more	
Tourist ships	
Ferries	
Ships navigating across provincial/municipal boundaries	
Ship trailers with an engine capacity of 90 HP or more	
Fishing ships	
Ship used for conducting business across borders	
Ships belonging to foreign nationals residing temporarily or permanently in the Kingdom of Cambodia	
Powerboat regardless of engine power	

**(b) When is it necessary to register your ship?**

Authority	Particulars of the ship	Timeframe	To be registered from:
IWTD	Ship located in Phnom Penh	1 month	Complete construction of the ship.
	Ship is in a location other than Phnom Penh	2 months	Complete construction of the ship.
	Imported ship	2 months	The date of the import tax payment

PMOPWT	Ship located in the respective province/municipality	1 month	- Complete construction of the ship; or - Date of the sale
	Ship located in another province/municipality	2 months	- Complete construction of the ship; or - Date of the sale
	Imported ship	3 months	The date of the import tax payment

**(c) Required documents for ship registration**

To register ships for the waterways in Cambodia, the following documents are necessary:

- The application form affixed with the appropriate stamps from the relevant authority;
- The sale-purchase contract recognized by the competent authority;
- Certified letter of residence or identity card of the applicant or a copy of the family record book;
- Administrative letter certifying that the ship is not owned by the State if the applicant is a civil servant;
- A letter of certification if the ship is owned by the State;
- A valid import tax invoice for an imported ship;
- A letter of certification from the PMOPWT if the ship is newly built or modified;
- The construction blueprint for the ship approved by the MPWT; and
- The ship's logbook certified by a shipyard official.

**II. Registration of ships navigating at sea**

**(a) Responsible authorities**

Merchant Marine Department	Provincial/Municipal Office of Public Works and Transport
Ship with a capacity of over 20 tons or more than 30 passenger seats	Ship with a capacity of less than 20 tons or 12 to 30 passenger seats
Ship navigating across provincial/municipal boundaries	Ship with engine power less than 75 HP
Fishing ship with an engine of 75 HP or more	

Ship navigating across country from or to Cambodia to/from other countries regardless of capacity or engine power or number of passenger seats
Ship belonging to foreign national residing temporarily or permanently in the Kingdom of Cambodia
Powerboat regardless of engine power

**(b) When is it necessary to register your ship?**

Authority	Particulars of the ship	Timeframe	To be registered from:
MMD	Ship purchased or built in Sihanoukville, Kampot, Kep or Koh Kong	1 month	<ul style="list-style-type: none"> <li>- Complete construction of the ship; or</li> <li>- Date of purchase</li> </ul>
	Ship purchased or built in other provinces/municipalities	2 months	<ul style="list-style-type: none"> <li>- Complete construction of the ship; or</li> <li>- Date of purchase</li> </ul>
	Imported ship	3 months	The date of the import tax payment

Authority	Particulars of the ship	Timeframe	To be registered from:
PMOPWT	Ship purchased or built in the respective province/municipality	1 month	<ul style="list-style-type: none"> <li>- Complete construction of the ship; or</li> <li>- Date of purchase</li> </ul>
	Ship purchased or built in other provinces/municipalities	2 months	<ul style="list-style-type: none"> <li>- Complete construction of the ship; or</li> <li>- Date of purchase</li> </ul>
	Imported ship	3 months	The date of the import tax payment

**(c) Required documents for ship registration**

To register the vessels/ships in Cambodia, the following documents must be submitted:

- A copy of the application form affixed with the appropriate stamps;
- contract for the sale (witnessed and certified by local authority) or construction of ships;
- Certified letter of residence of the applicant and family book or ID card or other identification documents;
- A certification letter from the director if the ship is State owned;
- The construction plan and vessel registry; and
- Receipt of tax payment.

### **III. Business licenses**

In addition to the registration, it is necessary for persons engaged in some activities conducted in relation to waterway and sea transportation to obtain a license before being able to partake in those activities. The licenses to be obtained are as follows:

- Inland Water Transportation Business License;
- Offshore shipping license for ships/roll-on/roll-off vessels;
- Passenger Vessel Operating Permit;
- Inland water transport business license for cargo vessels;
- River Transit Business Permit; and
- Waterway Operating Permit for tourist-type ships with accommodation.

Additional documents are required in order to obtain the business license, which is, in general, valid for a year and can normally obtained in under seven working days (although this timeframe is subject to variations).

The shipowner must re-apply for the business license in case of:

- A change of the destination; or
- A change of business objectives.

#### **IV. Technical conditions of ships intended for business**

There are additional technical conditions for ships registered in Cambodia which assure the seaworthiness and safety of the ship partaking in business or commercial transactions, according to the Circular 003:

- The hull of the ship shall be of sufficient quality to ensure the safety;
- The engine shall be installed in a metal casing to protect seafarers and passengers any direct contact with it;
- The pilot's seat shall be big enough and installed in such a manner that the pilot has full visibility at all time;
- Installation of a roof (depending on the length of the ship);
- Horn which must be audible from at least 1,500 meters;
- Bells (with a diameter of 0.20m at the bottom);
- Lights and signals (the number and color depending on various factors such as type of cargo and length);
- Safety equipment:
  - o Buoys, ring buoys and life vest;
  - o Wooden bridge (for passengers or tourists);
  - o Fire extinguishing equipment and water pump;
  - o Tarpaulin, pushing poles, ropes and anchor;
  - o Water depth device;
  - o Cargo loading scale; and
  - o Communication radio.

The Circular N.006 SRC/MPWT on Management of Sea Navigation dated 1 October 1999 (the “**Circular 006**”) adds for passenger and tourist vessels, the obligation to have toilets and medicines at disposal for unexpected illnesses (however do note that the dosage of the medicines should be low).

We do note in addition that article 8 of the Sub-Decree on Water Pollution Control dated 13 October 1999 adds a strict prohibition of “*the disposal of solid waste or any garbage or hazardous substances into the public water areas*”. The Circular 006 adds the obligation to have a waste bin on board but we are not aware of any other mandatory prevention pollution equipment to be kept on board.

Any ship shall also have a pilot holding a Class 1,2, or 3 Pilot License and a mechanic on board to be in charge of the engine(s) holding a Class 1,2 or 3 Mechanic License. The MPWT is the authority responsible for issuing these licenses.

The ships will also undergo numerous technical inspections during its life, notably a compulsory initial inspection for the application of the transportation license, a bi-annual inspection for wooden ships and an annual inspection for iron/fiberglass ships and a random inspection which can happen “*at any time and place on Cambodian waterways*”.

As a shipowner, do not forget to have on board, at all time, the following documents:

- Ship identity card
- Pilot license
- Technical inspection book;
- Business license;
- Traffic visa book; and
- Receipt of tax payment.

Transportation is a forward-looking sector and Cambodia is paying special attention to the Gulf of Thailand, with its natural resources, and its importance to national defense and security and international trade; with the aim of transforming Sihanoukville Port into a major hub in South-East Asia. The Kingdom of Cambodia has immense national interests in maritime affairs, and the country is starting to develop appropriate policies to defend its interests; ship registration being a step in this direction. We note that Cambodia is currently drafting new legislation with several draft laws in development such as the draft port act, the draft law on maritime transport and the draft law on inland waterway transport, but we are not aware of any date of publication yet.

Should you have any questions regarding the Transportation and Logistics sector, contact us at [info@hbslaw.asia](mailto:info@hbslaw.asia)

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