

HBS LAW

LEGAL GUIDE DOING BUSINESS IN CAMBODIA

LEGAL GUIDE
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TABLE OF CONTENTS

ABBREVIATIONS	iv
PREFACE	xi
INTRODUCTORY CHAPTER: HISTORICAL CONTEXT AND INSTITUTIONAL SETTING	1
I. HISTORICAL DEVELOPMENT OF THE CAMBODIAN LEGAL SYSTEM	1
II. THE CIVIL LAW AND COMMON LAW TRADITIONS.....	2
III. THE LAW-MAKING PROCESS	2
IV. THE HIERARCHY OF LAWS	3
A. The Constitution	3
B. Treaties and International Agreements	4
C. Laws (<i>Chbab</i>).....	4
D. Royal Decrees (<i>Preah Reach Kret</i>).....	4
E. Sub-Decrees (<i>Anukret</i>).....	5
F. Proclamations, Circulars, Guidelines and Orders (<i>Prakas, Sarahchor & Kolkar-Naeneom</i>)	5
G. Sub-National Administration Ordinances (<i>Deika</i>)	5
V. THE SEPARATION OF POWERS AND PUBLIC INSTITUTIONS.....	6
A. Legislative Body	6
B. Executive Body (Royal Government of Cambodia/Council of Ministers) 6	
C. Judicial Body	7
VI. ANTI-CORRUPTION	7
A. National Anti-Corruption Council (NAC).....	8
B. Anti-Corruption Unit (ACU).....	8
CHAPTER 1: BUSINESS SET-UP	9
I. DEVELOPMENT OF COMMERCIAL ENTERPRISES LAW AND REGULATIONS	9
II. COMMERCIAL REGISTRATION.....	10
III. FORMS OF BUSINESS ENTITY	11
A. Sole Proprietorship.....	11

B. General Partnership	11
C. Limited Partnership	12
D. Limited Company	12
E. Establishment of Foreign Business.....	14
IV. JOINT-VENTURES	14
CHAPTER 2: INVESTMENT	16
I. RESPONSIBLE INSTITUTIONS AND KEY FUNCTIONS	16
II. REGISTRATION PROCEDURE FOR QUALIFIED INVESTMENT PROJECTS.....	16
III. SECTORS AND ACTIVITIES QUALIFIED FOR INVESTMENT INCENTIVES.....	17
IV. NEW NEGATIVE LIST OF PROJECTS NOT ELIGIBLE TO OBTAIN QIP..	18
V. INVESTMENT INCENTIVES	20
A. Basic Incentives	20
B. Additional Incentives	22
C. Special Incentives	22
VI. OBLIGATION TO REPORT	23
VII. INVESTMENT AFTERCARE	23
VIII. INVESTMENT IN SPECIAL ECONOMIC ZONES.....	23
IX. INVESTMENT UNDER PUBLIC-PRIVATE PARTNERSHIP (PPP).....	24
CHAPTER 3: TAXATION	25
I. TAXATION REGIME	26
II. CLASSIFICATION OF TAXPAYERS.....	27
A. Small Taxpayers.....	27
B. Medium Taxpayers.....	27
C. Large Taxpayers	28
III. TAX REGISTRATION AND DECLARATION.....	28
A. Taxable Persons	28
B. Tax Registration	29
C. Tax Declaration	29
IV. TYPES OF TAX AND APPLICABLE RATES	30
A. Tax on Income.....	30

B.	Prepayment of Tax on Income	31
C.	Minimum Tax	31
D.	Withholding Tax (WHT)	31
E.	Tax on Salary and Tax on Fringe Benefits	32
F.	Value Added Tax (VAT)	33
G.	Specific Tax	34
H.	Public Lighting Tax	34
I.	Accommodation Tax	35
J.	Patent Tax	35
K.	Advertisement Tax	35
L.	Petroleum and Mineral Resource Operations Tax	35
M.	Immovable Property Rental Tax	36
N.	Immovable Property Tax	36
O.	Transfer Tax or Stamp Duty	36
P.	Capital Gains Tax	37
Q.	Unused Land Tax	37
R.	Means of Transportation Tax	37
V.	INTERNATIONAL TAX AGREEMENTS	37
VI.	TAX REASSESSMENT, PENALTIES AND DISPUTES	38
CHAPTER 4:	IMMIGRATION AND EMPLOYMENT	39
I.	IMMIGRATION	39
A.	Visa Requirements	39
B.	Khmer/Cambodian Citizenship	42
II.	EMPLOYMENT AND LABOUR	43
A.	Employment Contract vs. Service Contract	44
B.	Termination of Employment Contract	45
C.	Minimum Wages	46
D.	Work Hours, Overtime, Leave, and Holidays	46
E.	Foreign Manpower	47
F.	Labour Registration	48
G.	Collective Bargaining Agreement (CBA)	49
H.	Strike and Lockout	49

I.	Professional Organizations	50
J.	Workplace Health and Safety.....	50
III.	THE NATIONAL SOCIAL SECURITY FUND (NSSF)	50
	CHAPTER 5: INTELLECTUAL PROPERTY RIGHTS	53
I.	INTELLECTUAL PROPERTY (IP).....	55
II.	MARKS	55
A.	Registration of Marks	55
B.	Objection, Invalidation and Removal.....	56
C.	Rights Conferred by a Registered Trademark	56
D.	Infringement and Enforcement Mechanism	56
III.	PATENTS AND UTILITY MODEL.....	57
A.	Definition of Patent and Utility Model (Petty Patent).....	57
B.	Rights Conferred by a Patent and Utility Model Certificate.....	59
IV.	INDUSTRIAL DESIGNS	59
A.	Definition of Industrial Designs.....	59
B.	Rights Conferred by a Registered Industrial Design.....	60
V.	COPYRIGHT AND RELATED RIGHTS.....	60
A.	Subject Matter of Copyright.....	60
B.	Copyright Duration	61
C.	Transfer & Exploitation of Economic Rights.....	61
VI.	GEOGRAPHICAL INDICATION (GI).....	61
A.	Definition of GI.....	62
B.	Registration of GI	62
C.	Rights Conferred by a Registration	63
D.	Available Measures Against GI Infringement.....	63
VII.	PLANT VARIETY	63
A.	Requirement for Registration	64
B.	Scope of Protection and Rights Conferred by Registration	64
C.	Infringement of Plant Variety Rights.....	65

CHAPTER 6: CONSUMER PROTECTION, COMPETITION, AND E-COMMERCE 66

- I. CONSUMER PROTECTION 66
 - A. Consumer Rights and Association 66
 - B. Unfair Acts and Unfair Practices 67
 - C. Penalties 68
- II. COMPETITION 69
 - A. Definition of Competition 69
 - B. Governing Authorities 70
 - C. Prohibited Activities Under the Competition Law 70
 - D. Exemptions 76
 - E. Leniency policy 76
 - F. Infringement and Penalties 77
- III. E-COMMERCE 77
 - A. Notion of E-Commerce 77
 - B. Electronic Communications 78
 - C. Intermediary and E-Commerce Service Provider's Liabilities 78
 - D. Consumer Protection 80
 - E. Complaint Procedure 80
 - F. Penalties 80

CHAPTER 7: CONTRACTS 83

- I. HISTORY OF CONTRACT LAW 83
- II. FORMATION OF CONTRACT 83
- III. DEFECTIVE DECLARATION OF INTENT 85
- IV. REMEDIES FOR BREACH OF CONTRACT 86
- V. TERMINATION OF CONTRACT 87
- VI. PARTICULAR TYPES OF CONTRACTS 88
- VII. GOVERNING LAW AND JURISDICTION 89

CHAPTER 8: PROPERTY AND CONSTRUCTION 92

- I. PROPERTY 92
 - A. Immovable and Movable Property 92
 - B. Ownership Rights 93
 - C. Leases of Immovable Properties 95

D.	Concessions	96
E.	Cadastral Registration of Immovable Property	97
F.	Using Land and Buildings as Security for Financing.....	99
II.	CONSTRUCTION	100
A.	Supervising Authority	100
B.	Construction/Renovation/Demolition Permits	102
C.	Certificate of Occupancy	103
D.	Special Requirements for Certain Constructions	103
	CHAPTER 9: BANKING, FINANCE, AND SECURITIES.....	105
I.	BANKING AND FINANCE	106
A.	The Development of Cambodian Banking System	106
B.	Current Banking Climate	107
C.	National Bank of Cambodia	108
D.	Commercial Banks	109
E.	Microfinance Institutions.....	111
F.	Other Financial Institutions.....	112
G.	Payment Instruments and Transactions.....	115
II.	SECURITIES.....	115
A.	The Government Securities Law	115
B.	The Non-Government Securities Law	116
C.	Securities and Exchange Regulator of Cambodia (SERC).....	116
D.	Cambodia Securities Exchange and Other Actors.....	117
E.	Public Offering and Private Placement	119
	CHAPTER 10: INSURANCE.....	124
I.	BACKGROUND OF THE INSURANCE INDUSTRY IN CAMBODIA	124
II.	KEY PROVISIONS OF THE INSURANCE LAW	125
A.	Insurance Terms and Conditions	125
B.	Insurance Categories	125
C.	Compulsory Insurance	126
D.	Licensing for Insurance Business	126
E.	Other Relevant Issues.....	127

III. INSURANCE ASSOCIATION OF CAMBODIA (IAC)	129
CHAPTER 11: INFRASTRUCTURE	131
I. TRANSPORTATION AND LOGISTICS	131
A. Roads	132
B. Rail	132
C. Ports	133
D. Airways	133
II. ENERGY	133
III. PETROCHEMICALS	135
A. Background	135
B. Cambodian Law on Oil and Gas	135
C. Recent Developments	135
D. Future Prospects	136
IV. TELECOMMUNICATIONS	137
V. GOVERNMENT CONTRACTS	138
A. Public Procurement Contracts	138
B. Public Private Partnerships (PPP)	140
CHAPTER 12: ENVIRONMENTAL PROTECTION	143
I. DEVELOPMENT OF ENVIRONMENTAL PROTECTION LAW IN CAMBODIA	144
II. PROJECTS REQUIRING ENVIRONMENTAL IMPACT ASSESSMENT (EIA)	146
III. PROCESS OF ESIA	147
IV. PRINCIPLES AND STAGES OF ESIA	148
V. CONTENTS OF ESIA REPORT	149
A. Water Pollution Control	150
B. Solid Waste Management	150
C. Noise and Air Pollution	150
D. Sub-decree on the Management of Electric and Electronic Waste 2016	151
VI. RESETTLEMENT AND COMPENSATION	151

CHAPTER 13: DISPUTE RESOLUTION	152
I. COURT STRUCTURE	152
II. COMMERCIAL COURT AND ARBITRATION.....	155
A. Commercial Court	155
B. Commercial Arbitration.....	156
III. RESOLUTION OF LABOUR DISPUTES.....	158
A. Individual Dispute Resolution	158
B. Collective Dispute Resolution	159
IV. MEDIATION AND CONCILIATION OF DISPUTES.....	160
V. RESOLUTION OF CIVIL DISPUTES	161
A. Civil Lawsuit Proceedings	161
B. Non-Suit (Non-Contentious) Civil Proceedings.....	162
VI. RESOLUTION OF CRIMINAL OFFENSES.....	162
A. Criminal Laws.....	162
B. Criminal Procedure.....	162
VII. RESOLUTION OF ADMINISTRATIVE DISPUTES	164
CHAPTER 14: INSOLVENCY	165
I. COURT, ADMINISTRATOR, AND COMPETENT AUTHORITY	165
II. PETITION, RELATED PERSONS AND GROUND FOR OPENING INSOLVENCY PROCEEDINGS	166
III. COURT'S INSOLVENCY PROCEEDINGS	167
IV. EFFECTS OF THE OPENING OF INSOLVENCY PROCEEDINGS.....	167
V. PLAN OF COMPROMISE AND CREDITORS' MEETING	167
VI. LIQUIDATION AND SATISFACTION OF CLAIMS.....	168
VII. TERMINATION OF INSOLVENCY PROCEEDINGS	169
CHAPTER 15: NOTARY PUBLIC	170
I. APPOINTMENT OF NOTARY	170
II. FUNCTIONS OF NOTARY	170
III. THE USE AND EFFECT OF NOTARIAL DOCUMENTS OR CONTRACTS.....	171
A. Formation of Contract to Transfer or Acquire Ownership of Immovable Properties	171
B. Asserting Hypothec and Effect of Disposal of Hypothec.....	172

C. Will by Notarial Document.....	172
D. Subrogation by Performance	173
E. Requirement for Assertion of Assignment of Nominative Claim	173
F. Establishment of Assignment of Contractual Position	174
G. Requirements for Assertion of Pledge over Claim in Name of Specific Creditor.....	174
H. Notarial Certificate Used as Title of Execution and Execution Clause Pursuant to the Provisions of the Code of Civil Procedure	174
CHAPTER 16: TRUST LAW	177
I. NATURE OF A TRUST	177
II. TRUST INSTRUMENTS	178
A. Commercial Trust.....	178
B. Public Trust	179
C. Social Trust	180
D. Individual Trust.....	180
III. TERM OF TRUST	181
HBS LAW PROFILE	182
CURRENT PRACTICE GROUPS	183

ABBREVIATIONS

ACU	Anti-Corruption Unit
ASEAN	Association of Southeast Asian Nations
CDC	Council for the Development of Cambodia
CIB	Cambodian Investment Board
CNPC	China National Petroleum Corporation
CPC	Cambodian Petrochemical Company
CSEZB	Cambodian Special Economic Zone Board
EAC	Electricity Authority of Cambodia
EIA	Environmental Impact Assessment
GDT	General Department of Taxation
GIAC	General Insurance Association of Cambodia
IAC	Insurance Association of Cambodia
ILO	International Labour Organization
MCFA	Ministry of Culture and Fine Arts
MDLVT	Municipal Department of Labour and Vocational Training
MEF	Ministry of Economy and Finance

MFAIC	Ministry of Foreign Affairs and International Cooperation
MLMUPC	Ministry of Land Management, Urban Planning and Construction
MLVT	Ministry of Labour and Vocational Training
MME	Ministry of Mines and Energy
MOC	Ministry of Commerce
MOE	Ministry of Environment
MOI	Ministry of Interior
MPTC	Ministry of Post and Telecommunication
MPWT	Ministry of Public Works and Transport
NBC	National Bank of Cambodia
NCAC	National Commercial Arbitration Centre
NSSF	National Social Security Fund
OCA	Overlapping Claims Area
PDLVT	Provincial Department of Labour and Vocational Training
QIP	Qualified Investment Project
RGC	Royal Government of Cambodia
SERC	Securities and Exchange Regulator of Cambodia
SEZ	Special Economic Zone
UN	United Nations
WIPO	World Intellectual Property Organization
WTO	World Trade Organization

PREFACE

Following the 1991 Paris Peace Accords, adoption of a democratic and market-based economic system, and integration into regional and global networks such as the WTO, WIPO, ILO, and ASEAN, Cambodia has achieved remarkable socio-economic growth for more than three decades transitioning from a post-war country to a young nation preparing for the Fourth Industrial Revolution.

With an ambitious legal reform agenda to meet its local needs and regional and global requirements, from 1993 Cambodia has promulgated hundreds of laws and ratified many international agreements and treaties related to labour, commercial transactions, investment promotion and protection, intellectual property rights, banking and financial transactions, currency and anti-money laundering, and (among others) ratified the United Nations Convention on Recognition and Enforcement of Foreign Arbitral Awards and the International Convention on the Settlement of Disputes between States and Nationals of other States.

This legal and regulatory reform is an on-going process in which new laws and regulations are developed, adopted or promulgated on a regular basis. Whilst this reform aims to create a more transparent and competitive business and investment environment, it also poses great challenges for businesspeople and investors who are required to keep abreast of such reforms.

Therefore, the purpose of this book is to provide practical guidance to anyone looking to do business or invest in Cambodia. This book is not meant to be a definitive compendium of all legal matters the reader may encounter, nor a “Do it Yourself” kit if the reader encounters any problems and/or requires the need for legal services when doing business in Cambodia. Instead, we have been selective on matters we have covered which mainly relate to commercial transactions. However, if the reader has some matter which we have not covered in this guide, we are just an email or phone call away. We wish you every success in doing business and investing in Cambodia.

INTRODUCTORY CHAPTER: HISTORICAL CONTEXT AND INSTITUTIONAL SETTING

I. HISTORICAL DEVELOPMENT OF THE CAMBODIAN LEGAL SYSTEM

Cambodia has a long history and rich culture. Its ancient legal framework was largely influenced by religious rules from Hinduism and Buddhism and by royal decisions prior to the adoption of the French legal system during the French Protectorate from 1863 to 1954 and the following regimes of SANGKUM REAH NIYUM from 1954 to 1970, and LON NOL from 1970 to 1975. From 1975 to 1979, Cambodia fell into the dark period of the Khmer Rouge regime which abolished prior legal rules and norms and implemented the policies of communism.

Since the liberation from the Khmer Rouge regime in 1979, the Cambodian legal system experienced many challenges due to social and political changes and the need to rebuild a legal system to govern and develop the country. Cambodia adopted a civil law system which is rooted in Romano-Germanic legal tradition and based on codified legislation, rather than a binding judicial precedent system/common law system where judges are often bound to follow previous rulings on similar facts. The remarkable changes in the Cambodian legal system could be classified into three phases:

Phase 1 - from 1980 to 1989 Cambodian laws and regulations were widely influenced by socialist and communist legal concepts taken from the former Soviet Union and the Socialist Republic of Vietnam. Many Cambodian senior officials, judges and jurists received their education and training from socialist-communist countries.

Phase 2 - from 1990 to 1993 Cambodia started to liberalise its legal system to support a market economy and its transition from a communist regime to a liberal democratic regime. In 1993, a national parliamentary election was organised by the United Nations Transitional Authority in Cambodia, a royal government was re-established, and a democratic Constitution was adopted. The preamble of the 1993 Constitution enshrines several fundamental principles, which include the principle of a liberal and multi-party democracy, the guarantee of protection of property and the rule of law, the adoption of market economy principles, and the progressive development of the nation.

Phase 3 - from 1993 onward, Cambodia promulgated numerous laws and ratified international agreements and treaties which laid down foundations for the operation of a market economy and a basis for business practices in Cambodia and harmonized the local legal and regulatory requirements within a regional and global legal framework.

Of particular note has been the modernization of the Cambodian legal system due to its integration into global and regional communities such as ASEAN in 1997 and the WTO in 2004. Many laws and regulations have been promulgated or issued to meet the commitments stemming from Cambodia's accession to the WTO to bring the country in line with the global trading system.

The Cambodian government has continued updating and improving its legal and regulatory framework to attract direct foreign investment to Cambodia as well as to reconcile with the global legal framework. For instance, in the area of business law, the Law on Investment was promulgated in 2021, abrogating the Law on Investment 1994 and the Law on Amendment to the Law on Investment 2003. The Law on Taxation was promulgated in 2023, abrogating the Law on Taxation in 1997 and amended in 2003. The Law on Commercial Enterprises was promulgated in 2005 and amended in 2022.

II. THE CIVIL LAW AND COMMON LAW TRADITIONS

Cambodia has adopted a predominantly civil law system in which the judge decides based on the provisions of codified legislation. It is different from the common law system, wherein the judge may decide based on existing precedents.

Cambodian laws are published in the government's official gazette to be effective after they are adopted by Parliament and promulgated by the King. This official gazette is published bi-monthly and can be obtained from the Official Gazette Department of the Office of the Council of Ministers.

III. THE LAW-MAKING PROCESS

Under the Constitution, a law (*Chbab*) is adopted based upon a proposed law initiated by members of Parliament or a draft law submitted to Parliament by the executive body (the Royal Government of Cambodia).

Most of the current laws originated from draft laws submitted by the executive body. Under this process the competent ministry prepares the initial draft of the law and then submits it to the inter-ministerial committee led by the office of the Council of Ministers for review and comment. After receiving comments from the inter-ministerial committee, the ministry in charge submits the draft law to the Council of Ministers for review by the executive plenary session to adopt the draft law.

Once it is adopted by the executive plenary session, the draft law will be submitted to the Legal Department and Technical Commission of the National Assembly for further review and comment. The Technical Commission of the National Assembly, after reviewing and

finalising the draft with the responsible ministry, requests the President of the National Assembly to submit the draft law for discussion and adoption by the plenary session of the National Assembly.

After the draft law is adopted by the National Assembly, such adopted law will be forwarded to the Senate for review, comment and adoption. The Senate will accept the adopted law if it fully complies with the format and contents of the draft law sent from the National Assembly and will then send it back to the National Assembly for submission to the King for promulgation. In some cases, the Constitutional Council is requested to give an opinion on the draft laws adopted by the Parliament before submission to the King for promulgation.

After signing by the King, the adopted law will be published in the government's official gazette. Unless its urgent enforcement is required, an adopted law will be effective in Phnom Penh starting 15 calendar days from the date of its publication in the official gazette, and effective outside Phnom Penh 30 calendar days from such publication.

IV. THE HIERARCHY OF LAWS

The Cambodian legal system comprises legislation (laws) adopted by the Parliament, treaties and international agreements ratified by the Parliament, and executive regulations. Domestically, they can be organised in the following hierarchy:

- Constitution
- Treaties and International Agreements
- Laws (*Chbab*)
- Royal Decrees (*Preah Reach Kret*)
- Sub-decrees (*Anukret*)
- Proclamations, Circulars, Guidelines and Orders (*Prakas, Sarahchor and Kolkar-Naenoem*) including Joint or Inter-Ministerial Prakas)
- Sub-National Administration Ordinances (Deika)

A. The Constitution

The Constitution of the Kingdom of Cambodia was promulgated in 1993. It is the supreme law which has been subsequently amended in 1995, 1999, 2003, and 2014. Laws and decisions made by State institutions must be in strict conformity with the Constitution. The Constitution aims to facilitate the efficient functioning of national institutions in unusual circumstances requiring urgent action. Any revision to or amendment of the Constitution may only be enacted by the National Assembly with a two-thirds majority vote of all members of the National Assembly.

However, revisions and amendments are prohibited when the country is in a state of emergency.

The Constitutional Council is the supreme body which guarantees the observance, respect and interpretation of the Constitution and laws. All legislative actions must be in compliance with the Constitution and the laws in force in Cambodia. If there is any dispute concerning those laws, then the President of the Senate, the President of the National Assembly, the Prime Minister, one-tenth of all deputies, juridical institutions or citizens shall have the right to appeal through the Constitutional Council, the decisions of which are final. The appeal by the citizens shall be made through the deputies, the President of the Senate, the President of the National Assembly, or a senator.

B. Treaties and International Agreements

Cambodia has signed and ratified various international treaties, conventions, covenants, protocols and multi and bilateral agreements, including the Charter of the United Nations, Universal Declaration of Human Rights, ILO Conventions, UN Convention on Anti-Money Laundering and Financing of Terrorism, ASEAN Charter, ASEAN Free Trade Agreement, General Agreement on Tariff and Trade, Agreement on Trade-Related Aspects of Intellectual Property, etc. These international instruments have the effect of law in Cambodia.

C. Laws (*Chbab*)

Laws are legislative acts adopted by Parliament such as the Civil Code, Code of Civil Procedure, Criminal Code, Code of Criminal Procedure, Labour Law, Investment Law, Taxation Law, Law on Banking and Financial Institutions, Foreign Exchange Law, Law on Commercial Enterprises, Law on Secured Transactions, Law on Insolvency, Land Law, etc. A law is signed into effect or promulgated by a Royal Kram (*Preah Reach Kram*).

D. Royal Decrees (*Preah Reach Kret*)

A Royal Decree is an administrative decision issued by the Head of State, who is the King. The Royal Decree could also be issued for general implementation or used as an executive decision to appoint executive or judicial officers such as high-ranking civil servants, military officers, judges, and prosecutors.

E. Sub-Decrees (*Anukret*)

A Sub-Decree is an executive decision issued by the Royal Government of Cambodia, with or without review by the Council of Ministers, and signed by the Prime Minister. A Sub-Decree must comply with the Constitution, laws, and the Royal Decrees. Sub-Decrees may also be used to implement a law adopted by Parliament or a Royal Decree issued by the King or used as an executive decision to appoint medium-ranking public civil servants or military officers, or to decide on any issues under the responsibility of the Executive.

F. Proclamations, Circulars, Guidelines and Orders (*Prakas, Sarahchor & Kolkar-Naeneom*)

Proclamations, circulars or guidelines/orders (separately or jointly issued) are executive decisions issued by member(s) of the Council of Ministers or the Prime Minister who are head of a ministry or public national authority or institution. Mostly, Prakas are issued by Ministers or State Secretariats of the government. Prakas must comply with Sub-Decrees and other instruments which are higher in the hierarchy. Prakas could be used as an executive decision to decide on matters under the responsibility of a public institution or to make an appointment or termination of the roles of lower-ranking public civil servants or military officers.

G. Sub-National Administration Ordinances (*Deika*)

A Provincial/Capital Ordinance (*Deika Salar Ket* or *Deika Salar Reach Teany*) is an executive decision issued by a provincial/capital governor. It can be used as a decision of general application in a concerned province or capital city, or as a decision of appointment or removal of public civil servants under the responsibility of the sub-national administrations. An ordinance can also be issued by a district/khan/town governor which is termed district/khan/town ordinance (*Deika Salar Srok, Deika Salar Khan* or *Deika Salar Krong*).

Besides the above legislative and regulatory acts, there are other executive decisions (*sechkeysamrach*). In principle, an executive decision is also an executive instrument, which is issued by the Prime Minister or the head of a public institution. It can have a regulatory effect, or it can be used for the appointment, determination of status or removal of individuals. However, in practice, it is unclear as to when a decision, an Order, a Circular, a Prakas or Anukret should be issued unless otherwise specified by the higher legal texts such as a law or Royal Decree.

V. THE SEPARATION OF POWERS AND PUBLIC INSTITUTIONS

The Constitution provides for a separation of powers between the Legislative Body (Parliament), the Executive Body (Royal Government of Cambodia/Council of Ministers) and the Judicial Body (Courts).

A. Legislative Body

Cambodia has a bicameral parliamentary system. The Parliament comprises the National Assembly and the Senate.

- The National Assembly is vested with legislative power. Members are selected by each party and may serve for a term of five years (which is renewable) following a popular election. The National Assembly has power vested by, and performs its duties as provided in, the Constitution and laws in force. The key roles of the National Assembly members are to represent the will of their constituents, review and adopt legislative acts including international treaties and conventions, to appoint the Royal Government/Members of the Council of Ministers, to approve the national budget, state planning, lending and borrowing, and imposition, modification or the abolition of taxes. The adoptions and approvals shall be agreed by a simple majority vote of all members of the National Assembly.
- The Senate was established in 1998 which has legislative power and performs its duties as determined in the Constitution and laws in force. Some senators are nominated while others are elected through indirect election for a term of six years. Indeed, a large part of the senators are elected by a group composed mostly of commune councillors. The few remaining seats are appointed by the King and the National Assembly. The key roles of the Senate are to examine, give recommendations, review and approve the legislative acts forwarded from the National Assembly (including draft or proposed laws) and give recommendations thereon.

B. Executive Body (Royal Government of Cambodia/Council of Ministers)

The Royal Government of Cambodia (RGC) is the supreme executive body which has a duty to determine the policy of the nation which must be adopted by the National Assembly to administer State affairs and assure the application of laws. The RGC is composed of the central government and the local authorities (sub-national and local administrations). The RGC performs its roles through the office

of the Council of Ministers, Ministries, State Secretariats, National Authorities, Provincial Administrations, Capital City Administrations, District/Khan/Town Administrations, and Commune/Sangkat Administrations. The organisation and functioning of these government institutions are determined by the laws adopted by Parliament.

C. Judicial Body

The Judiciary is the body vested with judicial power and is required to be impartial and protect the rights and freedoms of citizens. The independence of the Judiciary is guaranteed by the King pursuant to the Constitution. The Judiciary consists of the Supreme Council of Magistracy and the courts. Also, the Constitutional Council has a judicial role in deciding election disputes, in addition to its normal role of guaranteeing the constitutionality of laws by rendering legal opinions on laws and interpreting the legal provisions with regard to the Constitution.

Cambodian courts can be divided into the Courts of First Instance (provincial/municipal courts), the Court of Appeal and the Supreme Court.

The Courts of First Instance have the competence to proceed with trials and to open access for appeals in all criminal, civil, commercial cases and litigation of administrative or labour disputes. The proceedings of the hearings are conducted by one or more judge(s), complemented by a prosecutor or a deputy prosecutor in case of criminal charges, and a court clerk.

The Court of Appeal has the competence to hear appeals against rulings or judgements of the provincial, capital and military courts.

The Supreme Court has the competence to hear complaints against judgements of the Court of Appeal by considering them only on erroneous points of law, but not on the facts of the case, except in the case of trials de novo (retrials).

VI. ANTI-CORRUPTION

To reinforce and promote the rules of law and justice and sustain the good governance and policies of the government, Cambodia has passed laws and regulations to control and condemn all kinds of corruption at all levels in the public and private sectors. Before commencing a new position or resigning from membership of the National Assembly, senators, governors, appointed public officers, public civil servants, police, military personnel, judges, clerks, notary publics and civil society leaders are required to clarify and declare their assets and liabilities. There is no requirement that shareholders or

managers/directors in the private sector declare their assets and liabilities. However, the Anti-Corruption Unit can open an investigation and order a declaration if necessary.

There are two institutions established under the Law on Anti-Corruption: the National Anti-Corruption Council and the Anti-Corruption Unit.

A. National Anti-Corruption Council (NAC)

The NAC was established to provide guidance and recommendations on anti-corruption, develop strategies and policies for fighting corruption, oversee the operation of the ACU and develop and adopt internal regulations for performing its own work. The NAC has an obligation to develop strategies and policies for fighting corruption, to provide consultation and recommendations to the ACU, to oversee the operations of the ACU and to request the provision of reports or clarification from the ACU.

B. Anti-Corruption Unit (ACU)

The ACU was established by a Sub-Decree in 1996 under executive initiative and was granted its legal mandate in 2006 under the Law on Anti-Corruption. The ACU is an executive body under the management of the Council Ministers. The ACU was established initially for the purpose of promoting the effectiveness of all forms of services and strengthening good governance and the rule of law in leadership and state governance as well as maintaining integrity and justice fundamental for social development and poverty reduction.

The Law on Anti-Corruption aims to combat corruption through education, prevention, and law enforcement with public participation and support, and international cooperation. Under this Law, the ACU has the duty to implement laws, orders and regulations related to corruption, develop an anti-corruption action plan in accordance with the strategies and policy of the NAC, direct works aimed at preventing and combating corruption, monitor, investigate as well as propose measures to combat corrupt practices in ministries, institutions, public and private units, in conformity with the procedures in force, and to receive and review all complaints on corruption and take action accordingly.

CHAPTER 1: BUSINESS SET-UP

Relevant Laws:

- Law on Taxation 2023
- Law on Commercial Rules and Register 1995 (as amended in 1999 and 2022)
- Law on Commercial Enterprises 2005 (as amended in 2022)
- Law on Investment 2021
- Labour Law 1997 (as amended in 2007, 2018 and 2021)
- Law on General Statutes of Public Enterprises 1996
- Other sectoral laws and many implementing regulations

I. DEVELOPMENT OF COMMERCIAL ENTERPRISES LAW AND REGULATIONS

A business may be organised and registered in Cambodia according to the 2005 Law on Commercial Enterprises as amended in 2022 and the 1995 Law on Commercial Rules and Register as amended in 1999 and 2022. These laws apply to sole proprietorship, partnerships and limited liability companies carrying on their business in Cambodia.

In addition, to set up business or investment projects in Cambodia it is worth looking at the 1996 Law on General Statutes of Public Enterprises if the investors would like to partner with the government of Cambodia in an investment project implementation. Before running a business or investment project, a number of relevant laws need to be considered or complied with. They include, but are not limited, to those listed in the box above.

Name of Institution	Key Functions and Services
Ministry of Commerce (MOC)	<ul style="list-style-type: none">• The function of the MOC is to provide to the public all services to meet business and investment interests and implement Cambodia's trade policies.• The MOC provides an online business registration service that is crucial in a market economy.• The MOC is to administer and regulate the conduct of international and domestic trade; foster the integration of the Cambodian economy into regional and international economies; establish and develop a sound legal and commercial framework, and promote the rapid growth of Cambodian exports. The MOC is to manage commercial registration and monitor commercial activities.

	<ul style="list-style-type: none"> • The MOC is to manage and issue business permits for natural persons or legal entities. • The MOC manages the filing of the notices of secured transactions.
Tax Administration	<ul style="list-style-type: none"> • The functions of the Tax Administration are to develop tax policies and collect all types of taxes for national budget. • Draft laws and regulations on taxation, determine other necessary legal documents which taxpayers or withholding agents need to keep and give to the tax administration. • Determine tax bases on taxpayers and withholding agents based on cross-checking. • Establish programs and perform tax audit. • Be responsible for international cooperation in the tax sector. • Apply penalties for taxpayers and withholding agents who breach laws and provisions. • Participate in preparing the national annual budget plan.
Ministry of Labour and Vocational Training (MLVT)	<ul style="list-style-type: none"> • MLVT is in charge of regulating Labour and Vocational Training throughout the Kingdom of Cambodia.

II. COMMERCIAL REGISTRATION

A merchant (individual or legal entity) shall, within at least fifteen (15) days prior to the commencement of operation, register a business with the competent authority having jurisdiction over the place of his or her business. Merchants are people or legal entities who conduct acts of commerce and make this their usual profession.

In order to register a business entity, the merchant shall conduct a company name search with MOC confirming if such name can be registered to avoid any infringement on the registered mark of another party.

As per Sub Decree No. 84 of 2020, from 15 June 2020 onwards, all new business registrations shall be made via online business registration system (known as Single Portal), which has been launched by the Government marking the development of Phase 1 for Single Portal Online Business Registration and QIP application. In this first phase, there are only four ministries/institutions integrated into the online platform, such as the MOC, GDT, MLVT and CDC. Subsequently, in 2021, Phase 2 was launched to enable merchants to request digital certificates or licenses from four additional ministries/institutions, namely, the Ministry of Industry, Science Technology and

Innovation, Ministry of Tourism, Ministry of Post and Telecommunication, and Real Estate Business and Pawnshop Regulator of the Non-Bank Financial Services Authority. Following Phase 3 started from June 2023 onward, there are twelve more ministries/institutions which are integrated into the online platform.

Therefore, merchants can register their business via the platform and apply for the certificates and licenses and obtain the digital certificates and licenses through the online procedure which is faster and less costly for the business registration and business licensing. The merchants can also pay their business registration fees and license fees through online payment systems such as ABA pay, debit card, credit card, and so on.

III. FORMS OF BUSINESS ENTITY

There are several forms of business entity which can be established under the Law on Commercial Enterprises.

A. Sole Proprietorship

A sole proprietorship is an enterprise established and wholly owned by one physical person. Unlike a limited company, the sole proprietorship does not have a legal personality separate from the owner, and liabilities of the sole proprietorship are the direct and unlimited responsibilities of the owner.

A sole proprietor is a merchant who carries on business as his/her regular occupation. The Law on Commercial Rules and Register governs the conduct of sole proprietors.

A sole proprietorship shall be registered in the commercial registry and with the tax authority in the classification of taxpayers under self-assessment regime. The name of a sole proprietorship shall have the words “Sole Proprietorship,” or a similar acronym used at the end or below its name. The sole proprietorship is not required to prepare any constitutional documents.

B. General Partnership

A general partnership is a contract between two or more persons to combine their property, knowledge, or activities to conduct business in common with a view to profit. A general partnership has a legal personality separate from that of each of its partners. It acquires a legal personality when it is registered in accordance with the Law on Commercial Rules and Register, and has the right to:

- own movables and (if Cambodian nationality) immovable property in its own name;
- carry on business in its own name;
- make contracts in its own name; and
- sue and be sued in its own name.

A general partnership is considered to have Cambodian nationality to the extent that the following two criteria are met:

- A place of business and registered office located in the Kingdom of Cambodia; and
- 51% or more of the recorded ownership interest in such general partnership is held by natural or legal persons of Cambodian nationality.

There is no minimum capital required by law for a general partnership. The capital is required to be stated in Riel.

C. Limited Partnership

A limited partnership is a contract between one or more general partners who are the sole persons authorized to administer and bind the partnership, and one or more limited partners, who are bound to contribute to the capital of the partnership. Therefore, in this form of partnership, there are two types of partners: general partners and limited partners. However, one person can be, at the same time, both a general partner and a limited partner in a limited partnership but will have rights and obligations of a general partner.

A limited partnership is created on the date on which it is registered in accordance with the Law on Commercial Rules and Register.

A limited partner is liable only to the extent of the sum of money or value of the property he/she agreed to contribute. In contrast, general partners are jointly and severally liable for the debts of the partnership to third parties.

D. Limited Company

A similar requirement for Cambodian nationality also applies to a limited company. A company which has a place of business and a registered office in the Kingdom of Cambodia and in which 51% or more of voting rights belong to a Cambodian individual or Cambodian entity as reflected in the AOI is considered as having Khmer nationality.

A limited company can be a private limited company (including a single member private limited company) or a public limited company. Formation of a bank, an insurance company or a securities company is governed by separate laws and regulations. A limited company is a very popular form of legal entity for conducting business. It can be 100% owned by foreign national(s).

A limited company is formed by filing (via the Single Portal discussed above) the AOI and other supporting documents and certificates in relation to the formation of the limited company are received via the same online system. Below is a summary of the characteristics of these corporate entities:

1) Private Limited Company

A private limited company is a form of limited company that meets the following requirements:

- Has 2 to 30 shareholders.
- Cannot offer its shares or other securities to the public generally, but can offer them to shareholders, family members, and managers.
- Has one or more restrictions on the transfer of each class of its shares.
- Is treated as a private limited company from the date of registration shown on the Certificate of Incorporation.

2) Single Member Private Limited Company

A single member private limited company is a private limited company which is composed of a single person, either a natural or legal person, as the sole shareholder. It is subject to the same requirements for any private limited company except the requirement of 2-30 shareholders.

3) Public Limited Company

A public limited company is a form of a limited company that is authorized by the Law on Commercial Enterprises to issue securities to the public which is the main difference between this and a private limited company. A public limited company can be formed by having at least two shareholders being individuals and/or legal entities.

4) Local Branch(es)

A limited company incorporated under the Law on the Commercial Enterprises may establish one or more of its domestic/local branch(es) (a "Local Branch").

A limited company that establishes a branch is referred to as a “Parent Company.” The Local Branch is an agent of the Parent Company and does not have a legal personality separate from the Parent Company. The Local Branch may only perform the same activities as the Parent Company. The assets of the Local Branch are the Parent Company’s assets. The Parent Company is liable for the acts and obligations of the Local Branch.

A Local Branch is represented by one or more manager(s) appointed and removed by the Parent Company. The name of the Local Branch must be the same as that of the Parent Company, with the words “[Local] Branch” placed above or before the name of such Local Branch.

E. Establishment of Foreign Business

Under the Law on Commercial Enterprises, a “foreign business” is defined as a legal entity formed under the laws of a foreign country having a place of business in and doing business in the Kingdom of Cambodia. A foreign business may be established in the Kingdom of Cambodia in the form of a commercial representative office, branch, and subsidiary.

- 1) **Commercial Representative Office** is a local representative of a parent company but cannot engage in business activities such as regularly buying or selling goods, performing services, and engaging in manufacturing, processing or construction.
- 2) **Branch** is a division of an offshore parent company. The branch may also regularly buy or sell goods, perform services, and engage in manufacturing, processing of construction, the same as a local company. The branch does not have a separate legal personality from its parent company which is responsible for its branch’s liabilities.
- 3) **Subsidiary** is a legal entity incorporated by a foreign company in the Kingdom of Cambodia with at least fifty-one percent (51%) of its capital held by a foreign holding company.

IV. JOINT-VENTURES

It is worth noting that with the influence of globally increasing promotion of public-private partnership in project development, Cambodia adopted in 1996 a Law on General Statutes of Public Enterprises to enable and govern creation and operation of Joint-

Venture enterprises with investment resources from both state/public entity and private investor(s).

Under this law there are three types of public enterprises that can be created and operated in Cambodia namely (1) Public Economic Establishments, (2) State Enterprises, and (3) Joint-Venture. In a Joint-Venture enterprise the State or public legal entity directly or indirectly holds more than 50% of the shares or voting rights of the company.

Creation of a Joint-Venture is subject to the principles and procedures specified in the Law on Commercial Enterprises. It must be registered in the Commercial Register and also be liable for tax. Like other public enterprises, a Joint-Venture enterprise is under State control managerially, technically and financially, although its staff and workforce are governed by a Board of Directors and subject to a separate statute similar to those of private companies. In a Joint-Venture, MEF is responsible for administering the state/public participation (J-V company shares) and ensuring compliance of financial operations with the Law on Finance (Annual Budget) and the Law on Public Financial System 2008.

CHAPTER 2: INVESTMENT

Relevant Laws:

- Law on Investment 2021
- Law on Public and Private Partnership 2021
- Sub-Decree 139 on the Implementation of the Law on Investment 2023
- Various sectoral laws and many regulations for implementing the above laws

I. RESPONSIBLE INSTITUTIONS AND KEY FUNCTIONS

Name of Institution	Key Functions and Services
*CDC *CIB (see main text below)	<ul style="list-style-type: none">• The main function of the CIB is to deal with investment projects outside the special economic zones (SEZs). The CIB and the CSEZB work together to review investment applications and grant investment incentives to investment projects meeting the requirements laid out in the Investment Law.
CDC **CSEZB (see main text below)	<ul style="list-style-type: none">• To promptly settle all issues occurring in an SEZ, whether pertaining to technical or legal aspects, or issues under the joint jurisdiction of ministries or institutions and beyond the competence of the SEZ Administration (the State administration management unit at the SEZ) or the CSEZB.• To be a mechanism to receive any complaint and find solutions to such complaints filed by Zone Developers as well as by Zone Investors.

The *CDC has *Cambodian Investment Board (CIB) and **Cambodian Special Economic Zone Board (CSEZB) as its operational Boards in providing private sector investment incentives. CIB grants investment projects out of special economic zones (SEZs) whereas CSEZB offers investment projects in SEZs. They review investment proposals and grant incentives to investment projects per the 2021 Investment Law.

II. REGISTRATION PROCEDURE FOR QUALIFIED INVESTMENT PROJECTS

The CDC is the sole and one-stop service responsible for approving a QIP and issuing the registration certificate of such QIP (a “**Registration Certificate**”). A QIP refers to a project registered with the CDC or the Municipal Provincial Investment Sub-Committees

("MPISC") through hard copy or online application. In addition, investment projects classified as QIPs are eligible for incentives provided by the Royal Government of Cambodia, including tax exemption, special depreciation or other benefits. A QIP can commence automatically on the date of issuance of the Registration Certificate for that QIP. However, it does not exempt eligible investors from obtaining other approvals and permits as required by the law and other regulations.

Furthermore, the timeframe for the issuance of a Registration Certificate is no more than twenty (20) working days considering that the proposed investment project is not listed in the Negative List or below the threshold capital in Annex 1 of Sub-Decree 139. The Registration Certificate will be affixed with a barcode, identification number, QR code, or another identifier.

III. SECTORS AND ACTIVITIES QUALIFIED FOR INVESTMENT INCENTIVES

The Investment Law sets forth key industries and activities to be eligible for investment incentives upon obtaining the Registration Certificate:

- High-tech industries involving innovation or research and development;
- Innovative or highly competitive new industries or manufacturing with high added value;
- Industries supplying regional and global production chains;
- Industries supporting agriculture, tourism, manufacturing, regional and global production chains, and supply chains;
- Electrical and electronic industries;
- Spare parts, assembly, and installation industries;
- Mechanical and machinery industries;
- Agriculture, agro-industry, agro-processing industry, and food processing industries serving the domestic market or export market;
- Small and medium-sized enterprises in priority sectors and small and medium-sized enterprise cluster development, industrial parks, and science, technology, and innovation parks;
- Tourism and tourism-related activities;
- Special economic zones;
- Digital industries;
- Education, vocational training, and product promotion;
- Health;
- Physical infrastructure;
- Logistics;
- Environmental management and protection, biodiversity conservation, and the circular economy;

- Green energy and technology contribute to climate change adaptation and mitigation;
- Other sectors and investment activities deemed by the RGC to have the potential for socio-economic development.

The above sectors, unless specified in the Negative List of Annex 1 of the Sub-Decree 139 which articulates prohibitions, qualifications, and restrictions, will be subject to investment incentives. Sub-Decree 139 further classifies investment projects into three groups based on business activities according to the government’s policy priorities and level of technology involved. Investment Group 1 (“Group 1”), prescribed in Part 1 of Annex 2 of the Sub-Decree 139, are investment projects of high technology or top-tier government policy priority. Investment Group 2 (“Group 2”), stated in Part 2 of the same Annex, lists medium-tech business activities. Lastly, low-tech business activities belong to Investment Group 3 (“Group 3”) in Part 3 of the same Annex. Notably, all three Investment Groups are entitled to specific investment incentives as explained in **Part V Investment Incentives** below.

IV. NEW NEGATIVE LIST OF PROJECTS NOT ELIGIBLE TO OBTAIN QIP

According to Article 12 of the Investment Law, business activities in sectors specified in a Negative List and/or not meeting the minimum requirements determined therein are not eligible for QIP status (“Negative List”). Annex 1 of the Sub-Decree 139 prescribed an updated Negative List of business activities along with a capital requirement threshold to determine the eligibility status for QIP. The laid-out business activities are in four main sectors: Agriculture, Service, Industry, and Infrastructure.

Below is the new Negative List of some of the investment activities:

Business Activity	Criteria
Production of rice crops	Investment capital less than US\$ 2,000,000- or land size less than 50 hectares
Freshwater aquaculture	Investment capital less than US\$ 1,000,000 or land size less than 5 hectares
Production of tobacco products	

Production of traditional and modern medicines and raw materials for production of medicines	Traditional medicine: Investment capital less than US\$ 500,000 Modern medicines and raw materials for production of medicines: Investment capital less than US\$ 2,000,000
Investment activities in secondary education	Investment capital less than US\$ 1,000,000
Investment activities in higher education	Investment capital less than US\$ 4,000,000
Investment activities in eco-tourism	Investment capital less than 10,000,000 or land size less than 100 hectares.
Hotels and resorts	Lower than 4-star
Tourism service provider, tourism agent, tourism information and tourism advertisement	
Activity related to newspapers and media, including radio, television, press, magazine, video production or reproduction, theater and related activities	
Development in real estate sector	
Manufacturing and/or assembly or installation of industrial robots with multiple functions to serve in agro-industry or industry	Investment capital less than US\$1,000,000
Establishment of supermarket or trade centre	Investment capital less than US\$ 10,000,000

Educational institutes and vocational training that serves industries, agriculture, tourism, infrastructure, environment, engineering, sciences	Investment capital less than US\$ 1,000,000
International trade exhibition centre or convention	Investment capital less than US\$ 10,000,000
Investment activities on the development of satellite infrastructure, and development of fiber optic cable	Investment capital less than US\$ 60,000,000
Investment activities on software development	Investment capital less than US\$ 500,000
Investment activities on the development of submarine fiber optic cable	Investment capital less than US\$ 40,000,000
Investment activities on the development of data centre and/or cloud service	Investment capital less than US\$ 20,000,000

V. INVESTMENT INCENTIVES

QIPs are entitled to receive the basic investment incentives, additional incentives, and special incentives.

A. Basic Incentives

Investors can choose either option between two basic incentives as follows:

Option 1: Income Tax Exemption	Option 2: Special Depreciation
<ul style="list-style-type: none"> • Income tax exemption from minimum three years to maximum nine years based on sectors and investment activities from the first income. <ul style="list-style-type: none"> ➢ nine years for Group 1 ➢ six years for Group 2 	<ul style="list-style-type: none"> • Offset capital expenditure through special amortization in accordance with applicable tax regulations; • Offset up to 200% on specific expenses for up to nine years. Sectors and investment activities, specific expenses, as well as the deductible period, shall be

<ul style="list-style-type: none"> ➢ three years for Group 3 • Upon the expiration of the income tax exemption, the QIP's income tax will gradually increase at a progressive rate for six years: <ul style="list-style-type: none"> ➢ 25% for the first two years; ➢ 50% for the following two years; and ➢ 75% for the last two years. • Prepayment tax exemption during income tax exemption for a specific period of time based on sectors and investment activities: <ul style="list-style-type: none"> ➢ nine years for Group 1 ➢ six years for Group 2 ➢ three years for Group 3 • Minimum tax exemption if an independent audit report can be provided; and • Export Tax exemption, unless otherwise provided in other laws and regulations. 	<p>determined in the Law on Financial Management and/or the Sub-Decree;</p> <ul style="list-style-type: none"> ➢ nine years for Group 1 ➢ six years for Group 2 ➢ three years for Group 3 • Receive prepayment of income tax exemption for a specific period of time based on sectors and investment activities: <ul style="list-style-type: none"> ➢ nine years for Group 1 ➢ six years for Group 2 ➢ three years for Group 3 • Receive minimum income tax exemption, provided that an independent audit report can be provided; • Export tax exemption, unless otherwise provided in other laws and regulations.
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In addition to these options:

- **Export QIPs** and **Supporting Industry QIPs** are entitled to customs duty, special tax and value-added tax exemption for the import of construction material, construction equipment, production equipment and production inputs; and
- **Domestically Oriented QIPs** are entitled to customs duty, special tax and value-added tax exemption for the import of construction material, construction equipment, and production equipment. The incentives for production inputs are specified in Annex 4 of the Sub-Decree 139.

B. Additional Incentives

Registered QIPs are entitled to the following additional incentives on top of the basic incentives:

- 1) Value-added tax (VAT) exemption for the purchase of locally made production inputs for the implementation of the QIP.
- 2) Offset 150% from tax base for any of the following activities:
 - a) Research, development and innovation;
 - b) Human resource development through the provision of vocational training and skills to Cambodian workers/employees;
 - c) Construction of accommodation, food courts or affordable canteens where reasonably priced foods are sold, nurseries and other facilities for workers/employees;
 - d) Upgrade of machinery to serve the production line; and
 - e) Provision of welfare for Cambodian workers/employees, such as comfortable means of transportation to commute from their homes to factories, accommodation, food courts or affordable canteens where foods are sold at reasonable prices, nurseries and other facilities.
- 3) Entitlement to income tax exemption for the Expansion of QIP:
 - a) Nine years for Group 1;
 - b) Six years for Group 2; or
 - c) Three years for Group 3.

C. Special Incentives

Any specific sector and investment activities having high potential to contribute to Cambodia's economic development may receive specific special incentives. Such specific eligible sectors and activities may be set out in the Law on Financial Management passed by the RGC each year.

VI. OBLIGATION TO REPORT

Upon obtaining a Registration Certificate, investors are obligated to report their semester reports and annual reports to the CDC or the MPISC within 20 (twenty) days following the closing date for tax return submissions. Based on the reports provided by investors, the CDC or the MPISC will issue a Certificate of Compliance to confirm the fulfillment of such investors' obligations. Failure to comply with this obligation may lead to an investment project losing incentives and other guarantees under the law. The investors, however, can subsequently request the Certificate of Compliance by providing the reports along with the justification for late submission.

VII. INVESTMENT AFTERCARE

In addition to incentives, the CDC or MPISC will also offer aftercare services, including the following:

- Assess the demand and challenges of the ongoing projects by the authorities;
- Arrange a meeting between the investors and relevant ministry representatives and stakeholders to be informed of the updated policies, implementation of law and regulations and procedure related to investment;
- Assist investors in consulting and coordinating with relevant stakeholders to obtain approvals, permits, licenses, other permits and entry visa and work permits;
- Organize matchmaking events to link domestic and foreign investors;
- Provide consultation on strategic site selection for investment, new and expansion projects;
- Provide consultation on the needs for human resource development, research and development, and innovation;
- Facilitate the provision of financial support by relevant institutions; and
- Provide consultation on challenges and solutions and a dispute-settlement mechanism.

Furthermore, investors can also request investment aftercare services from various ministries acting together or agencies by filling and submitting the request form attached in Annex 10 of Sub-Decree 139.

VIII. INVESTMENT IN SPECIAL ECONOMIC ZONES

An SEZ is an area for the development of particular sectors which brings together all industrial and other related activities and may include General Industrial Zones and/or

Export Processing Zones. Each SEZ must have a Production Area which may have a Free Trade Area, Service Area, Residential Area and Tourist Area.

An SEZ provides businesses within it the same investment incentives and protections as other QIPs stipulated by the Investment Law.

IX. INVESTMENT UNDER PUBLIC-PRIVATE PARTNERSHIP (PPP)

The PPP Law repeals the previous Law on Concession. The PPP Law governs the management of the development and implementation of infrastructure projects and/or provision of public services within eligible sectors. For more details, please refer to [Chapter 11: Infrastructure, Section V. B: Public-Private Partnership](#).

CHAPTER 3: TAXATION

Relevant Laws:

- Law on Taxation 2023
- Law on Commercial Enterprises 2005 (as amended in 2022)
- Law on Commercial Rules and Register 1995 (as amended in 2022)
- Law on Accounting and Auditing 2016
- Tax regulations, notifications and instructions issued by MEF or GDT

Tax Administration	Key Functions and Services
GDT-Central Department	<ul style="list-style-type: none"> • Providing taxpayer services including information, education, and guidance for taxpayers to properly comply with the laws and regulations on taxation; • Undertaking enforcement programs by auditing, enforcing and penalizing any taxpayers who do not properly comply with the laws and regulations on taxation; • Collecting tax revenues by properly implementing the laws and regulations on taxation and collating and preparing information used by the government in preparing the national budget; • Providing taxpayer services and education in a timely manner and reliably in order to reduce taxpayers' expenses, and to ensure proper compliance with the laws and regulations on taxation; • Undertaking enforcement programs effectively, responsibly and equally for non-compliant taxpayers; • Applying transparent principles in the implementation of laws and regulations on taxation to enhance the reliability of tax administration; • Reducing expenses of the tax administration in its operation, simplifying its procedures and reducing expenses of taxpayers; • Enhancing capacity and knowledge of tax officers on a regular basis for effective performance; and • Enhancing the effectiveness of management through precise, modern and highly responsible policies, work performance measures, and work systems.
Tax Branches	<ul style="list-style-type: none"> • Implementing the tax policies issued by the GDT;

	<ul style="list-style-type: none"> • Collecting other taxes which are assigned by the GDT; • Being responsible for and cooperating in tax matters on behalf of the GDT; • Calculating and collecting taxes and any additional revenues; • Determining tax bases on taxpayers and withholding agents based on cross-checking; and • Managing the tax responsibilities including desk and limited audits for medium and small taxpayers.
National Tax School	<ul style="list-style-type: none"> • Tax Education Center for providing education on tax, including training and capacity building for tax officers, tax agents and the general public; • Providing tax agent licenses; • Researching and programing development and maintaining a library; and • Providing public tax training.
Various Departments under the GDT	<ul style="list-style-type: none"> • Department of Administration and General Affairs • Department of Finance and Personnel • Department of Law, Tax Policy and International Tax Cooperation • Department of Tax on Movable and Immovable Properties • Department of Information and Communication Technology • Department of Tax Crime Investigation • Department of Large Taxpayers • Department of Small and Medium Taxpayers • Department of Enterprise Audit

I. TAXATION REGIME

The Law on Taxation was promulgated in 2023 to set out the rules, procedures, and conditions for tax obligations and to compile tax provisions regarding payment, filing and related obligations stipulated in the 1997 Law on Taxation, its amendment in 2003 and other relevant laws and implementing regulations.

Since the promulgation of the Law on Financial Management for year 2016, Cambodia applies a self-assessment tax regime. It is a tax regime which requires taxpayers to calculate tax and submit tax returns to the Tax Administration by themselves.

There are two different accounting rules applied by taxpayers depending on their classification. Small taxpayers apply the simplified accounting rules. Medium taxpayers

and large taxpayers apply International Accounting Standards of Cambodia as determined by the National Accounting Council according to the Law on Accounting and Auditing and Prakas of MEF.

The tax law and practice are evolving. The MEF and/or the Tax Administration has issued numerous regulations, instructions, and notifications to explain, clarify or inform taxpayers of their tax obligations, and the legal and administrative requirements for tax declaration, collection and payment.

II. CLASSIFICATION OF TAXPAYERS

Based on MEF's Prakas No.009 dated 12 January 2021 taxpayers are classified into three categories according to their annual turnover or their annual assets.

A. Small Taxpayers

A small taxpayer is a sole proprietorship or partnership which meets any of the following criteria:

- 1) Having annual turnover from KHR250million (approximately USD62,500) to KHR1,000million (approximately USD250,000) in the agricultural, service, or commercial sector;
- 2) Having annual turnover from KHR250million (approximately USD62,500) to KHR1,600million (approximately USD400,000) in the industrial sector;
- 3) Having annual turnover or expected annual turnover for three consecutive months of more than KHR 60million (approximately USD 15,000) within the calendar year; or
- 4) Participating in any bidding or quotation for the supply of goods or services.

A small taxpayer has its annual assets:

- 1) From KHR 200million (approximately USD50,000) to KHR1,000 million (approximately USD250,000) in the agricultural, service or commercial sector; or
- 2) From KHR 200 million (approximately USD50,000) to KHR2,000 million (approximately USD500,000) in the industrial sector.

B. Medium Taxpayers

A medium taxpayer is an entity which meets any of the following criteria:

- 1) Having annual turnover from KHR1,000million (approximately USD250,000) to KHR4,000 million (approximately USD1million) in the agricultural sector;
- 2) Having annual turnover from KHR1,000million (approximately USD250,000) to KHR6,000million (approximately USD1.5million) in the service or commercial sector;

- 3) Having annual turnover from KHR1,600million (approximately USD400,000) to KHR8,000million (approximately USD2million) in the industrial sector;
- 4) Incorporated as legal entities or representative offices;
- 5) National and sub-national government institutions, all types of organizations or associations including non-governmental organizations; or
- 6) Foreign embassies and consulates, international organizations and technical cooperation agencies of other countries.

A medium taxpayer has its annual assets:

- 1) From KHR1,000million (approximately USD250,000) to KHR2,000 million (approximately USD500,000) in the agricultural, service or commercial sectors; or
- 2) From KHR2,000 million (approximately USD500,000) to KHR4,000 million (approximately USD1million) in the industrial sector.

C. Large Taxpayers

A large taxpayer is an entity meeting any of the following criteria:

- 1) Having annual turnover of more than KHR4,000 million (approximately USD 1 million) in the agricultural sector; or
- 2) Having annual turnover of more than KHR6,000 million (approximately USD 1.5 million) in the service or commercial sector; or
- 3) Having annual turnover of more than KHR 8,000 million (approximately USD 2 million) in the industrial sector;
- 4) Foreign branches and companies that are QIPs; or
- 5) Subsidiaries of multinational companies and branches of foreign companies.

A large taxpayer has its annual assets:

- 1) Over than KHR2,000 million (approximately USD 500,000) in the agricultural, service or commercial sectors; or
- 2) Over than KHR 4,000 million (approximately USD 1 million) in the industrial sector.

III. TAX REGISTRATION AND DECLARATION

A taxable person is required to register with the Tax Administration within 15 working days after beginning economic activities or after obtaining a business registration certificate or approval from the relevant ministries or institutions.

A. Taxable Persons

- 1) Governmental institutions, embassies, consulates, international organizations, technical cooperation agencies of other governments and political parties;

- 2) Private limited companies, public limited companies, branches of foreign companies, representative offices, sole proprietorships, general partnerships, limited partnerships, public enterprises, state-owned enterprises and state joint ventures;
- 3) Associations and non-government organizations; and
- 4) Other individuals who conduct business in Cambodia.

B. Tax Registration

A taxable person of the type referred to in Section A(2) above is required to register for tax via the online platform hosted by the Tax Administration whereas other types of taxable person can choose to directly register for tax using the tax registration form 101 or online.

In case taxable persons are involved in multiple-project businesses, each project is required to separately register for tax and the Tax Administration issues different tax identity number for such project.

Tax registration is required for both resident taxpayers and non-resident taxpayers. A non-resident taxpayer who does not have a permanent establishment in Cambodia but conducts e-commerce activities in Cambodia, is required to file for tax as well. This tax registration is applicable only for the purpose of collecting VAT.

A resident taxpayer means:

- Any physical person who has residence in or has principal place of abode in the Kingdom of Cambodia, or who is present in the Kingdom of Cambodia more than 182 days in any period of 12 months ending in the current tax year; or
- Any legal person or partnership organized or managed in the Kingdom of Cambodia or having its principal place of business in the Kingdom of Cambodia.

A non-resident taxpayer means any person who is not a resident taxpayer and receives income from Cambodian sources.

C. Tax Declaration

All taxpayers are required to submit their tax declaration and tax payment each month to the Tax Administration no later than the 20th day of the following month.

All taxpayers are required to submit an annual tax on income filing with the Tax Administration within three months after the end of each calendar year (including enterprises that suffer a loss).

IV. TYPES OF TAX AND APPLICABLE RATES

There are 15 types of tax under the 2023 Law on Taxation: Tax on Income, Tax on Salary, Value Added Tax (VAT), Specific Tax, Public Lighting Tax, Accommodation Tax, Patent Tax, Advertisement Tax, Tax on Petroleum and Mineral Resource Operation, Immovable Property Rental Tax, Immovable Property Tax, Stamp Duty or Transfer Tax, Tax on Capital Gains, Unused Land Tax, and Tax on Means of Transportation.

A. Tax on Income

Income earned by taxpayers is subject to tax at different rates.

No.	Description	Rate
1.	Income by a legal person	20%
2.	Income by a physical person	Progressive rate by tranche is 0%, 5%, 10%, 15%, and 20% on the amount greater than KHR150M
3.	Life insurance and reinsurance	20%
4.	The commercial gambling industry	20%
5.	Revenue from oil and natural gas distribution, the exploitation of natural resources, including forests, gold, or precious stones	30%
6.	Qualified investment projects (QIP)	0%

The thresholds for calculating annual income tax of a physical person are determined as follows:

No.	The Thresholds of Annual Taxable Income by Physical Person		Tax Rate
	KHR	USD (Approx.)	
1.	From 0 to 18,000,000	From 0 to 4,500	0%
2.	From 18,000,001 to 24,000,000	From 4,500 to 6,000	5%
3.	From 24,000,001 to 102,000,000	From 6000 to 25,500	10%

4.	From 102,000,001 to 150,000,000	From 25,500 to 37,500	15%
5.	Over 150,000,000	Over 37,500	20%

B. Prepayment of Tax on Income

An enterprise liable to income tax according to the self-assessment scheme has an obligation to make a monthly pre-payment of tax on its income at the rate of 1% of monthly turnover inclusive of all taxes (except VAT).

C. Minimum Tax

Minimum tax is imposed at the rate 1% of annual turnover including all taxes (excluding VAT) and calculated at year end. The minimum tax is calculated at the time of filing the annual tax on income. It should be offset by the monthly tax prepayment of tax on income paid during the year.

The minimum tax will be exempted if the enterprise has properly complied with accounting and bookkeeping records as certified by the General Department of Taxation.

D. Withholding Tax (WHT)

A taxpayer that makes any payment in cash or in kind to a resident taxpayer or non-resident taxpayer is required to withhold tax and pay it to the Tax Administration at the time of payment. Any payment which is subject to withholding tax and recorded in the accounting book shall be considered as being subject to WHT regardless of whether the amount is actually paid or not.

Payments subject to WHT	Rate
To Resident Taxpayers	
<ul style="list-style-type: none"> • Payments to individuals for services such as management, consulting, etc. • Payments of royalties for intangibles and interests in mineral resources. • Payments of interest by a resident taxpayer carrying on business, other than domestic banks or financial institutions. • Interest payments by a resident taxpayer to an individual/physical person or an enterprise. 	15% of paid amounts
Income from the rental of movable or immovable property.	10% of rentals

Interest payments by domestic banks in respect of fixed term deposit accounts.	6% of paid interest
Interest payments by domestic banks in respect of non-fixed term deposit accounts.	4% of paid interest
To Non-Resident Taxpayers	
Interest, royalties, rent and other income connected with the use of property, dividends, payment for management or technical services.	14% of paid amounts

Withholding tax is exempted for the following payments in cash or in kind:

- For the supply of services worth less than KHR 50,000;
- For the supply of shrink-wrap software, site licenses, downloadable software and software bundled with computer software (the supply among self-assessment regime taxpayers);
- Income from the rental of movable or immovable properties (the payment among self-assessment regime taxpayers and it must be recorded in an invoice properly issued by the supplier);
- Payments to the Government of royalties or rental on movable or immovable properties;
- The payment of interest made by the Government or a government institution to a non-resident taxpayer for a loan approved and accepted by the Government or a government institution;
- Interest payments made to a domestic bank or savings institution or financial institution and the income that is exempt from tax pursuant to Article 8 of the Prakas No. 098; and
- Income of individual/physical persons which is subject to tax on salary or fringe benefits tax under applicable law.

Another important point to note is that the standard withholding tax rate on payments which are dividends, royalties, interest, and technical service fees to tax residents in the contracted countries under the DTAs shall not exceed 10 percent, whereas the standard rate of withholding tax to non-resident taxpayers can be applied up to 14 percent.

E. Tax on Salary and Tax on Fringe Benefits

Salary and fringe benefits received by employees within the framework of performing employment are taxable.

The tax rate for a resident employee is paid based on the amount of salary as follows:

Monthly Salary	Rate
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KHR	USD (Approx.)	
• 0 to 1,500,000	0 to 375	0%
• 1,500,001 to 2,000,000	375 to 500	5%
• 2,000,001 to 8,500,000	500 to 2,125	10%
• 8,500,001 to 12,500,000	2,125 to 3,125	15%
• More than 12,500,000	Over 3,125	20%

For an employee who is a non-resident taxpayer, the paid salary is subject to tax on salary for the Cambodian source at a flat rate of 20%.

According to Instruction No.017-27 issued by the MEF on implementation of the new rate of tax on salary on December 2022, all enterprises are considered as employers who are resident taxpayers and liable to deduct tax on salary for monthly payments of salaries, wages and other remuneration made to employees. Tax on salary is required to be filed and paid to the Tax Administration by the 20th day (manual filing) or the 25th day (E-filing and E-payment) of the month following the month in which the salary was paid.

Fringe benefits provided, directly or indirectly, to an employee in cash or in kind are subject to tax on fringe benefits at the rate of 20%. Fringe benefits include:

- a vehicle of any kind;
- food;
- a house or housing;
- utilities;
- housemaid;
- loans bearing interest at below-market rates;
- discounts on the sale of goods;
- educational assistance not related to the work of the employee;
- educational assistance for an employee's children;
- life and health insurance premiums unless the same benefit is provided to each employee regardless of employment or job classification;
- expenses that are unreasonable and unnecessary in the context of the employer's business;
- contribution to social security funds in excess of the levels provided by law;
- pension plans in excess of 10% of the employees' monthly salary (excluding fringe benefits);
- expenses for entertainment, amusement, or recreation which are not part of the employment relationship; and
- shares in the employer granted to employees.

F. Value Added Tax (VAT)

VAT is imposed on the taxable supply of goods and services at the rate of (a) 10% on the sale of taxable supplies in Cambodia and (b) 0% on the sale of taxable supplies that are for export from Cambodia.

Taxpayers can offset VAT input that is paid on purchases against the VAT output that it receives from the supply goods and services except VAT paid for entertainment or amusement, recreation, the purchase of automobiles or the purchase of certain petroleum products.

VAT payable shall be paid to the Tax Administration by the 25th of the month following month in which the supply is made. VAT refunds are applicable only to medium and large taxpayers.

In Cambodia, certain public services are exempt from VAT and are called “Non-taxable supplies” as stated in the Article 63 of Law on Taxation.

A non-resident taxpayer who supplies digital goods and services or conducts e-commerce activities in Cambodia, is required to perform a simplified VAT registration within 30 days if the taxpayer expects to receive annual turnover from Cambodian sales of KHR250 million (approximately USD62,500) or KHR 60 million (approximately USD15,000) in any period of three-consecutive months in a calendar year.

Taxpayers who receive digital goods and digital services or who are exposed to e-commerce activities from non-resident taxpayers are required to do a reverse charge. Taxpayers are required to file and pay VAT to the GDT by the 25th day of month following the month in which the supply is made.

G. Specific Tax

Specific tax is imposed on goods or services which are luxurious or not necessary in daily use or which affect health, society or the environment such as alcohol and cigarettes. Specific tax applies to the importation, production, or distribution of goods or services that are supplied for use in Cambodia.

The applicable rates of specific tax are 35%, 30%, 25%, 20%, 15%, 10%, 5% and 3%.

H. Public Lighting Tax

Public Lighting Tax (which has nothing to do with public lighting) is applied to all alcohol and beverage or tobacco products in Cambodia at the rate of 5% and paid at time of initial supply.

I. Accommodation Tax

Accommodation tax is imposed on supply of accommodation services at a rate of 2% on the accommodation charges imposed by a hotel in Cambodia which includes other charges, as well as taxes, excluding VAT and self-accommodation tax.

Accommodation services covered include those offered by hotels, apartments, suites, resorts, motels, lodges, bungalows, hostels or guesthouses, tourist camps, and other accommodation services.

J. Patent Tax

Patent tax is an annual tax and applied to any taxpayer that is doing business according to the type of taxpayer and the level of turnover as follows:

Classification of Taxpayer	Patent Tax (KHR)	Patent Tax (US\$)
Small Taxpayer	400,000	100
Medium Taxpayer	1,200,000	300
Large Taxpayer	3,000,000	750
	5,000,000 If the annual turnover is more than KHR10,000M (Approx. US\$2.5 million)	1,250

K. Advertisement Tax

Advertisement tax is imposed to all forms of advertisements both movable and immovable in Cambodia.

Advertisement tax is required to be paid from 1 January to 31 March every year.

L. Petroleum and Mineral Resource Operations Tax

Petroleum and mineral resource operations tax applies to petroleum and mineral resource operations in Cambodia (including the seabed and subsoil under the seabed of exclusive economic zones and the continental shelf as well as other areas where Cambodia has sovereign rights).

Income from such operation is subject to tax at the rate of 30%.

In addition to income tax at the rate of 30%, if a taxpayer has excess income, that taxpayer tax on excess income will be applied at a progressive rate as follows:

The Excess Income Ratio	Rate of Tax on Excess Income
Up to 1.3	0%
more than 1.3 up to 1.6	10%
more than 1.6 up to 2	20%
more than 2 upward	30%

M. Immovable Property Rental Tax

Tax is imposed on rents received from the lease of immovable property at the rate of 10% of rental income by the owner or beneficiary of immovable property who is not a taxpayer under the self-reassessment regime.

N. Immovable Property Tax

Immovable property tax is applied at a rate of 0.1% to all immovable property located in the capital of each province and/or city if the land and building has a value of more than KHR100 million (approximately US\$25,000). This tax is due annually by 30 September.

O. Transfer Tax or Stamp Duty

Transfer tax is applicable to the transfer of immovable or movable property, shares; contracts for the supply of goods or services that are paid for from the state budget and certain legal documents.

Transfer tax is payable at the following rates:

Subject	Rate
Transfer of ownership or possession of immovable property as construction and/or land or placement of shares as immovable property to the Company or transfer of share or similar interest of the immovable property companies.	4%

Transfer of ownership or possession of movable property or placement of shares	4%
Transfer of some or all of a company's shares	0.1%
Contract price under contracts for the supply of goods or services using the state budget	0.1%
Legal documents including documents in respect of a merger or dissolution of a company	KHR1million (Appx. US\$250)

The transfer of ownership over houses in a Borey, having price of up to US\$70,000 is exempted from transfer tax until the end of 2024. For houses with a value of more than US\$70,000, transfer tax can be deducted from the base price for tax calculation.

P. Capital Gains Tax

Capital gains tax is imposed on natural persons that are resident taxpayers and who obtained a capital gain from selling or transferring assets in Cambodia and outside Cambodia and to non-resident taxpayers who obtained capital gains from selling or transferring assets in Cambodia. This tax is paid at the rate of 20% of the gains sold or transferred.

Q. Unused Land Tax

Unused land tax is imposed at a rate of 2% annually on unused land whether or not anything has been or is being constructed on it. This tax is levied from lands which are located outside the area which is subject to annual immovable property tax. If the land size is less than 5 hectares, it is not subject to unused land tax.

Unused land tax is paid based on the land value determined by the Land Evaluation Committee.

R. Means of Transportation Tax

Means of transportation tax is imposed on all means of transportation including trucks, towing locomotives, trailers, semi-trailers, cars, watercraft, tourist cars, vehicles, or vehicle recycling. The tax rate applicable for each means of transportation is determined by sub-decree of the RGC based on proposals made by the MEF.

V. INTERNATIONAL TAX AGREEMENTS

The RGC has entered into several double tax agreements (DTA) to enhance economic cooperation, avoid double taxation, tax evasion or avoidance. The DTA covers taxes on income imposed by one of the contracting States or its local authorities on income earned by residents of one or both contracting States.

Persons and type of taxes covered are specified in each DTA. For example, the DTA with the Republic of Korea covers the following types of taxes: (a) in Cambodia: (i) tax on income including withholding tax, minimum tax, additional profit tax on dividend distribution and capital gains tax; (ii) tax on salary; and (b) in Korea: (i) income tax; (ii) corporation tax; (iii) special tax for rural development; and (iv) local income tax.

The tax rate applicable, tax benefits and conditions are specified in each DTA based on the agreement between Cambodia and another contracting State. So far, Cambodia has entered into double tax agreements with Singapore (2017), Thailand (2017), Brunei Darussalam (2017), Republic of China (2017), Vietnam (2018), Indonesia (2018), Hong Kong Special Administration (2019), Malaysia (2020), South Korea (2020) and Macau Special Administration (signed in 2022).

VI. TAX REASSESSMENT, PENALTIES, AND DISPUTES

The Tax Administration is empowered to re-assess the tax payments and declarations made by taxpayers or withholding agents at any time. A tax re-assessment can be periodical or a comprehensive one. In general, the Tax Administration can re-assess the tax payments and declarations made within 3 years following the calendar year in which the withholding/payment took place or the tax declaration was submitted. However, the reassessment period could be up to 10 years after the date a tax declaration was required to be submitted if there is evidence of obstruction of the implementation of tax laws and regulations.

A taxpayer or withholding agent may also request to revise its tax declaration within three years after the submission date or request the Tax Administration to revise a tax reassessment within 3 years after the date the Tax Administration made the tax reassessment on the basis of additional information that the taxpayer or Tax Administration did not obtain during that tax-reassessment.

CHAPTER 4: IMMIGRATION AND EMPLOYMENT

Relevant Laws:

- Law on Labour 1997 (as amended in 2007, 2018 and 2021)
- Law on Trade Unions 2016 (as amended in 2020)
- Law on Social Security Schemes 2019
- Law on Minimum Wage 2018
- Law on Nationality 2018
- Law on Immigration 1994
- Various sectoral laws and many regulations for implementing the above laws

I. IMMIGRATION

Name of Institution	Key Functions and Services
MFAIC	<ul style="list-style-type: none">• Issuing and renewing/extending visa types A, B and C• Managing E-Visas for tourist purposes
MOI	<ul style="list-style-type: none">• Issuing and renewing/extending visa types T, D, E and K• Approving applications for immigrant aliens as non-investors and immigrant aliens as investors and their dependent family members• Issuing resident permits• Approving applications for naturalization or requests for Cambodian citizenship

The 1994 Law on Immigration allows a non-Cambodian national (alien) to stay or live in Cambodia on a short-term, long-term or permanent basis, while the 2018 Law on Nationality provides for naturalization to be a Khmer (Cambodian) citizen when specified conditions are met by the alien who applies for naturalization.

A. Visa Requirements

Except for tourists from ASEAN countries, to stay in Cambodia legally, any alien, immigrant or non-immigrant, is required to have a valid visa for entering and staying in Cambodia whether for short-term or long-term.

1. Non-Immigrant Aliens

Non-immigrant aliens may apply for a visa for a specified purpose at a Cambodian embassy or consulate overseas, or at an international border point of entry before entering Cambodia. There are several types of non-immigrant visas.

A diplomatic visa (type A) is issued to non-immigrant aliens and their family members who hold diplomatic passports and come to Cambodia for a diplomatic mission or private visit. This type of visa is also issued to other non-immigrant aliens as determined by the MFAIC.

An official visa (type B) is issued to non-immigrant aliens who come to Cambodia for a governmental mission or to perform the work of an international organization registered with the MFAIC. This visa is also issued to aliens who hold official passports and come to Cambodia for a private visit.

A courtesy visa (type C) is issued to non-immigrant aliens and their family members, whom the MFAIC and other Ministries consider appropriate to provide the person(s) a courtesy.

These three types of visa (A, B and C) are issued under exclusive authority of the MFAIC.

A transit visa (type D) is issued to non-immigrant aliens who transit through Cambodia, such as a captain or pilot, crews or workers of ships, vessels, or planes.

A tourist visa (type T) is issued to non-immigrant aliens who enter Cambodia purely for tourist purposes and have no qualification for other types of visa. An “e-Visa” for tourists may be applied for online under the system operated by the MFAIC.

An ordinary/business visa (type E) is issued to non-immigrant aliens who do not fall in any of the previous categories.

The last type of visa called “special visa” (type K) is issued to a person of Cambodian origin who holds a foreign passport or other travel documents. This type of visa is issued free of charge and for multiple entries with permanent stay authorization.

The last four types of visa (D, T, E and K), except tourism e-Visa, are issued under the authority of the MOI.

Under bilateral agreements, visa exemptions for a maximum stay of thirty (30) days (initial visa), sixty (60) days (business visa type 'E'), or a mission period are granted to non-immigrant aliens or persons holding official or diplomatic passports from certain countries.

A foreign individual that wishes to enter and work, perform a service, or conduct a business/investment activity in Cambodia should apply for a type E visa. However, Vietnamese or Laotian citizens who live along the border with the Kingdom of Cambodia and wish to enter a bordering province of Cambodia for a short-term, may apply for a Border Pass, Laissez-passer or other certification letter in accordance with the special agreements between the concerned countries.

Additionally, the General Department of Immigration launched an online registration system for foreigners living in Cambodia in 2019 called "Foreigner Present in Cambodia System" (the "FPCS"). The FPCS aims to record personal information regarding foreigners when they arrive in or depart from Cambodia at any entry/departure point. The FPCS has the aim of protecting foreigners' safety and security in case of an emergency when travelling throughout Cambodia. All foreigners who enter Cambodia shall be reported into FPCS. Such report will be done by their landlord, property owner or owner of the hotel etc. at which they stay. Any foreigner who fails to register with FPCS will be not granted a visa extension.

If a person enters and stays in Cambodia on a tourist visa and subsequently would like to work or do business in Cambodia legally, he/she must first leave the country and re-enter with a business (type E) visa. Initially, a type E visa is issued with a validity of three months, but the visa holder can legally stay in Cambodia for one month only. To be able to legally stay longer than one month, the visa holder must apply to the Immigration Department of the MOI for a visa and stay extension for up to one year at a time. It is also possible to obtain an extension for three or six months.

2. Immigrant Aliens as Non-Investors

An alien who is not an investor and wishes to live permanently in the Kingdom of Cambodia as an immigrant may file an application with the MOI through a Cambodian embassy or consulate abroad. A decision to grant a permanent

residency or recognize an immigrant alien is made by the MOI. After entering Cambodia, an immigrant alien must file an application for a resident card with the Alien/Foreign Office of the Provincial or Capital Police Commissariat within 48 hours. An immigrant alien is also required under the Labour Law to have a work permit issued by the MLVT to legally work, operate or manage a business in Cambodia.

3. Immigrant Aliens as Investors

An immigrant alien who is an investor and who comes to Cambodia to look for business/investment opportunity or who has already received investment authorization from the CDC can legally enter and stay in Cambodia if the person meets all the requirements set forth for an investor immigrant alien. A resident permit for a qualified investor who comes to Cambodia to look for business/investment opportunity is issued for up to one year, while an investor who has already received investment authorization from the CDC who wishes to stay in Cambodia may be granted a permanent residency or a temporary residency up to the length of investment stipulated in the CDC authorization letter.

In general, when a principal applicant is qualified for any particular type of immigration visa or resident permit to enter and stay in Cambodia, his/her spouse and/or children under 18 years old will also qualify for the same.

B. Khmer/Cambodian Citizenship

Under the Law on Nationality, Khmer (Cambodian) citizenship may be obtained through a marriage to a Cambodian citizen or through a naturalisation process. The granting of Cambodian citizenship is made in the form of a Royal Decree through a request from the Prime Minister. Nevertheless, the MOI is authorized to accept applications and the Minister of the MOI will then nominate any qualified applicants to the Prime Minister for his/her request to the King. The Minister of MOI is also authorized to reject the application for Cambodian citizenship.

Cambodian citizenship may also be obtained through birth, full adoption, marriage or naturalization, such as naturalization via investment, subject to the applicable conditions set out in the Law on Nationality.

II. EMPLOYMENT AND LABOUR

Name of Institution	Key Functions and Services
<p>MLVT (exclusively supervising all employers in garment, textile and footwear sectors for export of goods, industry, sending manpower overseas company, NGOs, construction companies, hotels, banks, airlines and waterway transportation companies and those companies in Phnom Penh that employ more than 100 employees)</p>	<ul style="list-style-type: none"> • The MLVT has sole authority to approve/reject Quota requests for use of foreign workers and foreign workbooks and work permits by submitting applications through the MLVT's online system; • The MLVT, the MDLVT and the PDLVT have the same functions for approval of various labour registrations, approvals related to workplace relations, such as requests for overtime work and suspension of weekly time off, and for carrying out labour inspections, labour enforcement and labour dispute conciliation.
<p>MDLVT (supervising employers in Phnom Penh who employ less than 100 employees)</p>	
<p>PDLVT (supervising employers in provinces, except employers who are under the exclusive supervision of the MLVT)</p>	
<p>NSSF (provincial and capital offices)</p>	<ul style="list-style-type: none"> • Processing enterprise and worker registration for the national social security schemes; • Collecting and managing members' contributions; and • Providing benefits to eligible workers or their beneficiaries.
<p>Arbitration Council (AC)</p>	<ul style="list-style-type: none"> • Responsible for individual dispute and collective dispute resolution, referred by the MLVT, the MDLVT or the PDLVT.

The Labour Law governs relations between employers and workers/employees resulting from employment/labour contracts to be performed within Cambodia, regardless of where the contract was made and what the nationalities and residence of the contracting parties are. This law applies to all enterprises or establishments involved in industry, mining,

commerce, crafts, agriculture, services, land or water transportation, whether public, semi-public or private, non-religious or religious, whether they have professional, educational or charitable characteristics, as well as associations or groups of any nature whatsoever.

A. Employment Contract vs. Service Contract

An “employment contract” is a contract or agreement establishing the labour/employment relations between a worker and an employer. The execution and performance of the employment contract is subject to the legal requirements of the general law, customary rules and the Labour Law. Under Article 3 of Labour Law, a worker is defined as “every person of any sex and nationality, who has signed an employment contract in return for remuneration, under the direction and management of another person, whether that person is a natural person or legal entity, public or private.” However, under Article 65 of the Labour Law, an employment contract can also be made verbally.

There are two types of employment contract under the Labour Law: a fixed duration contract (“**FDC**”) and an undetermined (also known as, unspecified or unlimited) duration contract (“**UDC**”).

1. Fixed Duration Contract (FDC)

An FDC is a contract entered into for a specific duration, may not be made for a period exceeding two consecutive years and must be in writing; otherwise, it will be deemed an UDC. An FDC can be renewed for one or more times provided that it does not exceed the two-year limit; otherwise, it will be deemed a UDC.

2. Undetermined Duration Contract (UDC)

An employment contract is deemed a UDC when it is made verbally; or made in writing but without specified ending date or has a specified ending date but the total duration of the contract is more than two years.

3. Service Contract

A service contract or a contract for work (like consultancy or independent service provision contract) is not an employment/labour contract, as no party controls the work or performance of the other party. As defined in the 2007 Civil Code, a service contract refers to “a contract whereby one party (the

‘contractor’) assumes the obligation to complete agreed work and the other party (the ‘principal’) assumes the obligation to pay remuneration for the results of such work.”

The relationship between the contractor and the principal in this type of contract is not governed by the Labour Law. Nevertheless, if the contractor recruits workers for the execution of certain work or the provision of certain services, the Labour Law requires such a labour contractor to respect the Labour Law in the same way as any employer is required. Under the Labour Law, the obligation to compensate the workers hired by the contractor will fall on the principal employer if under certain conditions the contractor has failed to pay the workers their salary or the contractor is unable to do so. The Labour Law also allows the affected workers to sue the principal employer directly in such a case.

B. Termination of Employment Contract

1. Fixed Duration Contract (FDC)

An FDC is normally terminated on the specified end date. It can, however, be terminated before the end date by written agreement of both parties in the presence of a Labour Inspector or on the ground of commission of serious misconduct or in the event of “acts of God.”

At the expiration of an FDC, the Labour Law stipulates that the employer must provide the employee with severance pay which is proportional to both the wages and the length of the contract. The amount of severance pay is set by the CBA. If nothing is set in such agreement, the severance pay must be equal to at least 5% of the wages paid during the length of the contract.

If the employer terminates an FDC for reasons other than those mentioned above, the employer must pay the employee damages at least equal to the remuneration that the employee would have received if he/she had been allowed to work until the end of the FDC.

However, if such termination is made by the employee for reasons other than those mentioned above, the employee must pay the employer damages in an amount that corresponds to the damage suffered by the employers.

The employer is required to give prior notice of the expiration and its non-renewal according to the Labour Law. If there is no prior notice, the FDC shall

be extended for a length of time equal to its initial duration or deemed as a UDC if its total length of renewal exceeds two years.

2. Undetermined Duration Contract (UDC)

A UDC can be terminated at will by either of the contracting parties. This termination is subject to prior written notice to the other party being provided by the party who intends to terminate the UDC.

An employee has the right to cancel a UDC for any reason. However, the employer cannot terminate the employee without a valid reason relating to the employee's aptitude or behavior, based on the requirements of the operation of the enterprise.

The minimum required notice varies from seven days to three months depending on the length of employment. The contracting parties are released from the obligation of giving prior notice during the probation period, and in the event of serious misconduct or acts of God. Failure to comply with the Labour Law for such termination may lead to compensation in lieu of prior notice, damages, and seniority payment as well as the back pay of seniority payment.

C. Minimum Wages

The Labour Law requires that a wage paid by an employer be at least equal to the amount of a minimum wage ensuring a decent standard of living compatible with human dignity. Minimum wage could be set differently for different workers in different industrial sectors and/or geographical areas. However, at present, a minimum wage for workers only in the garment, textile, and footwear industry has been set by the Labour Advisory Council and put into implementation by the MLVT. This is subject to periodic review.

D. Work Hours, Overtime, Leave, and Holidays

The Labour Law provides that the number of work hours shall not exceed eight hours per day or forty-eight hours per week. Due to the nature of business activities and work management, each enterprise may arrange its work hours for its workers as long as it does not exceed the maximum work hours provided by the Law. The Labour Law also allows arrangement of routine day shift and night-shift work. For regular night shift, workers are entitled to a wage at the rate of 130% of the day-shift rate.

An arrangement for overtime work is also allowed for urgent needs, but it must be done on a voluntary basis, and permission from a relevant Labour Inspector must be sought before the commencement of each instance of overtime work. The overtime work must be paid for at a rate of 150% of the normal work rate. If the overtime work is performed at night (between 22:00-05:00 hours) or during weekly time off (i.e. Sunday and/or Saturday) or on public holiday, the rate is 200% of the normal work rate.

It is prohibited to use the same worker for more than six days per week. The weekly time off must last for a minimum of 24 consecutive hours. All workers must be given a day off during a week, and the day off can be Sunday or another day as arranged by the employer and the worker/employee.

Paid annual leave entitlement is set at 1.5 days for a month of employment, resulting in 18 days of paid annual leave per annum for each worker. One additional day of paid annual leave is provided for a worker for every three years of his/her employment. The right to use accrued paid annual leave is provided after one year of service.

Maternity leave is mandatory for 90 days, during which the female employee is entitled to at least 50% of her wage and benefits if she has continuously worked for the employer for one full year.

Special leave is granted for workers' personal and/or family needs (such as for a worker's own marriage or that of his/her children, or for illness or death of husband, wife, children, father or mother of a worker, etc.). Workers are entitled to seven days of special leave per year. This leave can be deducted from the worker's unused accrued annual leave. In other words, if the worker has not used all his/her accrued annual leave, he/she shall take such annual leave for special circumstances, or the employer is entitled to offset authorized special leave against the worker's accrued annual leave.

Annual public holidays are set by the MLVT each year. If a paid holiday coincides with a day that is a weekly day off for a worker, the worker will no longer be entitled to the next work day off with full pay.

E. Foreign Manpower

Under the Labour Law, to use a foreign worker, an enterprise must first apply for an annual quota for using foreign workers, and then obtain a work permit and

employment card from MLVT for each foreign worker actually employed by the employer in Cambodia in that calendar year.

1. Annual Quota

Any business incorporated under the Law on Commercial Enterprises and Commercial Register or licensed under the Law on Investment of the Kingdom of Cambodia may be permitted to bring foreign managerial or skilled workers into Cambodia under a quota system. However, this quota-based permission will be granted only when qualified staff cannot be recruited among local workers to perform the work required.

The annual quota of foreign workers, in principle, must not exceed 10% of the total local workforce in an enterprise. However, the enterprise can request for an increased quota if the enterprise has an exceptional need for foreign workers with a particular skill or qualification. In this regard, the enterprise may be required to provide reasonable evidence to the MLVT to support its claim.

2. Work Permit and Employment Card

Having an annual quota request granted by the MLVT simply means that an enterprise is allowed to use a certain number of foreign workers. However, to be able to use particular foreign workers, an enterprise has to apply to the MLVT for a work permit and employment card for the concerned foreigner via the online system named the Foreign Workers Centralized Management System (FWCMS).

F. Labour Registration

Labour registrations are required by and made at the MLVT, the MDLVT or the PDLVT and the NSSF. They include, but are not limited to, the following processes:

- Declaration of Opening of Enterprise;
- Enterprise/Establishment Register;
- Payroll Ledger (computer or bank-generated in the format provided by the MLVT);
- Annual Quota for using foreign employees;
- Work Permits and Employment Cards for local and foreign workers;
- Health Checks and Certificates for each foreign employee with Occupation Health Department of MLVT (optional for local workers);

- Updating and stamping VISA “In” or “Out” on the Cambodia Employment Book for a local employee or Declaration of Staff Movement (for additional hiring and dismissal); and
- Registration of the Enterprise and its workers with the NSSF.

Not all employers are required to complete all the registrations listed above, depending on the number of workers employed by that employer.

Several more labour registrations are required for employers who employ eight or more employees: (a) Recognition of Shop Steward Election Result, and (b) Visa or stamp on Internal Regulations.

G. Collective Bargaining Agreement (CBA)

A CBA is a written agreement between an employer or a group of employers, or one or more organizations representing the employers, and one or more trade union organization representing the workers, to determine the work and employment conditions of workers and to regulate relations between employers and workers as well as their respective organizations in such a manner that is consistent with all existing laws and regulations. A CBA can improve the protection of workers against social risks and ensure more effective or uninterrupted production or increase of workers’ productivity. A CBA can have transitional immediate effect if the parties so agree, although it is required by the Law on Trade Unions to be registered with the MLVT, as soon as practical, to have full legal effect for a period of one to three years. To be qualified for registration with the MLVT, a CBA must be written in Khmer and no clause may be less favourable than the Labour Law with regards to entitlements nor be contrary to the mandatory provisions of the Labour Law and regulations. A CBA must contain clauses on clear dispute resolution procedures to ensure minimum service, essential service, other required services, and public order.

H. Strike and Lockout

The Labour Law provides for the rights of workers to go on strike, and the employer to lockout, but only after they have exhausted all peaceful means for labour dispute resolution.

A seven-day prior notice of strike or lockout must be submitted to MLVT, and to the employer or workers (through their trade unions). A strike must be conducted at the work compound in a peaceful manner. Workers that are not strikers must be allowed to work normally without restraint or threat.

I. Professional Organizations

Under the Labour Law and the Law on Trade Unions, both workers and employers are permitted to establish their professional organizations or associations separately for the exclusive purpose of studying, promoting their interests, and protecting their rights as well as the moral and material interests of the persons covered by the organization's statutes. A professional organization for these purposes must be registered with the MLVT to gain legal power of representation. Employers are not allowed to discriminate against workers due to their membership or participation in one or more worker organizations (trade unions). Under the Law on Trade Unions, a worker can only join one local/enterprise-based trade union, while a local/enterprise-based trade union can only join one federation of trade unions, and a federation of trade unions can only join one confederation or coalition of trade unions. There is a provision on minimum membership for each category of trade unions. This law also provides clearer roles and functions of elected shop-steward(s) and an assigned trade union delegate, and the roles and powers of most-representative trade unions and the minority-representative trade unions. It also requires the employer(s) as well as their professional association(s) and the trade union(s) to negotiate a CBA or resolve labour disputes in good faith and with honesty.

J. Workplace Health and Safety

Employers are obliged to keep the workplace clean and safe to protect the workers' health and wellbeing. In this regard, they must comply with a number of specific regulations and guidance related to matters such as the number of infirmities, first aid kits, toilets, clean drinking water, lifting heavy objects, quality of the air, air circulation, noise levels and lighting. Employers are required to take measures or conduct investigations to prevent work-related accidents which also include the provision of fire extinguishers, creating a clear fire evacuation plan and reporting accidents to the MLVT. Employers are also responsible for paying for medical examinations, and care and treatment for any worker suffering from work-related accidents/illness.

III. THE NATIONAL SOCIAL SECURITY FUND (NSSF)

The Law on Social Security was enacted for the purpose of implementing a social security system in Cambodia based on the principle of social solidarity and the promotion of the welfare and living conditions of citizens. This law consists of four schemes including the Pension Scheme, the Health Insurance Scheme, the Employment Injury Scheme, and the Unemployment Insurance Scheme.

The Law on Social Security governs certain persons under the public sector, persons specified by the Labour Law including personnel serving in the air and maritime transportation sectors, household servants, and the self-employed.

The NSSF, is the single operator in charge of implementing social security schemes, as stipulated in the Law on Social Security Schemes, under the regulatory and supervisory framework of the Social Security Regulator. The Social Security Regulator has the following main roles and responsibilities:

- Introducing prudential regulations, standard operating procedures, necessary measures and guidelines on investment of social security funds;
- Monitoring the financial status of social security operators;
- Establishing member protection mechanisms and conflict resolution procedures;
- Monitoring compliance to ensure that social security services are provided with transparency, accountability and financial sustainability;
- Preparing, updating and requesting approval of relevant regulations for the supervision of social security operators and related actors;
- Promoting education and training on social security to the public; and
- Participating in regional and international cooperation.

Employers or owners of enterprises/establishments are required to register themselves and their employees/workers with the NSSF. Employers and their employees/workers are required to make co-contributions to the NSSF under the Pension Scheme, the Health Insurance Scheme, and the Unemployment Insurance Scheme. However, the Employers are solely obligated to pay contributions for their employees/workers under the Employment Injury Scheme. The NSSF will then process the registration, collect and manage contributions and provide eligible employees/workers or their beneficiaries with the benefits to which they are entitled in accordance with the law and regulations.

The benefits of each scheme areas follows:

- Pension Scheme covers old age, disability, dependent and funeral benefits;
- Health Insurance Scheme covers medical care and treatment, daily allowance during sickness, maternity, and funeral benefits;
- Employment Injury Scheme covers benefits for medical care and treatment, temporary disability, permanent disability, funeral and dependant benefits, and rehabilitation services; and
- Unemployment Insurance Scheme covers benefits to NSSF members who do not have any income or being unemployed due to the termination of employment contract, and such persons that have been seeking for work

within a period of time in accordance with the law and regulations after unemployment.

As at the time of writing, only the Employment Injury Scheme, the Health Insurance Scheme and the Pension Scheme are in full operation.

CHAPTER 5: INTELLECTUAL PROPERTY RIGHTS

Relevant Laws:

- Law on Geographical Indication (GI) 2014
- Law on Seed Management and Breeder Rights 2008
- Law on Copyright and Related Rights 2003
- Law on Patents, Utility Model Certificates and Industrial Designs 2003
- Law on Marks, Trade Names and Acts of Unfair Competition 2002
- Law on Management of Quality and Safety of Products and Services 2000
- Various sectoral laws and many regulations for implementing the above laws

At the time of Cambodia's accession to WIPO in 1995 and the Paris Convention in 1998, the regulatory framework to protect intellectual property rights ("IPR") in Cambodia was weak. However, over the years, the development of IPR in Cambodia has evolved, reflecting the changing needs of society, technological advancements, and economic development.

Cambodia is also in the process of developing and drafting other IPR-related laws such as a Trade Secret Law, a Traditional-Cultural Knowledge and Folklore Law, a Compulsory Licenses for Public Health Law, a Commercial Contracts Law, etc. Cambodia is also a member of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) and the Madrid Protocol concerning international registration of marks.

The three main government authorities implementing the relevant laws are the MOC, the MIH, and the MCFA and eleven other cooperative Ministries.

Below is a summary of the key functions and services of each Ministry.

Name of Institution	Key Functions and Services
MOC	<ul style="list-style-type: none">• Trademark / GI search• Trademark / GI registration• Affidavit of use or non-use of mark• Assignment of trademark right• Change of ownership, mark owner's name and/or address

	<ul style="list-style-type: none"> • Trademark cancellation / opposition to trademark application • Franchise recordal
MIH	<ul style="list-style-type: none"> • Patent and utility model: <ul style="list-style-type: none"> ▪ Granting Patent ▪ Issue compulsory license and patent license recordal ▪ Dispute resolution of patent right infringement • Industrial design: <ul style="list-style-type: none"> ▪ Issue ID certificate and renewal ▪ Issue report of ID search ▪ Change of ownership ▪ License recordal ▪ Dispute resolution of ID right infringement • Integrated circuit: <ul style="list-style-type: none"> ▪ Issue certificate ▪ Change of ownership ▪ License recordal ▪ Dispute resolution of IC right infringement
MCF	<ul style="list-style-type: none"> • Issue certificate of copyright registration of literature works: <ul style="list-style-type: none"> ▪ Reproduction of dictionary ▪ Electronic dictionary work and reproduction thereof ▪ Film ▪ Video • Issue certificate of copyright registration of musical works: <ul style="list-style-type: none"> ▪ Reproduction of music with or without lyrics ▪ Derivative music work with or without lyrics ▪ Music performance with or without lyrics ▪ Original music with or without lyrics uploaded on website ▪ Derivative music with or without lyrics uploaded on website • Issue certificate of registration of art performance, work of collage, book, article, painting, photo, map, architecture, computer program, phonogram and audio-visual work, digital work • Issue letter of permission for: <ul style="list-style-type: none"> ▪ Import – export book, including article ▪ Import – export disc ▪ Import – export tools for photocopy ▪ Commercialization of photocopy tools

	<ul style="list-style-type: none"> ▪ Photocopy service ▪ Book and article printing ▪ Disc production • Issue letter of permission for usage of picture of patrimonial temple in business • Issue license for movie making
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I. INTELLECTUAL PROPERTY (IP)

Intellectual Property (IP) is an intangible asset for businesses, and it refers to creations of the mind: inventions, literary and artistic works, symbols, names, images, and designs used in commerce. The idea is not protected unless it is transformed into a form that can be protected under IP laws. Below are the primary forms of IP protection.

II. MARKS

Cambodian's main legal instrument governing the protection of marks is the Law on Marks, Trade Names and Acts of Unfair Competition (2002, the "**Trademark Law**"). The Trademark Law governs, among other things, the registration of trademarks and service marks, rights conferred by registration, how objection and invalidation to marks are made, licensing of marks, unfair competition and an infringement mechanism.

A. Registration of Marks

Trademarks and service marks are defined as any visible sign capable of distinguishing the goods (trademark) or services (service mark) of an enterprise. According to this definition, non-visible marks, such as smell, sound, or taste, is not registrable. Even though the law is silent on the matter, three-dimensional trademarks can also be registered if they meet the statutory requirements of "distinctiveness."

Registration of trademarks or service marks can be made at the Department of Intellectual Property Rights ("**DIPR**") by their owners or through an authorized trademark agent licensed by the MOC. Alternatively, trademark owners may also file international registration of their marks through the Madrid System from any member state that is a signatory to the Madrid Protocol.

The registration procedure may take from six to nine months (ASEAN standard) in Cambodia. After it is accepted for registration, the mark owner must submit an Affidavit of Use or Non-Use to the Registrar within six years from the registration date or renewal date, failing which the registration will be automatically cancelled by the DIPR.

B. Objection, Invalidation and Removal

After a mark is accepted for registration, the Trademark Law allows for a period of 90 days (period of publication in the Official Gazette) for any interested party to file an objection to the registered mark. The objection can be filed by the mark owner or through a trademark agent.

Similarly, an invalidation request can also be filed against a registered mark without any time limit if the interested party can prove that the registered mark is in violation of the Trademark Law.

The effect of the invalidation or objection shall be deemed to have been effective from the date of the registration of such invalidation or objection and shall be recorded and published as soon as possible in the Official Gazette.

C. Rights Conferred by a Registered Trademark

When a mark is duly registered with the DIPR, the owner shall enjoy his/her exclusive rights over the mark. The exclusive rights refer to the rights of the owner to prohibit any other person from using the registered mark or any similar or identical mark for commercial purposes.

The exclusive right will be valid for 10 years from filing date. This duration of validity of the registered trademark is renewable every 10 years without limitation.

As a member state of the Madrid Protocol, registration of a mark in Cambodia should be recognized in all other member states in addition to Cambodia.

Once the mark is registered, the registered owner shall have the rights to license or transfer it to any third party. The Trademark Law requires the license agreement to be recorded with the Registrar otherwise it cannot be asserted against a third party. Once the trademark license agreement is recorded, the particulars of the license will be published in the Official Gazette, while the terms and conditions of the license agreement remain private and confidential.

D. Infringement and Enforcement Mechanism

Infringement of a mark happens when an unauthorized person uses a registered mark or any sign identical to or confusingly similar to the registered mark or a well-known mark.

Under the Trademark Law, a mark owner or its licensee may file a complaint to the DIPR or the court if they become aware of any infringement of their marks.

Pending the decision of DIPR or the court on the merits of the complaint, the mark owner or its licensee may seek an interim restraining measure from the court or competent authority for specific relief to prevent further infringement or damages.

Such interim measures include, but are not limited to, requesting the customs authorities, or a court, to suspend customs clearance and destroy counterfeit goods. The request must be accompanied by the relevant documents showing a *prima facie* case that the goods are counterfeit, a description of the goods, and payment of an official fee.

The authorities can require the applicant to provide a security or other assurance. The authorities have ten working days to notify the applicant as to whether the application is granted. If it is granted, the applicant then has ten working days to initiate a civil infringement case, or else the goods will be released from customs. If the authorities find the applicant's case to be wrongful, they have the power to order payment of compensatory damages to the importer. The customs authorities, with court approval, can order the destruction of counterfeit goods.

III. PATENTS AND UTILITY MODEL

The Law on Patents, Utility Model Certificates and Industrial Design (2003) was enacted with the aim of protecting granted patents and utility model certificates and industrial designs in Cambodia. Apart from this, Cambodia has also entered into several international agreements such as the Memorandum of Understanding with Singapore, Japan, the European Organization, China, Korea, and the United States to facilitate and accelerate Patent registration in Cambodia.

A. Definition of Patent and Utility Model (Petty Patent)

A patent is granted by a government authority for protection of certain types of inventions. The Law defines an invention as “an idea of an inventor which permits in practice the solution to a specific problem in the field of technology;” it may relate to either a product or a process.

A utility model is defined as any invention which is new and industrially applicable and may be, or may relate to, a product or process.

The following types of inventions are excluded from patent protection and utility model certification:

- Discoveries, scientific theories and mathematical methods;
- Schemes, rules or methods for doing business, performing purely mental acts or playing games;
- Methods for treatment of the human or animal body by surgery or therapy as well as diagnostic methods practiced on the human or animal body, excluding products for use in any of these methods;
- Plants and animals other than micro-organisms, and essentially biological processes for the production of plants or animals; and
- Plant varieties.

The differences between patent and utility model certificates are (i) requirements for registration and (ii) term of protection. Beside the above restriction, any invention may be subject to a protection by patent if it meets the following conditions.

1. Novelty

To be patented, an invention must be new. It is new if it is not anticipated by prior art. Prior art consists of everything disclosed to the public, anywhere in the world, by publication in tangible form or by oral disclosure, by use or in any other way, prior to the date of filing or the priority date. However, disclosure to the public made by the applicant or his predecessor in title, or an abuse by a third party within 12 months of filing or the priority date, is not considered as loss of its novelty.

2. Inventive Step

For an invention to involve an “inventive step,” it must not have been obvious to a person having ordinary skill in the prior art. This condition is not applicable for registration of a utility model certificate.

3. Industrially Applicable

To be industrially applicable, an invention must simply be capable of being made or used in any kind of industry. The law broadly excludes certain inventions as follows on public policy grounds:

- Those of which the commercial exploitation in the Kingdom of Cambodia would be contrary to public order or morality,

- Those which are harmful to human or animal health, or plant life,
- Those which seriously prejudice the environment or are prohibited by law.

B. Rights Conferred by a Patent and Utility Model Certificate

The patent or utility model owner has the right to exclude others from making, importing, selling, offering for sale, and using the product, and from stocking the product for the purpose of sale or use. As for process patents, the owner has the right to prevent others from using the process and from doing any of the acts covered by a product patent where the product is obtained directly by means of the process. The patent owner may institute court proceedings against anyone who performs such acts, or who makes such acts more likely to occur.

For a patent, the owners can enjoy the non-renewable exclusive rights of the registered patent and utility model for 20 years and seven years, respectively.

A registered patent or utility model may be freely assigned and licensed. All changes in ownership (assignments) must be in writing and must be recorded by the Registrar, failing which the assignment or license agreement has no effect against third parties.

IV. INDUSTRIAL DESIGNS

A. Definition of Industrial Designs

An industrial design may be any composition of lines or colours, or any three-dimensional form, or any material, so long as it gives a special appearance to a product of industry or handicraft. This special appearance must be judged visually; hence non-visual characteristics – such as the smell or touch of a material – cannot be protected.

Unlike patent and utility models, the law requires only novelty for registration of an industrial design (i.e. it must not be already known to the public). However, Article 92 of the Law on the Patents, Utility Model Certificates and Industrial Designs provides some exceptions. It shall be deemed to not be known to the public when (1) the industrial design has been disclosed within 12 months from the filing date, or (2) it has been disclosed by the applicant, his/her predecessor, or a third party by abuse. In these cases, such disclosures will not bar registration.

Industrial designs contrary to public order or morality are not registrable.

B. Rights Conferred by a Registered Industrial Design

The owner of a registered industrial design has the right to exclude others from exploiting the design in Cambodia. Exploitation is defined as “the making, selling, or importation of articles incorporating the design.”

Registrations are valid for a period of five years from the filing date, renewable for two further consecutive five-year terms. The renewal filing must be accompanied by payment of a renewal fee, which can be paid up to six months late with payment of a surcharge.

V. COPYRIGHT AND RELATED RIGHTS

A. Subject Matter of Copyright

The Law on Copyright and Related Rights, 2003 (Copyright Law) protects the following subject matter:

- All kinds of reading books or other literary, scientific, and educational documents;
- Lectures, speeches, sermons, oral or written pleadings and similar works;
- Dramatic works and musical dramas;
- Choreographic works, either modern or adapted from traditional works or folklore;
- Circus performances and pantomimes;
- Musical compositions, with or without lyrics;
- Audio-visual works;
- Works of painting, engraving, sculpture or other works of collages, or applied arts;
- Photographic works, or those realized with the aid of techniques similar to photography;
- Architectural works;
- Maps, plans, sketches or other works pertaining to geography, topography, or other sciences;
- Computer programs and the design, encyclopedia, and documentation relevant to those programs; and
- Products of collage work in handicraft, hand-made textile products or other clothing fashions.

The Copyright Law excludes from protection all laws, regulations, government circulars, court decisions, and their translations, as well as any idea, formality,

method of operation, concept, principle, discovery, or mere data, even if expressed, described, explained or embodied in a work.

The Copyright Law provides for protection of all subject matter either registered or non-registered with the Department of Copyright and Related Rights of the Ministry of Culture and Fine Arts. The author enjoys the exclusive economic and moral rights to their work, subject to certain limitations.

B. Copyright Duration

Moral rights are the rights of the author to decide the manner and timing of the disclosure of the work and the right to oppose all forms of distortion or modification of the content of the work, which would be prejudicial to the author's honour or reputation. This right is perpetual, cannot be forfeited or seized and shall remain with the author forever. This right may, however, be inherited/transferred upon death to the heirs of the author or to the administration and governance of the MCFA in case of no heir.

The economic rights begin at the moment that the work is created and remains protected for the life of the author plus 50 years postmortem. The economic rights include the rights to rent, sell and distribute the original or a copy of the work; importation into Cambodia of reproductions; and public performance, public display, broadcasting, or other communications of the work to the public.

C. Transfer & Exploitation of Economic Rights

The economic rights of the author are freely transferable through assignment or license. The parties to an agreement are free to attach conditions of exploitation to the transfer.

All contracts for the exploitation of economic rights must be in writing. A co-author must have the consent of all co-authors to exploit a work; disagreements must be referred to a court.

VI. GEOGRAPHICAL INDICATION (GI)

Cambodia adopted a Law on Geographical Indication on 20 January 2014. This law is aimed at determining the legal requirements for registration and protection of GI in the Kingdom of Cambodia for agricultural products, food-processing products, and handicrafts or other products in compliance with the legal requirements of this law. To

date, there are four products which are currently protected under GI Law in Cambodia:

- Kampong Speu Palm Sugar;
- Kampot Pepper;
- Koh Trong Pomelo; and
- Mondulkiri Wild Honey.

The law provides the protection for both national and foreign GI.

A. Definition of GI

Article 22.1 of the TRIPS Agreement defines *GI* as: “indications which identify goods as originating in the territory of a [WTO] Member, or a region or locality in that territory, where a given quality, reputation or other characteristic of the goods is essentially attributable to its geographical origin.” Its definition may vary based on the local laws of each WTO Member State.

In Cambodia, GI refers to the name, sign and/or other distinctive pictures which are used to designate or represent the geographical origin and can identify the goods originating from such geographical origin where the quality, reputation or other characteristic of the goods is attributable to the geographical origin.

B. Registration of GI

Any agricultural goods, foodstuffs, handcrafted goods, and other goods which are produced or processed in the Kingdom of Cambodia in compliance with the regulations in force are subject to GI protection. The mentioned goods will be protected in Cambodia when they are registered with the MOC.

The application for a GI may be made in Khmer or English language. Any document constituting a part of the application, and which is not in Khmer or English language must be attached with its translation in Khmer or English language. The following are required for filing the application for registration of a GI:

- An original notarized power of attorney issued by a GI Association if the application is filed by an agent;
- A GI Association/Organization: Generally, a multi-professional organization which brings together producers, operators and traders of the product;
- An application form;

- A book of specifications: a document, issued by the applicant, which defines clearly the geographical area of production, production conditions and control mechanisms for the GI goods.

The administrative fees for mark registration are also applied to GI applications.

C. Rights Conferred by a Registration

Once the Registrar accepts the registration, the Registrar will issue a GI certificate to the applicant. This certificate confers the exclusive rights to use the GI. These rights cannot be transferred to a third party. The GI protection lasts until the MOC cancels it from the Registrar because the owner did not comply with conditions required by the law.

However, the registered GI may be cancelled by the Registrar before the expiration date in the following cases:

- The GI was not implemented in accordance with the plan defined in the book of specifications; or
- The applicant does not provide documents or provide additional information at the request of the Department of Intellectual Property Rights.

D. Available Measures Against GI Infringement

The GI Law also provides some available measures, including the procedure for opposition, provisional measures, border measures, and penalties related to GI infringement. GI infringement is punishable by a statutory fine of up to 20,000,000 Riels (approximately US\$5,000) and imprisonment for a term of between one and five years.

VII. PLANT VARIETY

The Law on Seed Management and Breeder Rights (2008), enables Cambodia to protect the breed of new plant varieties. A new plant variety is defined as a variety which was recently discovered and developed by plant breeders and broadly monopolized for the specific period.

A. Requirement for Registration

A new plant variety which meets the following requirements is eligible for protection:

- **Novelty:** A variety must be new, i.e., it must not have been sold or circulated in the market for more than one year, more six years in the case of trees or vines in Cambodia, or more than four years for all other varieties outside of Cambodia.
- **Distinctness:** A variety is clearly distinguishable from any other variety which is generally known and recognized.
- **Uniformity:** A variety shows sufficient uniformity in the relevant characteristics.
- **Stability:** Necessary relevant characteristics of a variety remain unchanged in all stages of the growth cycle and in successive generations of multiplication.

A natural person or legal person, Khmer citizen, foreign citizen having resident status in the Kingdom of Cambodia, habitually resident in a party to the International Union for the Protection of New Varieties of Plants or of a country that has concluded a reciprocal MOU with Cambodia, who has bred or discovered and developed a new variety and has the intention to protect the intellectual property of that variety may file an application to the MISTI. All application documents must be submitted to MAFF for technical review before such plant variety is registered with MISTI.

If the evaluation of the technical outcomes from MAFF proves positive, and the request for denomination of the variety is approved for registration, the Registrar will grant a certificate of protection of the new variety and publish details thereof in the official bulletin.

An application may claim a priority date based on a foreign application filed within 12 months from the filing date in any country that is a member of the International Union for the Protection of New Varieties of Plants.

B. Scope of Protection and Rights Conferred by Registration

Once a plant variety is registered, the variety will be protected for 20 years from the grant date and 25 years for trees and vines. The rights owner must pay an annual fee to the Registrar for guaranteeing the validity of the variety.

The exclusive rights to the plant variety shall belong to the owner. Any acts in respect of propagating material of a protected variety for the production or multiplication, conditioning for the purpose of propagation, offering for sale, selling or other marketing, exporting, importing and/or stocking, or using harvested products arising from the unauthorized use of a protected variety shall require the authorization of the owner.

A physical person or a legal person can submit a request to the MISTI and the MAFF for a compulsory license for the use of a protected variety on the grounds of necessity in order to protect the public interest in the Kingdom of Cambodia. The holder of a compulsory license must pay proper compensation to the owner of the protected variety.

C. Infringement of Plant Variety Rights

Acts in respect of propagating material of a protected variety for the production or multiplication, conditioning for the purpose of propagation, offering for sale, selling or other marketing, exporting, importing and stocking for any the purposes, or using harvested products arising from the unauthorized use of a protected variety by a third party without the owner's authorization constitutes plant variety infringement. In such a case, the owner shall have the right to institute court proceedings against the infringers.

An act of plant variety infringement is an offence and is punishable by a fine of up to 20,000,000 Riels (approximately US\$5,000) and/or imprisonment of up to five years. The penalty will be doubled in the case of repeat infringement. The right holder may also seek civil compensation for damages.

CHAPTER 6: CONSUMER PROTECTION, COMPETITION, and E-COMMERCE

Relevant Laws:

- a) Law on Competition 2021
- b) Law on E-Commerce 2020
- c) Law on Consumer Protection 2019
- d) Other sectoral laws and many implementing regulations

I. CONSUMER PROTECTION

To ensure that trade practices are conducted fairly and equitably between sellers and buyers, in a free-market economy, the RGC enacted the Law on Consumer Protection (the “LCP”). It aims to ensure the protection of consumers and to contribute to the promotion of fair competition within Cambodia.

The LCP’s main objective is to lay out the rules and mechanisms to create a fair, competitive and trustworthy trading environment between consumers and businesses, where consumers’ rights and interests are protected.

A. Consumer Rights and Association

The LCP provides for the following consumer rights:

- The right to access information and education to distinguish the difference between goods or services and to prevent fraud and fraudulent commercial advertisements;
- The right to choose goods or services with competitive prices and quality;
- The right to be heard on concerns and to examination and settlement by competent regulators and the RGC; and
- The right to claim compensation under the LCP, or other related laws.

The LCP grants consumers in each sector the right to form associations with the MOI in accordance with the Law on Associations and Non-Governmental Organizations, with prior authorizations from the relevant competent regulators.

Once established, the consumer association has the following roles and duties:

- To consult independently with consumers and coordinate consumer-related issues;

- To act as a representative before the National Consumer Protection Committee or before the court on behalf of any consumer or consumer group whose rights and interests are infringed;
- To represent the views and interests of consumers in public forums or the press;
- To receive consultation from any competent regulator on any regulation concerning information standards issued by the competent regulator to be provided to consumers;
- To create a consumer protection working group in each sector; and
To undertake to perform other duties as assigned by the National Consumer Protection Committee.

B. Unfair Acts and Unfair Practices

Investors who wish to conduct business in Cambodia must be aware of the prohibited acts and practices as stipulated under the LCP as follows.

An “*Unfair Act*” is defined by the LCP as any act of a person in business, that may be misleading or deceptive to a consumer, whether that act is intentional or unintentional. Unfair acts include the following:

- An act or representation such as advertising, sales promotion, and other representations;
- Misleading consumers regarding the cost, price or quality of the goods or services. Hard-to-read small print and labels and misleading claims for self-defense, cannot be relied upon by those who conduct businesses to avoid liability;
- Failure to present to consumers promises, expectations, and relevant information;
- Taking advantage of the consumers if the supplier is aware that the consumers are not in a position to protect their interests or are incapable of understanding the goods or services, such as the characteristics, type, language, effect of the transaction or any problems related to the transaction, or
- Other acts determined by the MOC.

Further, business activities regarding the provision of goods and/or services, which are misleading or deceptive to the public concerning the type, production process, characteristics, suitability, quantity, measurement, dimension, standard, or quality, constitute unfair acts and are prohibited by the LCP.

A misrepresentation also constitutes an unfair act prohibited by the LCP. Article 12 of the LCP provides an exhaustive list of business representations that are considered misleading as follows:

Chapter 5 of the LCP also prohibits nine specific unfair practices as follows:

- Prohibition of unfair sales;
- The promise of gifts and prizes;
- Bait advertising;
- Unfair solicitation sales;
- Demanding or accepting payments without intention to supply goods or services as per the purchase order;
- False or misleading representations in respect of certain business activities;
- Coercion by force and mental threat;
- Pyramid schemes; and
- Selling goods bearing false trade description.

Additional unfair practices may be specified from time-to-time by the regulator.

Chapter 6 of the LCP requires any person who conducts a business in the Kingdom of Cambodia to disclose at least a minimum of information to consumers in accordance with the information standard determined by regulation of the competent regulator and may also seek consultation with the National Consumer Protection Committee as necessary.

C. Penalties

A person who commits any unfair act or practice prohibited under the LCP may receive a written warning, suspension or revocation or cancellation of its certificate of incorporation or license, provisional fines, monetary fines, and/or imprisonment. Chapter 10 of the LCP lists several offenses and penalties associated with unfair acts or practices as follows:

Article	Offence	Penalty
Article 41	Unfair Conduct Relating to Goods, Services, or Misleading Claims.	- Written warning, and/or - Fines up to KHR20 million (approximately US\$5,000).
Article 44	Acts Related to Dishonest Practices.	- Fines up to KHR 50 million. (approximately US\$12,500).
Article 45	Pyramid Scheme Selling or the Sale of Goods through False Advertising.	- Fines up to KHR 80 million. (approximately US\$20,000).
Article 48	Violations for Non-Compliance with the Provision of Information Standards for Consumers.	- Fines up to KHR 10 million. (approximately US\$2,500).
Article 49	Violations of the Prohibition from Holding Management Positions.	- Fines up to KHR 10 million (approximately US\$5,000).

To ensure effective implementation of the LCP, a Joint Prakas No. 338 on Provisional Fines for Violations of the LCP was issued by the MEF, the MOJ, and the MOC which sets out the procedures for imposing penalties.

II. COMPETITION

With Cambodia's obligation to have a fair competition law under its commitments to the WTO and ASEAN Economic Community by 2025, Cambodia promulgated the Law on Competition on 5 October 2021 (the "Competition Law"), which then came into force the next day. The law provides a set of rules for a market-based economy where it governs any activities that prevent, restrict, or distort competition. It establishes and determines the authority of the Cambodia Competition Commission (the "**CCC**") to encourage new businesses, and help consumers to access high-quality, low-cost, diverse, and versatile products and services.

A. Definition of Competition

The term "*competition*" is defined under the Competition Law as "an act carried out by persons¹ in the market to get a greater number of customers to use their goods and services in order to gain market share and market dominance."

Before the Competition Law came into force, unfair competition was covered by the Trademark Law. Unfair competition was referred to by the Trademark Law as "any act of competition contrary to honest practices in industrial, commercial, and service matters." The law provides three types of acts that are deemed to constitute acts of unfair competition, namely:

- All acts that create confusion by any means whatsoever with the establishment, the goods, or the industrial, commercial, or service activities of a competitor;
- False allegations in the course of trade of such a nature as to discredit the establishment, the goods, or the industrial, commercial or service activities of a competitor; and
- Indications or allegations used in the course of trade that are liable to mislead the public as to the nature, the manufacturing process, the characteristics, the suitability for their purpose, or the quantity of the goods.

The Competition Law applies to any natural or legal persons conducting business activities that significantly prevent, restrict, or distort competition in the Cambodian markets regardless of where the activities take place.

¹ *Persons* are defined under Article 3(11) of the Law on Competition as natural persons or legal persons carrying on business activities regardless of whether for profit or non-profit, registered or unregistered.

B. Governing Authorities

The Competition Law established the CCC as the competent institution with the authority to perform duties and functions concerning competition issues in the Kingdom of Cambodia. Its principal functions and duties include the following:

- Establishing policies and plans regarding competition;
- Advising on draft legislation and regulations regarding competition;
- Requesting the RGC to revise or amend any national and international law, regulation or agreement which affects competition;
- Issuing decisions, orders and interim measures and imposing fines;
- Preparing the formalities and procedures related to the calculation of fines;
- Preparing rules regarding conflicts of interest for members of the CCC;
- Preparing the requirements and procedures for business combinations;
- Preparing the requirements and procedures that individually and collectively permit any agreement or activities related to competition;
- Preparing the requirements and procedures for the leniency policy on pecuniary fines;
- Cooperating with national ministries, institutions, or regulators, foreign states, and international agencies with regards to competition;
- Receiving complaints; and
- Establishing other regulations and rules that are under the authority of the CCC related to competition.

C. Prohibited Activities Under the Competition Law

The Competition Law sets out prohibitions on persons from carrying out business activities that prevent, restrict, or distort competition.

1. Horizontal Agreements

Those carrying out business activities are prohibited from making and implementing a Horizontal Agreement that directly or indirectly affects competition.

The Competition Law defines a Horizontal Agreement as “an agreement² between persons who carry out business activities that operate or are likely to operate at the **same level** in the production or distribution chain.”

² *Agreement* is defined under Article 3(2) of the Law on Competition, as any form of contract, agreement, arrangement or understanding between Persons, regardless of whether it is written, verbal or implied, and can include direct or indirect coordination where that coordination has the object or effect of; (i) influencing the conduct of one or more Persons in a Market; or (ii) disclosing a course of conduct which a person has decided to adopt or is contemplating adopting in a Market.

Horizontal Agreements that directly or indirectly affect competition include the following:

- a) Agreements on fixing, controlling, or maintaining the price of goods or services;
- b) Agreements on preventing, restricting or limiting the quantity and type of goods or services which are made available for sale, and the development of new goods or services;
- c) Agreements on allocating geographic areas, and customers between competitors; or
- d) Favoring one bidder in bids for a contract in private procurement.

2. Vertical Agreement

Making and implementing Vertical Agreements are also prohibited by the Competition Law. A Vertical Agreement is defined as “an agreement between persons who carry out business activities that operate or are likely to operate at ***different levels*** in the production or distribution chain.”

The Competition Law particularly prohibits those agreements which directly or indirectly require a purchaser to resell purchased goods or services at a minimum price or to accept any condition set by the seller. Furthermore, it prohibits persons from making and implementing agreements that have or may have the object or effect of significantly preventing, restricting, or distorting competition in a Market³ by:

- a) Requiring a purchaser to resell purchased goods or services only within a defined geographic area;
- b) Requiring a purchaser to resell purchased goods or services only to specified customers or specified categories of customers;
- c) Requiring a purchaser to purchase all or nearly all of its requirements for particular goods or services exclusively from the seller;
- d) Preventing a seller from selling goods or services to another purchaser; or
- e) Requiring a purchaser to purchase unrelated goods or services in addition to the goods and services that the purchaser wants to purchase.

³ Market is defined under Article 3(10) of the Law on Competition, as a market for any competing goods or services.

3. Abuse of Dominant Market Position

As required by the ASEAN Regional Guidelines on Competition Policy, Cambodia has implemented a prohibition on activities that constitute an abuse of Dominant Market Position⁴ in the Competition Law.

The Competition Law sets out five prohibited activities that have the object or effect of significantly preventing, restricting, or distorting competition in a market, applicable to those with a Dominant Market Position⁵ as follows:

- a) Requiring or inducing a supplier or customer not to deal with a competitor;
- b) Refusing to supply goods or services to a competitor;
- c) Selling goods or services on the condition that the purchaser needs to purchase other goods or services separately, which are unrelated to the object of the contract;
- d) Selling goods or services below the cost of production; or
- e) Refusing to give a competitor access to an essential facility.

However, the Competition Law allows those with a Dominant Market Position to lawfully conduct such activities if the CCC determines that:

- a) The person has established a reasonable ground to legally carry out the prohibited activities for the benefit of its business, and
- b) The activities do not significantly prevent, restrict, or distort competition within a market.

4. Business Combinations

The Competition Law prohibits any “Business Combination” which has or may have the effect of significantly preventing, restricting or distorting competition in a market as determined by the CCC.

Business Combination is defined under the Law as “the acquisition of the right of control or voting rights through the purchase of shares or assets by one

⁴ “Abuse of a dominant position” occurs where the dominant enterprise, either individually or together with other undertakings, exploits its dominant position in the relevant market or excludes competitors and harms the competition process. It is prudent to consider the actual or potential impact of the conduct on competition, instead of treating certain conducts by dominant enterprises as automatically abusive. (Article 3.3.1.2 of the ASEAN Regional Guideline on Competition Policy)

⁵ “Dominant Market Position” is defined under Article 3(6) of the Law on Competition, as a situation in which a person has the power to act in a Market significantly without any effective constraint from other competitors.

“Dominant position” refers to a situation of market power, where an undertaking, either individually or together with other undertakings, is in a position to unilaterally affect the competition parameters in the relevant market for a good(s) or service(s), e.g., able to profitably sustain prices above competitive levels or to restrict output or quality below competitive levels. (Article 3.3.1.1 of the ASEAN Regional Guideline on Competition Policy).

person from any other person, or the combination of two or more persons to acquire joint ownership of an existing or a new legal person.”

On 6 March 2023, a Sub-Decree on Conditions and Procedures of Business Combinations was issued to set out the requirements and procedures regarding a Business Combination.

The Sub-Decree applies to any Business Combination which, directly or indirectly, has or may have, the object or effect of significantly preventing, restricting, or distorting competition in the market of Cambodia, regardless of whether the Business Combination takes place inside or outside the territory of Cambodia, except for Business Combination in certain industries that have been regulated by applicable laws and regulations.

a) Threshold

The Cambodia Competition Commission (“**CCC**”) is the authority that determines the threshold of the Business Combination. This Decision on the Pre-Notification Thresholds for the Business Combinations was issued by the Ministry of Commerce on 14 March 2023 (“**Decision**”).

The Decision makes a distinction in the threshold for a) General Business Combinations, b) Business Combinations where any of the parties is a Banking and Financial Institution, and c) Business Combinations where any of the parties is an Insurer or in the Securities Business.

For *General Business Combinations*, the parties to the Business Combination are obligated to pre-notify the Business Combination to the CCC, where any party to the Business Combination falls under one of the thresholds as follows:

No.	Threshold	Amount in KHR	Equivalence in US\$
1	Total assets of any party or its related Group in Cambodia	KHR 340,000,000,000	US\$ 85,000,000
2	Total sales of any party or its related Group in Cambodia; or	KHR 270,000,000,000	US\$ 67,500,000
	Input purchase turnover of any party or its related Group in Cambodia	KHR 120,000,000,000	US\$ 30,000,000
3	Transaction value of the Business Combination	KHR 41,000,000,000	US\$ 10,250,000

For *Banking and Financial Institutions*, the parties to the Business Combination are obligated to pre-notify the Business Combination to the CCC, where any party to the Business Combination falls under one of the thresholds as follows:

No.	Threshold	Amount in KHR	Equivalence in US\$
1	Total assets of any party or its related Group in Cambodia	KHR 4,500,000,000,000	US\$ 1,125,000,000
2	Total sales of any party or its related Group in Cambodia; or	KHR 420,000,000,000	US\$ 105,000,000
	Input purchase turnover of any party or its related Group in Cambodia	KHR 3,800,000,000,000	US\$ 950,000,000
3	Transaction value of the Business Combination	KHR 120,000,000,000	US\$ 30,000,000

For *Insurer or Securities Business*, the parties to the Business Combination are obligated to pre-notify the Business Combination to the CCC, where any party to the Business Combination falls under one of the thresholds as follows:

No.	Threshold	Amount in KHR	Equivalence in US\$
1	Total assets of any party or its related Group in Cambodia	KHR 1,000,000,000,000	US\$ 250,000,000
2	Total sales of any party or its related Group in Cambodia; or	KHR 280,000,000,000	US\$ 70,000,000
	Input purchase turnover of any party or its related Group in Cambodia	KHR 820,000,000,000	US\$ 205,000,000
3	Transaction value of the Business Combination	KHR 61,000,000,000	US\$ 15,250,000

The CCC has the right to amend the Pre-Notification thresholds as it deems appropriate for actual circumstances.

b) Pre-Notification

A party that proposes to undertake a Business Combination must notify the CCC prior to the completion of the proposed Business Combination.

Primary Review

Any party that is required to provide the Pre-Notification shall provide certain relevant documents and information to the CCC. Once receiving such documents and information, the CCC shall have 7 working days to issue a notice to the party of the completeness or incompleteness of such documents and information and shall apply the process as follows:

- If the CCC does not issue a written notice to the party within the period as set out above, the notification shall be deemed complete and valid.
- The party shall provide any documents and information as required by the CCC to complete the notification conditions within 30 working days after the issuance of the CCC's notice.

After receiving the complete notification, the CCC shall have 30 working days to issue a notice to the party of the results of its Primary Review of the proposed Business Combination by indicating any of the following decisions:

- The Business Combination may be completed; or
- The Business Combination is subject to Secondary Review.

Secondary Review

In case the Business Combination is subject to Secondary Review, the CCC shall issue a notice indicating additional documents and information required for the party to provide. The CCC shall have 60 working days to complete its Secondary Review starting from the date the party has provided the documents and information as requested. During the process of the Secondary Review, the CCC shall have the following rights:

- The CCC may extend the Secondary Review period 2 times, by up to 30 working days each time, by providing notice to the party;
- During the process of the Secondary Review, the CCC may request additional documents and information from the party. The period for completion of the Secondary Review shall be suspended until the party has fulfilled the CCC's additional request; and
- The CCC shall have the right to make additional requests for documents and information from the party and relevant parties.

By the expiry of the time period referred to above including any extensions or suspensions, the CCC shall issue the notice to the party of the results of its Secondary Review by indicating any of the following decisions:

- The Business Combination may be completed;
- The Business Combination may be completed subject to conditions; or
- The Business Combination may be prohibited.

If the CCC does not issue the notice within the stipulated time period, the proposed Business Combination may be completed.

A Business Combination shall not be subject to Secondary Review where any of the following conditions exists:

- A party being acquired has become bankrupt or may become bankrupt;
- Acquisition of voting shares or an interest in a joint venture is solely to underwrite the shares or the interest;
- Acquisition of voting shares, an interest in a combination or assets that would result from a statutory succession or testamentary succession; or
- An acquisition of collateral or receivables, or an acquisition resulting from a foreclosure or default or forming part of a debt work-out, is made by a creditor in or pursuant to a credit transaction entered into in good faith in the ordinary course of business.

Advance Ruling Certificate

A party to the Business Combination may request the Advance Ruling Certificate issued by the CCC. Where the CCC has no grounds to challenge or commence a proceeding to prohibit a Business Combination, the CCC may issue an Advance Ruling Certificate. In this regard, the Business Combination may be completed. The requirements and the procedures for the Advance Ruling Certificate shall be determined by the decision of the CCC.

D. Exemptions

Persons who carry out the prohibited agreements and/or activities may be exempt from sanction if the said agreements or activities satisfy four requirements:

- 1) There are significant identifiable technological, economic or social benefits;
- 2) Such benefits would not exist without those agreements or activities;
- 3) Those benefits significantly outweigh the effects caused by any preventing, restricting, or distorting of competition; and
- 4) They do not eliminate competition in relation to any important aspect of the relevant goods or services.

E. Leniency policy

The CCC may grant leniency to any person participating or assisting in Horizontal Agreements. However, leniency may only be granted to persons that give evidence or important information related to an unlawful Horizontal Agreement to the CCC.

F. Infringement and Penalties

Should there be an infringement of the Competition Law, the CCC may initiate its investigations or receive complaints from other regulators or any person other than the regulator.

Upon receipt of complaints, and conducting necessary investigations, the CCC is empowered to issue interim measures and/or decisions, an administrative sanction, and/or impose pecuniary fines on the alleged violator.

Sanctions on violators of the Competition Law include a written warning, suspension, revocation or withdrawal of business registration certificates, business licenses, or business permits, pecuniary fine, financial penalty, and imprisonment.

Those who enter into a Vertical Agreement, abuse a dominant market position, or carry out business combinations that are prohibited by the Competition Law are subject to a written warning and a fine of between 3% and 10% of the person's turnover for each year in which a violation occurred for a maximum of three years issued by the CCC⁶.

Furthermore, a natural person who enters into a Horizontal Agreement may be subject to a term of imprisonment from one month to two years, and a fine of 5,000,000 KHR to 100,000,000 KHR (approximately, USD1,250 to USD25,000). Whereas a legal Person may be subject to a fine of 100,000,000 KHR to 2,000,000,000 KHR (approximately, USD25,000 to USD500,000).

III. E-COMMERCE

To fit well into industry 4.0, where everything is digitalized including but not limited to business activities, the Law on Electronic Commerce was promulgated on 2 November 2019 (the "**E-Commerce Law**").

There are three purposes of the promulgation of the E-Commerce Law; namely to govern e-commerce at both national and international levels, to create legal certainty in civil and commercial transactions by an electronic system, and to give confidence to the public in the usage of e-commerce.

A. Notion of E-Commerce

Electronic Commerce or E-Commerce refers to activities involving the purchase, sale, rental, exchange of goods or services, including business activities, and various transactions by the state through an electronic system.

⁶ See Inter-Ministerial Proclamation No. 041 on the Procedure for Imposing Fines in Case of Violation of the Law on Competition, dated 25 January 2023.

The E-Commerce Law seeks to:

- 1) Provide requirements regarding the authenticity, perfection and reliability of an electronic form;
- 2) Promote the development of the legal and business frameworks to conduct safe electronic commerce;
- 3) Prevent and enforce against acts which are harmful to data and information systems;
- 4) Eliminate obstacles which hinder electronic commerce and which are created by the uncertainty of requirements of written documents and signatures;
- 5) Facilitate electronic filing of documents with public institutions and promote efficient delivery of services of public institutions through the use of reliable electronic records; and
- 6) Establish rules, regulations and standards regarding the authenticity and perfection of electronic records.

The E-Commerce Law applies to all activities and documents relating to civil and commercial transactions that are made electronically except for those in relation to: the formation or execution of a power of attorney, testament, codicil or other succession matters; contract for sale, transfer or disposition of rights to immovable property or any interests in such property or transfer thereof; and any other exception stipulated by sub-decree.

B. Electronic Communications

Although the E-Commerce Law recognizes the validity, legal effect, admissibility, and enforceability of an electronic communication it also sets out some regulatory requirements for such communications.

An electronic communication is defined by the E-Commerce Law as information which is communicated, processed, recorded, displayed, created, stored, received, or transmitted by electronic means. Such a communication is deemed to be sent when it leaves the originator's information system and to be received when it is retrievable by the addressee.

C. Intermediary and E-Commerce Service Provider's Liabilities

The E-Commerce Law also imposes liabilities on intermediaries and e-commerce service providers in relation to information or events that give rise to civil or criminal liability.

Intermediaries and e-commerce service providers are required to request a permission letter or a license from the MOC and the MPTC to carry out their

respective activities. They are also required to comply with a professional code of conduct and regulations concerning e-commerce.

On 25 August 2020, the Royal Government of Cambodia issued Sub-Decree No. 134 on the Determination of Types, Formalities and Procedures for Issuing Approvals or Licenses to Intermediaries and Electronic-Commerce Service Providers and Exemptions (“**Sub-Decree No. 134**”).

According to Article 5.1 of the Sub-Decree No. 134, a License for Operation of E-Commerce Services must be obtained and maintained by legal entities and foreign branches that conduct the following e-commerce activities:

- E-commerce website services;
- E-commerce business platform services;
- Online marketing services;
- Online auction website services;
- Other similar services provided through software or smart devices for the promotion of e-commerce.

A Business Approval for E-Commerce must be obtained and maintained by natural persons and sole proprietorships who are operating their business through an electronic system in Cambodia, including using social media or electronic systems to affect the supply, sale, or purchase of goods and/or services. In addition, the Sub-Decree No. 134 provides a license holder with the ability to voluntarily apply for an E-Commerce Confidence Certificate at the MOC confirming its compliance, safety and trustworthiness.

Pursuant to Article 7.1 of the Sub-Decree No. 134, legal entities or foreign branches that are intermediaries of electronic-commerce service providers must apply for a license at the MOC and meet the following conditions:

- It must be a registered business and taxed according to Cambodian law and have business objectives related to e-commerce;
- It must have obtained an Online Service Certificate and domain name from the Ministry of Posts and Telecommunications;
- It must use an electronic application or means for operating e-commerce;
- The Electronic system used by it must be accurate;
- It must specify the payment method;
- It must have a business model and consumer protection form;
- If it is a legal entity or foreign branch acting as an intermediary, it must enter into a contract with the business service providers.

A License is valid for 3 years and can be renewed.

D. Consumer Protection

To ensure consumer rights are protected within the scope of E-commerce, the E-Commerce Law imposes further requirements on those using electronic communications to sell goods or services to consumers. Accurate, clear, and intelligible information is required to be included in such communications. Any person that holds personal information in electronic form shall use all means to ensure that the information/data is protected to avoid the loss, access, use, modification, leak, or disclosure of that information, except when it is permitted by the owner.

E. Complaint Procedure

The Ministry of Commerce and the Ministry of Posts and Telecommunications have the authority to issue a written warning, order the cessation of business activities or transactions, suspend, revoke, or cancel the authorization or license to conduct E-commerce as well as impose fines on violators of the E-Commerce Law.

Anyone unsatisfied with the sanctions decided by either the Ministry of Commerce or the Ministry of Posts and Telecommunications can file a complaint to the ministers thereof. Upon receipt of complaints, the relevant minister has 30 days to make a second decision. If the applicant remains unsatisfied with the second decision they can further appeal to the competent court in Cambodia within 30 days of the decision.

F. Penalties

Sanctions on violators of the E-Commerce Law include, but are not limited to, a written warning, an order to cease business activities or transactions, suspension, revocation or cancellation of any relevant authorization or license, penalty, imprisonment and a fine.

Some penalties for the offenses stipulated under the E-Commerce Law are as follows.

Article	Offense	Penalties
Article 53	Identity Theft	<ul style="list-style-type: none">- Imprisonment from six months to three years, and- A fine from 1,000,000 KHR to 6,000,000 KHR (approximately, USD250 to USD1,500).-

Article 54	Failure to Report Information or a Fact	<ul style="list-style-type: none"> - Imprisonment from one month to one year, and - A fine from 100,000 KHR to 2,000,000 KHR (approximately USD 25 to USD500 the intermediaries and e-commerce service providers).
Article 55	Provision of False Information	<ul style="list-style-type: none"> - Imprisonment from one month to one year, and - A fine from 100,000 KHR to 2,000,000 KHR (approximately USD25 to USD500)
Article 56	Executing an Unauthorized Transaction	<ul style="list-style-type: none"> - Order to cease business activities or transactions, and - A monetary fine not exceeding 10,000,000 KHR ((approximately USD2,500). - In case of continued violation; imprisonment from one year to three years, and a fine from 2,000,000 KHR to 6,000,000 KHR (approximately USD500 to USD1,500).
Article 57	Failure to Comply with the Provision Regarding Minimum Information in Electronic Commerce.	<ul style="list-style-type: none"> - Written warning, or - Suspension or revocation of the license or the authorization of the e-commerce provider.
Article 58	Sending an Unsolicited Business Communication	<ul style="list-style-type: none"> - Written warning, or - Suspension or revocation of the license or the authorization of an intermediary or the e-commerce provider, or - Disable the media or close down the electronic medium or the originator.

Article 59	Electronic System Forgery and Malicious Code	<ul style="list-style-type: none"> - Imprisonment from six months to three years, and - A fine from 1,000,000 KHR to 6,000,000 KHR (approximately USD250 to USD1,500).
Article 60	Failure to Comply with Data Protection Obligations	<ul style="list-style-type: none"> - Imprisonment from one year to two years, and - A fine from 2,000,000 KHR to 4,000,000 KHR (approximately USD500 to USD1,00).
Article 61	Violation of Authenticity Issuance	<ul style="list-style-type: none"> - Imprisonment from one month to one year, and - A fine from 100,000 KHR to 2,000,000 KHR (approximately USD25 to USD500).
Article 62	Coding Violation	<ul style="list-style-type: none"> - Imprisonment from one year to three years, and - A fine from 2,000,000 KHR to 6,000,000 KHR (approximately USD500 to USD1,500).
Article 63	Electronic Payment Transaction	<ul style="list-style-type: none"> - Imprisonment from one year to five years, and - A fine from 1,000,000 KHR to 10,000,000 KHR (approximately USD250 to USD2,500).
Article 64	Electronic Payment Instrument Forgery	<ul style="list-style-type: none"> - Imprisonment from one year to three years, and - A fine from 2,000,000 KHR to 6,000,000 KHR (approximately USD500 to USD1,500).

The E-Commerce Law also makes clear that legal entities may be criminally liable if they violate the offences stipulated under the law.

CHAPTER 7: CONTRACTS

Relevant Laws:

- Law on Implementation of the Civil Code 2011
- Civil Code 2007

I. HISTORY OF CONTRACT LAW

Historically, Cambodia adopted its first Civil Code in 1921 which was mainly based on the French Civil Code (Code Napoleon 1863). That Civil Code was amended in 1959 and used until 1975 when Cambodia fell into the Khmer Rouge/Pol Pot Regime. After the collapse of the Khmer Rouge, in 1989 the State of Cambodia adopted a Decree-Law No.38 on Contracts and Non-Contractual Liabilities 1988. This Decree-Law provides for general principles of contracts, several types of special contracts, and tort. It was used until the application of the new Civil Code of Cambodia 2007 (the “**CC**”).

The CC was promulgated on 8 December 2007 and came into force on 21 December 2011 with the enforcement of the Law on Implementation of the Civil Code. The CC is comprehensive with 1305 articles divided into nine books on general rules, persons, real rights, obligations, types of contracts/torts, security, relatives, and succession. So far, there is no special law in Cambodia which specifically regulates commercial transactions, therefore the CC, particularly books of obligation and particular types of contracts, are applied not only to civil contracts but also to commercial contracts.

II. FORMATION OF CONTRACT

A contract comes into force once an offer and acceptance thereto conform to each other (Art 336-1 of CC). The CC does not require any formality like executing a written contract nor affixing a seal to form a contract unless otherwise provided for by articles of the CC or other special laws. A contract can be executed in any language other than Khmer although any documents tendered in proceedings before Cambodian courts must be translated into Khmer language. Examples of situations in which certain formalities are required by CC are as follows.

A contract in which one of the parties bears an obligation to transfer or to acquire ownership of immovable property shall come into effect only upon such contract having been executed in the form of a notarized document (Art. 336-2 of CC). This

article aims to protect the interests of both parties and make the existence of the agreement clear because often an immovable property is more expensive and important to parties than a movable one. Please note that Art. 336-2 of the CC is applied only to a contract of immovable property ownership, and not applied to a contract to establish real rights to use and enjoy the profits of the immovable property like a perpetual lease, usufruct, right of use, and right of residence and easements.

A claim for interest will not come into effect unless it is in writing and bears the signature of the borrower (Art. 583-3 of the CC). A contract of loan for consumption is formed through the agreement of the lender and the borrower alone (Art. 579 of the CC). However, it is necessary to execute a written contract with the signature of the borrower in order for a claim for interest to be effective. Moreover, should the interest rate agreed to by the parties exceed the legal interest rate, it shall have no effect unless the format of the contract complies with the form provided in paragraph (3) of Art. 583 (Claim for interest) (Art. 584-3 of the CC). For example, if parties to a loan for a consumption contract agree to establish a claim for interest for the principal in writing, but orally agree an interest rate that exceeds the legal interest rate of 5% per annum (Art. 318 of the CC), the agreement for establishing the claim for interest will be valid but the agreement for the interest rate will be void. Therefore, the legal interest rate of 5% per annum will apply to the loan for consumption contract. Please note that the legal interest rate is different from the maximum interest rate which is 18% per annum.

A guaranty shall be formed only with an agreement between an obligee and a guarantor (Art. 900 of the CC). However, a guaranty undertaking not recorded in an instrument or document may be revoked at any time until a guarantor has voluntarily sought to perform the guaranty obligation (Art. 901-1 of the CC). Moreover, if the amount of the guaranty obligation is not stipulated in the guarantor's handwriting, the guaranty may be revoked until the guarantor has voluntarily sought to perform the guaranty obligation (Art. 901-2 of the CC). However, it is not necessary to have the amount of guaranty handwritten by the guarantor if it is a case of floating guaranty which fluctuates based on the outstanding obligations of the debtor (Art. 902-1).

A lease comes into effect upon the agreement by both parties and does not require compliance with any formalities (Art. 597 of the CC). However, a lease of immovables not in writing shall be deemed to be a lease without a stipulated period (Art. 599-2 of the CC); thus, either party may give notice of termination at any time (Art. 615-1 of the CC).

A gift comes into effect once an offer and the acceptance thereto conform to each other (Art. 568 of the CC). However, if not put in writing, either party to the contract may

revoke the contract (Art. 570 of the CC).

A certificate prepared by a notary concerning a demand for an affixed amount of money can be a title of execution provided this only applies to certificates that include a statement that the debtor shall be immediately subject to execution (Art. 350(f) of the Code of Civil Procedure). A certificate prepared by a notary proving the existence of the security interest can also be a title of execution (Art. 496(b) of the Code of Civil Procedure). Therefore, in such cases, the creditor can file a motion with the execution court for compulsory execution or enforcement of security interest, respectively, without obtaining a final and binding judgement regarding the existence of claims. Having said that, actual practices may be different from what written regulations stipulate and we have never noticed actual cases in which compulsory execution or enforcement of security interest has been completed based on only a certificate prepared by a notary without obtaining a final and binding judgment with regard to the existence of claims. Therefore, we recommend obtaining legal advice from qualified legal counsel on actual practices and situations at the relevant time.

In addition, there are certain contracts and documents required to be in writing and signed by the parties thereto. Some of these are: (i) bills of exchange, cheques, promissory notes, etc under the Law on Negotiable Instruments; (ii) memorandum and articles of association of a company registered under the Law on Commercial Rules and Register; (iii) partnership agreements and share transfer agreements under the Law on Commercial Enterprises; (v) agreements to refer a dispute to arbitration under the Law on Commercial Arbitration; (vi) share pledges and other collateral agreements under the Law on Secured Transactions; and (vii) economic land concessions, Built-Operate-Transfer and other infrastructure concessions under the Law on Public-Private Partnership and the Land Law.

III. DEFECTIVE DECLARATION OF INTENT

As previously stated, a contract becomes effective when the intentions of both parties conform to each other without requiring any formalities. On the other hand, a declaration of intent by both parties should be effective for a contract to come into force.

The CC stipulates that a person who declares a defective intention may rescind the contract (Art 345. of the CC). It also stipulates that declarations of intent which are made as the result of the following circumstances are defective:

- Mistake (Art. 346 of the CC);
- Fraud (Art. 347 of the CC);
- Misrepresentation (Art. 348 of the CC);

- Abuse of Circumstances (Art. 349 of the CC);
- Duress (Art. 350 of the CC); or
- Act of Receiving Excessive Benefit (Art. 351 of the CC).

A contract which may be rescinded means that: (i) it is valid and binding on both parties until it is rescinded by the aggrieved party, (ii) it can be rescinded only by the aggrieved party and not by the other, and (iii) the party who can opt to rescind is not bound to rescind the contract. Thus, the aggrieved party has two-fold rights, i.e., (a) to rescind the contract, and therefore not be bound thereunder and (b) to carry out the transaction as stipulated in spite of the flaw in the contract.

In addition to the above cases in which a contract may be rescinded because of a defective declaration of intent, the CC also stipulates that should a contract be formed by the declaration of intent made by a party who knows that it does not reflect the true intentions of the declarant, the contract shall not be void. However, if the other party is aware also that such a declaration of intent does not reflect the true intention of the declarant, the declarant may reject the performance of the contract (Art. 352 of the CC).

Furthermore, a contract formed through a fictitious declaration of intent made in collusion with another party shall be void (Art. 353(1) of the CC).

IV. REMEDIES FOR BREACH OF CONTRACT

Breach (or non-performance) of a contract is defined as an obligor's failure to perform an obligation arising under a contract. The types of non-performance are as follows (Art. 389 of the CC):

- Cases in which the performance is late;
- Cases in which the performance is impossible;
- Cases in which the performance is incomplete; or
- Cases in which the performance is not carried out in accordance with the intended purpose.

One example of incompleteness is where a seller provides a buyer with a defective product. Cases in which performance is not carried out in accordance with the intended purpose include all kinds of breach of contract which do not come under the categories of late performance, impossibility to complete, or incompleteness. For example, if a worker is injured while working in the workplace because of a lack of safety facilities, it can be considered that an employer failed to perform an obligation

of safety. Therefore, such a case may be considered to be the case in which performance is not carried out in accordance with the intended purpose.

In cases of such non-performance, an obligee (the aggrieved party) should ask an obligor (the party in breach) to remedy the situation within a reasonable time (in case of impossibility of performance, demand is not required). If the obligor does not comply, the obligee can send a notice to terminate the contract or demand compensation for damages, or file a lawsuit in a civil court to demand compulsory performance (Art. 390 of the CC). The obligee may select any or all of such remedies so long as they are not mutually exclusive (Art. 395 of the CC). With regards to the termination of a contract, please see below.

Should the obligor prove that non-performance was not the fault of the obligor then the obligor shall not be liable for damages (Art. 398(1) of CC). However, when the subject of the obligation is the payment of money, the obligor shall not be exempted from payment of interest for any delay even if the obligor proves that the delay in payment was the result of *force majeure* (Art. 399(1) of the CC). Compensation for damages can be agreed in advance; but if the amount fixed by the parties is grossly higher or grossly lower than the damages suffered, the court can decide to decrease or increase the agreed amount (Art. 403(1) and (3) of the CC). Also, a special agreement exempting the obligor from liability for intentional non-performance or the result of gross negligence shall be void (Art. 403(2) of the CC).

V. TERMINATION OF CONTRACT

Should one of the parties to a bilateral contract commit a material breach of the contract, the other party may terminate the contract immediately (Art. 407 of the CC). Not only the non-performance of the contract but also the existence of a material breach of contract is necessary to terminate the contract. On the other hand, the obligor's fault is not necessary to terminate the contract. A material breach of contract occurs wherein as a result of one party's breach, the purpose of the contract for the other party cannot be achieved. This shall be deemed to occur in any of the following situations (Art. 408 of the CC):

- Where after failing to perform at the specified time, the other party demands that the non-performing party performs the obligation by establishing a period of performance of reasonable length, and the obligation is not performed within such period.
- Where a party fails to perform at the specified time, and the purpose of the contract cannot be achieved if performance is not made at the specified time. For example, a person orders a caterer to deliver food on the day of

his/her wedding but the caterer fails to deliver the food on the day of the wedding.

- Where it is impossible to carry out an essential act of performance.
- Where the magnitude of the breach is so substantial that trust between the parties is destroyed, and further performance cannot be expected. For example, a lessee repeatedly fails to pay his/her rent on time.

A party bearing the right to terminate a contract may terminate the contract by expressing an intention to terminate to the other party (Art. 409(1) of the CC). A party bearing the right to terminate is not required to file a lawsuit with a court to terminate the contract. Termination of a contract relieves both parties of their obligation under the contract except for the duty to pay damages (Art. 411(1) of the CC).

Upon termination, a party that has received full or partial performance of a contract must return to the other party those items received as performance so as to return the other party to his/her original state (Art. 411(2) of the CC). A party required to return money because of termination shall return the money with interest computed from the date on which the money was received. A party required to return property or other benefits due to termination shall return any benefit received thereby (Art. 411(3) of the CC). For example, in the case of termination of a sales-purchase contract of land, the buyer of the land must return the land to the seller together with money equivalent to rent the land. On the other hand, the seller must repay the sales price to the buyer together with interest on what has been paid towards the sales price.

VI. PARTICULAR TYPES OF CONTRACTS

The CC stipulates 13 types of contracts. Particular types of contracts stipulated in the CC act as criteria for judgment on issues over which there is no particular agreement between both parties or an agreement is not clear. Most articles of Book 4 (Obligation) of the CC and Book 5 (Particular types of contracts) of the CC are discretionary provisions and parties may make an agreement which varies from these provisions.

However, an agreement which is against mandatory provisions of the CC and other laws will be void (Art. 354(1) of the CC). Moreover, should a portion of a contract violate a mandatory provision of law and should the remainder of the contract not affect the reasonable expectation of the parties, only the portion of the contract in violation of such provision of law will be void (Art. 354(2)). It is not clear which articles of the CC are discretionary provisions or mandatory provisions from the wording of each provision. It is necessary to take into account the objectives and aims of each article in order to figure out if a particular article is a discretionary provision or a mandatory provision.

For example, Art. 518 (Earnest money), Art. 522 (Sales expenses), Art. 586 (Time of payment for interest and statutory compound interest), Art. 610 (Obligation to pay and time of payment of rents), Art. 618 (Obligation to return leased object), Art. 619 (Lessee's right of removal), Art. 318 (Legal interest rate) are likely to be considered as discretionary provisions. Therefore, both parties may make an agreement which is different from these articles. On the other hand, and for example, Art. 585 (Limitation on interest) and Art. 487 (Renunciation of benefit of extinctive prescription regarding claims) are likely to be considered as mandatory provisions because these articles aim to protect the interests of an obligor who is generally considered to be in a weaker position than an obligee when they make an agreement. Therefore, even if both parties agree with an interest rate which exceeds the maximum interest rate stipulated by law, the agreement should be void. Particular types of contracts stipulated in the CC are as follows:

- Sale;
- Exchange;
- Gift;
- Loan for Consumption;
- Lease;
- Loan for Use;
- Mandate;
- Contracts for Work;
- Contracts of Employment;
- Deposits;
- Partnership;
- Life Annuity; and
- Settlement.

VII. GOVERNING LAW AND JURISDICTION

There is no Cambodian law or regulation stipulating the governing law of a contract. However, it is considered that parties may agree on the governing law based on the principle of private autonomy (Art. 3 of the CC). Therefore, parties may include an article in the contract which stipulates the governing law, for example: "This agreement is governed by the law of X." In case of failure to specify the governing law, the laws of Cambodia will be applied by the courts of Cambodia.

However, Art. 131 of the CC stipulates that no real right may be created except as for the types and contents permitted under CC or under any special law. Therefore, the law of Cambodia should be applied to the types and contents of real rights such as ownership, perpetual lease and hypothec over movable and immovable property in Cambodia. Accordingly, a real security right, including hypothec and pledge, should

be established according to requirements of the laws of Cambodia if movable or immovable property which is the subject matter of the hypothec or pledge is in Cambodia. As a practical matter, even if the parties to the contract agree to establish a real security right which is not stipulated by the laws of Cambodia, such real security right cannot be registered and enforced in Cambodia. Therefore, for example, when a creditor lends an amount of money to a debtor and establishes a hypothec over land in Cambodia to secure a claim and perfect a security interest, both parties may agree on the governing law of the loan agreement. However, a hypothec agreement should be governed by the laws of Cambodia.

The laws of Cambodia are silent with respect to international jurisdiction. However, it is considered that both parties may agree upon the jurisdiction based on the principle of private autonomy. Therefore, an article agreed by both parties in the contract which stipulates on the jurisdiction, for example: “any dispute in connection to this agreement shall be subject to the jurisdiction of the courts of X,” may be valid.

However, we are unaware of any Cambodian courts applying to a case any law other than Cambodian law; so the “autonomy” that both parties may possess is likely to be ineffective as the courts would, in any case, probably apply Cambodian law.

In accordance with Articles 199 and 352 of the Code of Civil Procedure, a judgment of a foreign court may be enforced by a Cambodian court, without a re-examination of the merits of the matter, provided that:

- jurisdiction is properly conferred on the foreign court by law, treaty or convention;
- the non-prevailing defendant received service of a summons or any other order necessary to commence the action, or responded without receiving such summons or order;
- the contents of the judgment and the procedures followed in the action do not violate the public order or good customs of Cambodia; and
- there is a guarantee of reciprocity between Cambodia and the foreign country in which the court is based.

In the absence of a reciprocal treaty, the courts of Cambodia may decide on a case-by-case basis considering the legal system, written laws, court precedents and actual practices in both countries. Moreover, in the case that both parties agree that a dispute shall be resolved by a foreign court, even if the obligee files a case with a court of Cambodia after obtaining a judgment from the foreign court which cannot be enforced in Cambodia, the courts of Cambodia may dismiss the case if the obligor raises an objection

based on the above agreement on jurisdiction.

Therefore, it is recommended to give the courts of Cambodia exclusive or selective jurisdiction in the contract, if the obligor's properties are in Cambodia. On the other hand, if parties to the contract prefer not to give the courts of Cambodia any jurisdiction, it is recommended to select the National Commercial Arbitration Centre in Cambodia or arbitration in a foreign country like Singapore or Hong Kong International Arbitration Center in the contract.

Subject to compliance with the 10 June 1958 New York Convention on the Recognition of Enforcement of Foreign Arbitral Awards, the Law on the implementation of this convention, the Commercial Arbitration Law, and the Code of Civil Procedure of Cambodia, a foreign arbitral award will be enforced by the courts in Cambodia without re-examination or re-litigation of the matters thereby adjudicated. However, the Court may, in exercising its discretion, refuse to execute an award if it finds that the subject-matter of the dispute cannot be settled by arbitration, or the recognition and enforcement of the award would be contrary to public morals.

Furthermore, refusal of an arbitral award is also available at the request of the party against whom it is invoked on the grounds listed in Section 3 of Art. 353 of the Code of Civil Procedure (e.g. the award is not binding and enforceable by the court of the country in which, or under the law of which, that award was made).

CHAPTER 8: PROPERTY AND CONSTRUCTION

Relevant Laws:

- Law on Public and Private Partnership 2021
- Law on the Management, Use and Disposal of State Property 2020
- Law on Construction 2019
- Law on Implementation of Civil Code 2011
- Law on Provision of Ownership to Private Units of Co-owned Building to Foreigners 2010
- Law on Expropriation 2009
- Civil Code 2007
- Land Law 2001
- Land Law 1992
- Other sectoral laws and many implementing regulations

I. PROPERTY

A. Immovable and Movable Property

As provided in the Civil Code, an immovable property comprises land or anything immovably fixed to land such as a building or structure and standing trees. A movable property is anything that is not an immovable property.

Things attached to land or comprising a part thereof, particularly buildings or structures immovably constructed on the land, are components of the land unless they are severed from the land. They may not, except as otherwise provided by law, be the subject of rights separate from those applicable to the land. For example, a building that cannot be severed from its associated land without destroying the building or changing its essential nature may not be the subject of rights separate from those applicable to the land.

However when the holder of a perpetual lease or other long-term right-holder has constructed buildings or structures, etc. on the concerned land, in the course of exercising such right, those buildings or structures are not components of the land. The same applies to those things attached to the land or structures built on the land on a temporary basis by a land use right-holder.

B. Ownership Rights

1. Private Ownership and Public Ownership

There are numerous laws and regulations setting out the regimes for private and public immovable property ownership. The Constitution provides for what are deemed State properties (under public ownership) while recognizing the rights of individuals or entities to private property ownership. Private property ownership is constitutionally protected and the taking of such ownership from any person can only be exercised by the State (central government) in the public interest under procedures provided for by law and after fair and just compensation is paid or offered to the affected property owner. The Law on Expropriation 2009 provides the guiding principles, basic procedure and institutional arrangements for the State to exercise its expropriation powers.

Private land ownership and other rights prior to 1979 were fully abolished. However, they were gradually reinstated from 1989 when residential land/building ownership and land acquisitive possession leading to land ownership was recognized again. In 1992, Cambodia re-adopted the Land Law basically copied from the 1920s Civil Code, and subsequently substantially amended in August 2001 when the 2001 Land Law was promulgated. The 2001 Land Law did not abrogate the 1992 Land Law totally, particularly the provisions on acquisitive possession, legal effect of land registration, and State properties. The 2001 Land Law also specifically recognized or strengthened collective immovable property ownership regimes such as communal properties of indigenous minority communities, and Buddhist monasteries. The 2001 Land Law regulates two types of State properties: State private property and State public property. Under the 2001 Land Law, State public property cannot be the subject of sale or transfer to private ownership except in the case where it no longer serves public use. It can be the subject of temporary/short-term (less than 15 years) and precarious land use permit or concessions other than land concession (agro-industrial concession) granted by a competent authority; while, State private property can be the subject of lease, economic or social land concession, sale or transfer to private hands for investment or exclusive ownership.

Cambodia has adopted a land registration regime where, initially, all land belongs to the State, and only land specifically registered in the Land Register is private immovable property. All remaining unregistered land technically remains under State ownership although certain property may be subject to a legal or contractual claim that it is private property.

Also, under Art. 162 of the Civil Code, ownership of private immovable property (land and/or buildings) may be acquired through prescriptive possession under the following conditions:

- a person can acquire ownership of immovable property through peaceful and notorious possession of the immovable property for a period of 20 years with the intention of ownership; or
- ownership of immovable property can be acquired after 10 years if the peaceful and notorious possession of the immovable property commenced in good faith and without negligence.

Therefore, it seems that actual and continuous occupation or use of a piece of land or building for 10 years in good faith and without negligence (i.e. without being aware of somebody else's ownership thereto) with intent to own the property may lead to ownership acquisition; whereas peaceful and notorious occupation or use of land or building for 20 years (regardless of any knowledge of existing ownership) with intent to own the property can also lead to ownership acquisition under the rule of prescriptive possession. However, this does not apply to any land that has not been registered as private land of an individual or private entity. No person can legally acquire collective property of indigenous minority communities or Buddhist monasteries as the 2001 Land Law provides that these properties are not subject to any rules of prescription.

Ownership of land and/or a building may be acquired via contract, inheritance or other causes set forth in the provisions of the Civil Code and other laws. The 2001 Land Law as well as the Civil Code requires a contract for transfer of ownership or acquisition of ownership over immovable properties to be authenticated. The authentication can be done by notaries or public officers vested with such authority. And to perfect the transfer of immovable property ownership, such transfer must be registered in the Land Register by the Cadastral Administration established under the 2001 Land Law.

2. Foreign Ownership of Land and Buildings

Under the Constitution, only Khmer citizens or entities can own land in Cambodia. In other words, no foreigner (natural person or legal entity) from any country can legally own (freehold) land in Cambodia. A legal entity is considered to be of Cambodian/Khmer nationality when 51% or more of its voting shares are owned by Cambodian individual(s) or Cambodian entity(ies). This principle is stated in the 1994 Law on Investment and the 2001 Land Law. It is reconfirmed under the 2005 Law on Commercial Enterprises. The

ownership restriction for foreigners does not apply to other types of land rights recognized by existing laws (Land Law and Civil Code) such as leasehold, concession or use rights. Under the 2010 Law on Provision of Ownership Rights over Private Units in Co-owned Buildings to Foreigners and implementing regulations, foreigners are allowed to own up to 70% of private units in a co-owned building or condominium, excluding ground or underground floors.

Investors should also note that Khmer citizenship can be obtained through naturalization or by birth. However, the Land Law provides a criminal penalty against foreigners who obtain Khmer citizenship for the sole purpose of avoiding the restriction on foreign ownership of land. Moreover, any contractual arrangement entered into for the purpose of avoiding the restrictions under the Law on Investment shall also be null and void.

C. Leases of Immovable Properties

Under the Civil Code, there are two types of leases: (i) short-term leases and (ii) perpetual leases. A lease of 15 years or more is called a perpetual lease (formerly under the 2001 Land Law called a “long-term lease”). Such lease may not exceed 50 years. Under the 2011 Law on Implementation of Civil Code, if a long-term lease was established under the 2001 Land Law, prior to the date of application of the Civil Code, with a term exceeding 50 years but not more than 99 years, the remaining term is still valid and enforceable. However, if the remaining term exceeds 99 years, it will be deemed shortened to 99 years.

A perpetual lease may be renewed one or more times, provided that the renewal terms do not exceed 50 years counting from the date of renewal.

If the perpetual lessee fails to pay the stipulated rental for three years, the lessor may cancel the perpetual lease. Perpetual leases may be inherited, assigned with or without consideration, or otherwise disposed of.

Upon termination of a perpetual lease, the perpetual lessor cannot demand that the perpetual lessee restores the immovable property to its original condition unless the perpetual lessee has destroyed the property or fundamentally changed its nature. Upon termination of a perpetual lease, the lessor shall acquire ownership over any improvements and any structures installed on the property by the perpetual lessee without having to pay compensation to the perpetual lessee. However, these

conditions can be changed by the terms of the lease agreement agreed between the parties.

D. Concessions

A concession is a legal right established by an agreement issued under the discretion of the government, given to any natural person or legal entity or group of persons to occupy and use a portion of State private or State public land. However, a land concession under the 2001 Land Law may only be granted in relation to State private land. Land concessions may only create rights for the time fixed by the concession contract and can never result from a *de facto* occupation of the land. Land concessions must be based on a specific legal document, issued prior to the occupation of the land by a competent government authority.

For economic land concessions, a concession contract must be signed with the ministry in charge of maintaining and protecting the concerned land after receiving approval in principle and delegation of power to sign a concession contract from the RGC. Practically, these ministries include the MAFF and MOE. However, all economic land concessions formerly under the MOE have been transferred to the MAFF. Economic land concessions are required under the Land Law to be registered with the Land Register managed by the MLMUPC.

There are many types of land or resources-related concessions, and each is subject to separate rules and procedures. They can be divided into four broad categories as follows:

- **Social land concessions:** beneficiaries can build residential constructions and/or cultivate State private land for their subsistence with the right to acquire ownership after five years of proper land use;
- **Economic land concessions:** beneficiaries can clear State private land for agro-industrial exploitation including building an agricultural processing factory, and use the land as security for receiving loans from a third party;
- **Public physical infrastructure concessions:** may be granted on either State public or private land, and could be in a form of port concession, airport concession, industrial development concession, tourism development concession, etc. These concessions are governed by the 2021 Law on Public and Private Partnership; and

- **Other concessions (resources exploitation concessions):** may be granted on either state and/or private land, and could be in a form of mining concession, forestry concession, and/or fishery concession. These concessions are governed by special laws such as the 2001 Law on Management and Exploitation of Mineral Resources, the 2002 Law on Forestry, and the 2006 Law on Fisheries.

Under the 2001 Land Law, economic land concessions (ELCs) cannot be effectively transferred to a third party without written consent or approval of the competent ELC contracting authority. Here, a new concession contract with the concession rights of the recipient and the contracting authority is required.

E. Cadastral Registration of Immovable Property

Name of Institution	Key Functions and Services
MLMUPC (Central Cadastral Administration)	<ul style="list-style-type: none"> • Issue guidelines for implementing the 2001 Land Law • Updating and conserving Cadastral Index Map and Land Register at national level.
Provincial/Capital Land Management, Urban Planning, Construction and Cadastre (Provincial Cadastral Administration)	<ul style="list-style-type: none"> • Register and issue immovable property certificate after the local and sub-national administrative authorities have approved the registration request. • Updating and conserving Cadastral Index Map and Land Register at provincial/capital level.
District/Khan/Town Administration Land Management, Urban Planning, Construction and Cadastre	<ul style="list-style-type: none"> • Receive, check and forward immovable property registration application to the provincial line department, after local and sub-national administrative authorities have reviewed and commented on the registration request. • Updating and conserving Cadastral Index Map and Land Register at district/khan/town level.

The Cadastral Administration under MLMUPC is responsible for the establishment and conservation of the Cadastral Index Map (on which land parcels are shown)

and Land Register wherein immovable property rights such as ownership, perpetual lease, pledge and hypothec and other real rights (*rights-in-rem*) are recorded. The Cadastral Administration has established a number of Land Registers to register different types of immovable property rights or ownerships such as:

- Land Possession Register for recording land and buildings under acquisitive possession regime;
- Private Immovable Property Register for recording private ownership of and real rights attached to private land and buildings;
- State Immovable Property Register for recording private ownership of and real rights attached to State land and buildings; and
- Indigenous Minority Community Land Register for recording land under collective ownership of recognized Indigenous Minority Communities.

The Land Register is the proof of immovable property rights in Cambodia.

After registration in the Land Register, the Cadastral Administration issues relevant certificates such as land/immovable property possession certificate, immovable property ownership certificate, perpetual lease certificate, economic land concession certificate, pledge certificate or hypothec certificate to the rights holder.

These certificates are evidence of immovable property rights. However, sometimes they may have been falsified or nullified by government decision or altered by systematic land registration. Therefore, it is important to check the status of an immovable property through a request to the Cadastral Administration. In other words, a purchaser or lender is advised to check any changes or encumbrances (pledges or hypothecs) created over the relevant land and/or building with the Cadastral Administration prior to execution of a purchase contract or loan agreement. This is important because the person whose rights are registered in the Land Register has real rights attached to the relevant immovable property (meaning that even if the ownership of the immovable property has been transferred to a third party once or several times, the person's real right remains claimable against the relevant property as long as such real right has not been discharged by deregistration or nullified by government decision for public purpose).

At present, approximately 5 million land parcels in Cambodia have yet to be registered at the Land Register and, therefore, no cadastral certificate (locally known as “hard title”) has been issued to those parcels. While the land parcels have not been registered, to respond to the needs of the land possessors there are numerous forms of documents (locally known as “soft title”) such as receipt of land possession application, certification of land possession, certification of immovable property owner, land parcel sketch map (PV), land sale/transfer/donation issued or witnessed or certified by cadastral officer or/and local authorities such as chief of village, commune chief, or district governor. These soft title documents are simply evidence, but not proof, of immovable property possessory rights and generally imprecise in terms of their descriptions of property location, dimensions and/or size.

Also, under a Sub-decree (No. 114) issued in 2007, conceptually long-term/perpetual leases or economic land concession rights can be pledged as security for loans or transferred to a third party but require registration in the Land Register by the Cadastral Administration of the land location to perfect such pledge or transfer of rights.

F. Using Land and Buildings as Security for Financing

Ownership or other real rights to land, buildings or apartment units of co-owned buildings can be used as security for a debt, loan or financial facility for the interest of the creditor in a form of pledge or hypothec. For all forms of immovable property security, the creditor does not directly own the secured property and unless the parties agree otherwise at time of default the creditor must resort to the court to sell the property or real rights in auction for repayment of the debt. However, it is not clear how a real right associated with economic land concession on state private land could be sold in auction by the court as under the Land Law, transfer of economic land concession requires consent of the contracting authority and new concession agreement with the rights transferee.

A hypothec of immovable property is a term-based grant of property interest by the property owner, acquisitive possessor or real right holder to the creditor in a hypothec agreement under which the creditor can enforce loan repayment against the property in case of default. There is no term limit for a hypothec. Under the Civil Code the creditor neither has the rights to possess and use the property nor hold the property title certificate. However, in practice, due to the high cost of registration and/or perceived high cost of enforcement against third parties, the creditor usually obtains under the loan/facility and/or hypothec agreements the

right to hold the property title certificate until full repayment of loan principal, interest and charges.

A pledge of immovable property is a term-based grant of property interest by the property owner, acquisitive possessor or real right holder to the creditor to have actual possession and enjoy fruits or beneficial use of the property without charging interest for the loan. The pledge over immovable property may not exceed a ceiling term of five years. However, the pledge can be renewed for each term of five years counting from the date of renewal. The pledgee has a duty to preserve the pledged property and a duty of care of a good manager.

A pledgee may have a right to reimbursement if:

- The pledgee has defrayed necessary expenses in respect of the property pledged; he/she may seek reimbursement for such expenses from the pledgor (the property owner);
- The pledgee has defrayed useful expenses regarding the property retained; he/she may seek reimbursement from the pledgor of, at his/her option, either the amount defrayed or the amount by which the value of the property has increased, so long as the increase in value remains in effect. However, the court may, upon application of the pledgor, grant him/her reasonable time for reimbursement.

To perfect a pledge or hypothec against any third party, the pledge or hypothec must be registered in the Land Register. This could be done only when the subject property is already registered in the Land Register (meaning that the property owner has hard title to the property).

II. CONSTRUCTION

A. Supervising Authority

Name of Institution	Key Functions and Services
MLMUPC (Central Construction Management Authority)	<ul style="list-style-type: none">• Issue guidelines for implementing the Law on Land Management, Urban Planning and Construction.• Approve construction/renovation/demolition permit application for new construction, renovation or demolition of any building with total construction area larger than 3,000

	<p>square meters and a number of other specific constructions as prescribed under applicable laws and regulations.</p> <ul style="list-style-type: none"> • Approve validity extension for construction/renovation/ demolition permit issued by MLMUPC. • Review and approve construction site opening permit for any construction/renovation/demolition approved by MLMUPC. • Issue certificate of occupancy. • Issue licenses for construction professionals including construction certifiers.
<p>Provincial/Capital Construction Management Authority (Provincial/Capital Administration)</p>	<ul style="list-style-type: none"> • Approve construction/renovation/demolition permit application for new construction, renovation or demolition of any building with total construction area between 501-3,000 square meters. • Approve validity extension for construction/renovation/ demolition permit issued by provincial/capital administrations. • Review and approve construction site opening permit application for new construction, renovation or demolition of building approved by provincial/capital administrations.
<p>District/Khan Construction Management Authority (District/Khan Administration)</p>	<ul style="list-style-type: none"> • Approve construction/renovation/demolition permit application for new construction, renovation or demolition of any building with total construction area up to 500 square meters. • Approve extension of construction permit validity for new construction or renovation of building with total area up to 500 square meters. • Approve validity extension for construction/renovation/ demolition permit issued by District/Khan Administration.

	<ul style="list-style-type: none"> • Review and approve construction site opening permit application for new construction, renovation or demolition of building approved by District/Khan Administration.
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B. Construction/Renovation/Demolition Permits

Prior to constructing, renovating, or demolishing a building, a relevant construction/renovation/demolition permit and construction site opening permit issued by the Supervising Authority is required, except for:

- Small constructions that do not affect public security, safety and order;
- Small construction in rural areas that are not located in protected or conservative areas;
- Constructions which serve a purpose related to national security and national defence; and
- Constructions/demolitions of buildings in emergency or disaster situations in order to save or protect lives or to prevent serious impact or damage to health or property (however, the construction/demolition permits have to be acquired within 30 days after the emergency situation ends).

To apply for construction/renovating/demolition permits, a certified copy of land possession or ownership certificate and/or land use agreement (i.e. lease agreement or similar agreement) and relevant detailed architectural and technical plans certified by a qualified architect, or a construction/design company are generally required among other required supporting documents such as identity/corporate documents of the applicant, land parcel certificate, etc.

Applying for a construction/renovation/demolition permit often involves various administrative and technical verification procedures involving multiple tiers of local and sub-national administrations and line offices to review and endorse the application before it can be approved by the competent authority/institution. Depending on the nature and conditions of the proposed building, the review and approval process can take anywhere between 10 and 45 working days after submission of complete applications documents. Insufficiencies in or incorrect supporting documents will prolong the application process.

A construction/renovation/demolition permit is valid for one year, and it can be extended for one time only for the same period provided such approved construction work is not commenced within the validity period. The permit

extension application will be reviewed and decided by the competent authority/institutions who issue the construction/renovation/demolition permit.

Upon receiving the construction/renovation/demolition permit, a relevant construction site opening permit is also required to commence approved construction work. The application for such construction site opening permit must be submitted to the competent authority/intuition that issued the construction/renovation/demolition permit and the review process takes between 10 – 20 working days.

C. Certificate of Occupancy

Under the Law on Construction (2019), the occupancy of any building that requires a construction permit requires a certificate of occupancy from the Supervising Authority. The certificate of occupancy will be issued to the owner of the building after the construction of the building is completed, checked and certified for its compliance with the building technical regulations by a qualified certifier or the competent Supervising Authority.

The application for a certificate of occupancy of a building can be applied for to the Supervising Authority that issues the construction permit for the building and the review process may take between 10 – 25 working days. The certificate of occupancy is valid permanently regardless of any change in the owner of the building.

As a condition for maintaining a valid certificate of occupancy, the construction owner, at its own costs, must periodically conduct building/construction safety inspections as follows:

- Every five years for buildings other than residential buildings;
- Every 10 years for residential buildings;
- Every two years on fire prevention and firefighting systems; and
- Every year on high-risk construction equipment.

D. Special Requirements for Certain Constructions

Certain constructions such as co-owned buildings or condominium apartments, boreis or gated residential and commercial complexes, or special economic zones with residential complexes along with commercial/industrial facilities are subject to additional or special requirements (such as establishing land use and maintenance internal rules and a management committee) for obtaining or as a condition of

granting a construction permit. For some constructions with potential adverse environmental impacts, project owners are also required to prepare an initial or full Environmental Impact Assessment (EIA) Report and obtain from the MOE an approval on the EIA Report.

A borei is a site which has been developed for lots, residences, other constructions, public spaces and infrastructure on a single land parcel in conformity with the officially authorized borei project master plan. Practically, the possession of the land has been divided into smaller lots for each individual building block. Owner(s) of each building block may request separation of their land ownership from the original land ownership certificate provided that no security is placed on the entire land parcel.

An SEZ is a special area for development of economic sectors which brings together all industrial and related activities and may include a General Industrial Zone and/or Export Processing Zone. Each SEZ has a production center and may have a free trade area, service center, accommodation center and tourism center. The public spaces, gardens, entry-exit roads, common service spaces and walls within the SEZ are considered as common property belonging to the SEZ. All construction, maintenance and renovation of public spaces, gardens, entry-exit roads, common service spaces and walls are the burden of the owners of the SEZ, or the developers, or are the burden of all owners in the SEZ in conformity with the agreement between the owners of the zone or/and the developers and the owners of lots or other improvement plots in the SEZ.

The owners of SEZ must develop and operate the zones in accordance with the investment agreement approved by the CDC and the provisions of the Sub-decree approving the establishment of the SEZ and other relevant legislation and regulations.

CHAPTER 9: BANKING, FINANCE, AND SECURITIES

Relevant Laws:

- Law on Financial Management (Annual Budget)
- Law on Anti-Money Laundering and Terrorist Financing 2020
- Law on Financial Leasing 2009
- Civil Code 2007
- Law on Government Securities 2007
- Law on the Issuance and Trading of Non-government Securities 2007
- Law on Commercial Enterprise 2005
- Law on Negotiable Instrument and Payment Transactions 2005
- Law on Banking and Financial Institutions 1999
- Law on Foreign Exchange 1997
- Law on the Organization and Functioning of the National Bank of Cambodia 1996
- Various sectoral laws and many regulations for implementing the above laws

Name of Institution	Key Functions and Services
MEF	<ul style="list-style-type: none"> • Prepare national budget and annual financial management plan; • Prepare policies and regulations and manage work related to taxation, trade, revenue, resettlement, procurement and national expenses; • Prepare policies and procedures for auditing; and • Prepare policies for licensing.
NBC	<ul style="list-style-type: none"> • Determine financial policy; • Formulate, implement and monitor monetary and exchange policies; • Conduct regular economic and monetary analysis, make public the results, and submit proposals and measures to the RGC; • License, de-license, regulate and supervise banks and financial institutions; • Oversee payment systems and to enhance interbank payments; • Act as the sole issuer of national currency;

	<ul style="list-style-type: none"> • Undertake and perform, in the name of the Kingdom, transactions resulting from the participation of the Kingdom in public international institutions in banking, credit, and monetary spheres; • Establish the balance of payments; • Participate in the management of external debts and claims; • Participate in the formation and supervision of the money and financial markets; and • License, de-licence, regulate and supervise all those operating in the market for precious stones and precious metals; and • Set interest rates.
SERC	<ul style="list-style-type: none"> • Enforce policy with respect to securities market; • Formulate conditions for granting approvals to the operators of a securities market, clearance and settlement facilities, and securities depository; • Formulate conditions for granting license to securities companies and securities representatives; • Promote and encourage compliance with the requirements of this law; • Play a role as an institution to examine and solve complaints against licensed legal entities' decision affecting the benefits of participants or investors; • Consult with any qualified person to develop policies for the purpose of developing securities market in Cambodia; • Fulfil other duties prescribed by government regulations; and • Issue operating rules of the market operator for supporting the services of the CSX and also operating rules for other operators and members of the securities market.

I. BANKING AND FINANCE

A. The Development of Cambodian Banking System

The banking system in Cambodia has undergone a series of stages, which date back to as early as the 1860s during the French Protectorate. The French administration established Banque de l'Indochine on 21 January 1875 in order to manage banking operations in Asia and the Pacific.

Upon Cambodia gaining its full independence in 1953, the NBC was established to replace the French banking system. However, the whole banking system was abolished later in 1975 when Khmer Rouge overtook the country by force.

After the collapse of the Khmer Rouge in 1979, The People's Bank of Kampuchea ("PBK") was established to operate a mono-banking system. From 1980–1989, the People's Republic of Kampuchea had followed Soviet communist and socialist economic models. PBK was transformed to 20 provincial and municipal specialized banks in 1989 when Cambodia started to liberalise its economy at the end of the Cold War.

In 1991, the First Commercial Bank was established as a State Joint Venture Bank for attracting investors and supporting the activities of the United Nations Transitional Authority in Cambodia following the Paris Peace Agreement of 23 October 1991.

In 1992, PBK was transformed into the NBC. The National Assembly of the State of Cambodia adopted a law to change the name and duties of the Bank of Cambodia to the National Bank of Cambodia. The law was promulgated by the State Council on February 8, 1991.

In 1996, the roles and responsibilities of the NBC were specified in more detail in the Law on the Organization and Functioning of the NBC. Its key roles are to "determine and direct the monetary policy" and "supervise banking operations and policy."

B. Current Banking Climate

In 2006, the first Blueprint 2001–2010 was updated to become the Financial Sector Development Strategy (FSDS) 2006–2015 and a second update in 2011 became the FSDS 2011-2020.

To respond to the need for sound economic development and to be in line with changes in global and regional economic and financial conditions, the RGC updated the strategy for the third time in 2016 with FSDS 2016-2025.

The FSDS 2016-2025 was adopted by the Council of Ministers in the Plenary Session on 21 October 2016, with a vision to achieve a sound, efficient, diversified, and inclusive market-based financial system that can broadly fulfil domestic demand for financial services and is able to effectively support sustainable

economic growth, raise peoples' income, reduce poverty and align with regional economic and financial integration.

The FSDS 2016-2025 synthesizes and prioritizes the goals, strategies and plans for each subsector of the financial system and aligns these with the long-term vision for the financial sector as a whole.

The FSDS 2016-2025 is designed to be flexible to respond to changing conditions in the economic, social, and political situation in Cambodia; to financial industry developments; and to the changes and challenges that result from Cambodia's increasing integration into the regional and global markets.

The banking sector has been considered as one of the driving forces for economic growth. In 2013, the IMF, in its World Economic Outlook, cited Cambodia as one of the five "Growth Take-off Models" in the world.

As of 30 September 2022, Cambodia's financial system comprised:

- 59 commercial banks;
- 9 specialized banks;
- 6 representative offices;
- 82 microfinance institutions;
- 5 microfinance deposit-taking institutions;
- 16 financial leasing companies;
- 34 payment service institutions;
- 5 third party processors; and
- 225 rural credit institutions.

C. National Bank of Cambodia

The NBC is Cambodia's central bank and undertakes the key functions and services mentioned in the table above. It is an autonomous public entity of a commercial and industrial nature.

The NBC is responsible for licensing, de-licensing and supervising banks and other financial institutions such as microfinance institutions, financial leasing companies, money exchangers, etc. (together referred to as "other financial institutions"). It is also empowered to manage monetary transactions, credit, domestic and international settlements, foreign exchange, and precious metals and stones.

Banks and other financial institutions are required to provide reports on a monthly, semi-annual, or annual basis pertaining to their operational activities and compliance with legal requirements. The NBC may audit bank operations and establish credit ceilings and foreign exchange requirements.

A milestone in the banking sector was introduced in late 2006 with the introduction of an indefinite license to all forms of banks and other financial institutions. Moreover, some qualified MFIs were licensed by the NBC to collect deposits from the public; they are referred to as microfinance deposit institutions (MDIs).

The NBC is a very active regulator in governing and regulating the banking sector. It has issued regulations concerning corporate governance and the solvency ratio and liquidity ratio of a bank or financial institution.

Regarding insolvency matters, the NBC has power to appoint a provisional administrator to manage, direct, and represent a bank in the liquidation process. This administrator may suspend payment and refer the case to court, which will appoint a liquidator. However, this procedure applies only after certain attempts fail to bring the bank back to solvency (via recapitalizing the bank).

The NBC sets rules for calculating the net worth of banking and financial institutions, and necessary internal control systems for monitoring the quality of their accounting and financial information. The banks shall at all times observe a solvency ratio of their net worth to their aggregate credit risk exposure of not less than 15%.

The Banking Law divides banks into commercial banks, specialized banks, specialized financial institutions (including securities companies) and MFIs. Only licensed banks may engage in the activities set out in the Banking Law.

D. Commercial Banks

A commercial bank, as well as other financial institutions, must be registered as a public limited company or as a cooperative, or a mutual non-commercial society subject to special statutes. The Banking Law requires all financial institutions to be governed by the Banking Law, the Law on Commercial Enterprise (the “Commercial Law”) and separate special statutes (in case of non-commercial institutions).

The Banking Law allows a commercial bank to engage in (i) credit operations for valuable consideration including leasing, guarantees and commitment under

signature, (ii) the collection of non-earmarked deposits from the public; and (iii) the provision of means of payment to customers and the processing of said means of payment in national currency or foreign currencies.

Any financial institution that operates only one or part of the aforementioned activities is referred to as a specialized bank.

For the purposes of licensing a bank, the Banking Law requires the NBC to ensure the suitability of the shareholder(s) as specifically prescribed by the law. The suitability of a shareholder will depend on (i) whether its financial position allows it to be responsive to any financial difficulties that the bank might encounter and (ii) its compliance with applicable laws.

With regards to registered capital requirements, there has been a gradual increase over the years. The most recent increase was in March 2016, whereby the NBC required all commercial banks incorporated as a foreign branch, whose parent bank is rated as “investment grade”, to increase its minimum registered capital to KHR200,000,000,000 (approximately USD50 million) from USD12.5 million. Other commercial banks that are incorporated as local companies or foreign subsidiaries that do not meet investment grade rating must have a minimum registered capital of KHR300,000,000,000 (approximately USD75 million). Banks are required to permanently deposit 10% of its minimum registered capital into an account at the NBC.

In addition to licensing and minimum capital requirements, a commercial bank is required to comply with a number of prudential requirements including, but not limited to, the following:

- Maintain a solvency ratio (The solvency ratio of their net worth to their aggregate credit risk exposure must be not less than 15%);
- Maintain a liquidity ratio of at least 50% calculated and submitted on a monthly basis;
- Maintain at all times a maximum ratio of 300% between the total of their large exposure and their net worth;
- Ensure that the value of fixed assets acquired by it for operational purposes are less than 30% of its total net worth;
- Ensure that loan to related parties are made on arms-length commercial terms and that the aggregate value of such loans does not exceed 10% of the bank's net-worth;

- Assess its loan portfolio, categorize loans based on the level of impairment (if any) and make provision accordingly to absorb expected losses in the loan portfolio;
- Implement policies for dealing with customer complaints; and
- Comply with corporate governance and AML/CFT requirements.

E. Microfinance Institutions

Microfinance institutions are institutions licensed by the NBC to provide financial services such as loans and deposits to the poor and low-income households, and to micro-enterprises. Microfinance institutions are classified as Registered Microfinance Operators (RMO), Microfinance Institutions (MFIs), and Microfinance Deposit-taking Institutions (MDIs). The classification is based on the scope of operations which include:

- MFIs (RMOs) with loan portfolios equal to or greater than 100 million Riels (approximately US\$25,000) or having 100 depositors, or deposits of 1 million Riels (approximately US\$250) or more are required to be registered with NBC;
- MFIs with loan portfolios equal to or greater than 1 billion Riels (approximately US\$250,000) or having 1,000 borrowers or more or deposits exceeding 100 million Riel (approximately US\$25,000) are required to obtain a license from NBC;
- Licensed MFIs requesting to mobilize savings from the public are required to meet additional criteria such as holding an MFI license for at least 3 years, having strong financial conditions and sound management, having effective management systems, and sustaining profit for at least two consecutive years.

MDIs are subject to stricter regulatory requirements than licensed and registered MFIs. Some of the requirements for prudential measures and corporate governance are similar to those required for commercial banks.

On 22 March 2016, NBC increased the minimum capital requirement to KHR120,000,000,000 (approximately USD30 million) for MDIs and KHR6,000,000,000 (approximately USD1.5 million) for MFIs.

F. Other Financial Institutions

1. Foreign Bank Representative Offices

The NBC has also licensed a number of representative offices of foreign banks. The representative offices are not allowed to carry out banking operations but may perform some work necessary for the preparation of their parent companies to operate banking operations when they obtain a license from the Central Bank.

2. Financial Lease Institutions

In 2009, a law on financial leasing was promulgated. The NBC issues licenses for leasing companies/financial lease institutions. Financial leasing operations may only be conducted by banks that already have a license from the NBC to conduct banking business and by financial lease companies that obtain a license from the NBC to conduct financial leasing business.

Financial lease agreement means an agreement in which the lessor purchases movable property selected by the lessee from a supplier, and leases this movable property to the lessee, and authorizing the lessee to periodically pay the lease payment. An agreement may also be considered as a financial lease agreement if it provides at least:

- A description of the leased movable property;
- The amount periodically and terms of financial lease payments;
- A commencement date of the financial lease; and
- The signature of the lessor and the lessee.

3. Third Party Processor

In 2010, the NBC issued a Prakas No.B-9-010-151 on Third Party Processors. A Third-Party Processor is a person entrusted by a bank to conduct one or more parts of its payment transaction services.

The purpose of this regulation is to allow banks to outsource one or more parts of their payment transactions services through one or more third party processors, as may be agreed between the bank and those Third-Party Processors, and subject to prior approval from NBC.

4. Payment Service Providers

Given the huge growth of financial technology (FinTech) and the consequent increase in businesses focussed on offering payment services, the NBC issued Prakas No. B-14-017-161 on the Management of Payment Service Providers (PSPs) in June 2017. This Prakas aims to regulate entities that offer payment services and place them under the supervision of the NBC.

Upon the implementation of this Prakas, all covered entities that held a license under the Prakas on Third Party Processors (other than those engaged in certain activities) were required to re-apply for license of payment service providers, within six months of the issuance of the Prakas. All new applications for a license to offer payment services must be made under the Prakas.

Payment services covered under this Prakas include but are not limited to (i) services that enable users to make withdrawals from or deposits into payment accounts and any transactions to be conducted in relation to such payment accounts; (ii) services that enable users to carry out payment transactions such as the transfer of funds from one payment account to another, whether they are held by the same payment service provider or not; (iii) electronic monies issuance which includes the issuance of electronic monies and/or payment transaction acceptance; (iv) domestic and overseas transfers; and (v) other payment services as specified by the NBC. There are two exceptions regarding what constitutes a regulated payment service that are listed in Article 4 of the Prakas being (i) the provision of IT services that are used to *support* the provision of payment services; and (ii) payment services that can only be used on the provider's premises or within the "network" to which it belongs.

5. Credit Bureau of Cambodia

In 2012, with a view to provide credit reporting regime and credit risk mitigation, a private Credit Bureau of Cambodia (CBC) was established as a private company whose capital was contributed to by several banks and MFIs.

The CBC operates a credit information system shared amongst banking and financial institutions. All entities under the supervision of the Central Bank, with their customers' consent, are required to provide their customers' credit information to the CBC and to check the customers' credit information at every

stage. The CBC plays a very important role in promoting access to finance for Cambodian people.

6. Money Changers

The currency exchange operation refers to the operation of buying and selling domestic currency in exchange for foreign currencies or buying and selling a foreign currency in exchange for others. The exchange operations include (i) buying and selling banknotes, and (ii) buying traveller checks.

Any person who wishes to run a money changing operation shall apply for a license or authorization at the Central Bank. The applicant shall fulfil the following conditions:

- Have a minimum paid-up capital of 80 million Riels kept in an account at the Central Bank permanently, which must generate interest set forth by the Central Bank;
- Have the right to participate in the Riel Auction conducted by the Central Bank; and
- Have the right to participate in the training on detecting counterfeit money organized by the Central Bank.

7. Pawnshops

Other than banks and MFIs, licensed pawnshops may also provide lending services provided each loan granted shall not exceed KHR20,000,000 (approximately USD5,000). To secure their loan, pawnshop operators are allowed to provisionally take possession over the security (the movable or immovable property pawned by the borrowers) during the loan period.

However, the Civil Code of Cambodia does not allow the direct transfer of ownership over immovable property from the borrowers to the pawnshop operator to set off the loan without going through a proper court procedure in case the borrowers fail to repay the loan and/or its interest at the maturity date.

To obtain the necessary license for pawn business, the operators must fulfill some regulatory requirements relating to nationality of the operators, minimum capital of the business, educational qualification or any criminal history and proof of permanent residency of the operators, etc.

G. Payment Instruments and Transactions

Banks may also be involved in the settlement of negotiable instruments and payment transactions in accordance with the Law on Negotiable Instruments and Payment Transactions 2005.

Negotiable instruments are written orders or promises to pay a sum of money, transfer by delivery, and, where required, also with endorsement. They are checks, bills of exchange, and promissory notes.

Payment transactions are transfers of funds between or from bank accounts. They can be either a credit transfer or debit transfer. They are initiated by a payment order, which may be written, electronic or verbal.

II. SECURITIES

The development of the financial markets has been growing in line with the development of the banking industry but at a slower pace. In 1996, the Law on Banking and Financial Institutions assigned the responsibility for establishing and overseeing financial markets to the NBC. The NBC has duties and functions to participate in the formation and supervision of the money and financial markets but can also conduct securities operations to facilitate registration, distribution and trade of securities issued by the Government.

The Law on Government Securities and the Law on the Issuance and Trading of Non-government Securities ("**Securities Law**") were each promulgated in 2007. These two laws formed the basis for the establishment of a securities market in Cambodia. The development and operation of the securities market required additional implementing regulations for these laws. The RGC and the SERC has regularly issued regulations to support the operation of the securities market.

A. The Government Securities Law

A new Government Securities Law was promulgated on 26 December 2020 (the "**New Law**") and abrogated the Law on Government Securities promulgated in 2007. The New Law aims to provide a general framework to: (i) manage the issuance and trading of government securities; (ii) provide transparent, accountable, effective, and efficient management of government securities; and (iii) ensure sustainable management of public debt. The New Law covers the issuance, trading and management of government securities both within and outside of Cambodia.

Government securities are offered and issued by the MEF, and the total amount of funds to be raised by issuing government securities must be in accordance with the Law on Public Financial System and relevant laws and regulations. The MEF may refund, buyback, and redeem any government securities at or before the maturity date thereof. Where there is a need for funding, the government may issue new government securities only if the spending target is clearly defined.

B. The Non-Government Securities Law

Non-government securities refer to securities that are issued by a public limited company or other legal entity permitted by the SERC to offer and issue securities to qualified investors, including:

- Ownership securities (i.e. equity securities/shares);
- Debt securities, such as bonds;
- Interests in a Collective Investment Scheme;
- Future instruments or derivative instruments related to securities based on a), b) and c) above; and
- Other financial instruments determined as securities.

The Securities Law regulates the securities exchange, clearing and settlement systems, securities depositories and other operators who trade or provide financial services including public limited companies or registered legal entities that issue securities. In addition to the Securities Law, the MEF and the RGC have issued many complementary regulations to establish guidelines for the operation of securities markets and the issuance and trading of securities.

C. Securities and Exchange Regulator of Cambodia (SERC)

The SERC has been transformed from the Securities and Exchange Commission of Cambodia (“**SECC**”) pursuant to the Law on Organization and Functioning of Non-Banking Financial Services Authority which was promulgated on 16 January 2021. The SERC carries out the duties of the SECC as provided for in the Securities Law in 2007 and other relevant laws and regulations applicable to the securities sector. The SERC is the government body that regulates and supervises the securities markets and securities transactions. The SERC assists the government with the strategic and regulatory aspects of the securities market in Cambodia and licenses all relevant securities-related operators, including securities market operators, clearance and settlement facility operators, securities depository operators, securities firms and securities representatives, including underwriters, securities dealers, and securities brokers, accounting and auditing firms, law firms, valuation companies, and translation companies.

The public offer of securities is also subject to approval from the SERC. To obtain such approval, the following two main conditions must be satisfied: (i) the issuing company is able to meet all requirements for listing and (ii) securities issued or sold in accordance with the public offer shall meet all requirements for setting the price of those securities to be traded in the securities market approved by the SERC.

D. Cambodia Securities Exchange and Other Actors

The operation of a securities market requires the involvement of several participants, as mentioned below:

1. Cambodia Securities Exchange (CSX)

The CSX is a market, exchange, or facility which offers to acquire or dispose of securities. The CSX, licensed by SERC, was incorporated in 2010 as a market operator to facilitate securities transactions. The SERC also issued operating rules for other operators and members of the securities market.

The operating rules of the securities market issued by SERC prescribe matters necessary for the trading of securities, such as criteria for pricing, special quotation, purchase or sale of securities, placing orders and cancellation of submitted order procedures, trading times and days, and securities transaction fees charged by the CSX.

For trading securities, in addition to the market operators, there are other operators, members and participants:

2. Operator of Securities Depository

This operator is responsible for the process through which rights over securities are transferred, altered, and nullified by book-entry (recording debit/credit in the member and participant account book) without the actual movement of physical certificates.

3. Operator of Clearance and Settlement Facility

This operator provides a system that enables the parties to a transaction for the sale or purchase of securities to meet their obligations to each other, by verifying the details of the transaction and securing payment of the purchase price to the seller in exchange for the transfer of the securities to the purchaser.

4. Cash Settlement Agent

It is a commercial bank accredited by the SERC to conduct cash clearance and settlement. Such a bank must be licensed by and obtain a non-refusal letter from the NBC for acting as a cash settlement agent. The cash settlement agent manages clients' securities account for trading securities and conducts cash transfers to other parties for securities trading transactions in a proper way and on time.

5. Securities Registrar

The securities registrar is the person registered with SERC to provide the following services:

- Ensuring proper management of the subscription process and securities allotment in accordance with the public offering procedures;
- Recording securities owners' books after the securities allotment process has been completed in the primary market;
- Preparing reports on the completion and success of the deposit of securities at the operator of securities depository to the issuer and SERC;
- Sending notifications to securities holders by indicating the ownership of securities under the subscription process of the issuer; and
- Other services approved by SERC.

6. Securities Transfer Agent

The securities transfer agent is registered with the SERC to provide the following services:

- Maintaining and managing the securities owners' books including the details of securities owners to be conformed to the records of the securities depository operator;
- Administration work related to the changes in ownership register, preparing reports, statistics and other relevant information related to the activities of the securities transfer agent;
- Preparing work related to the corporate actions provided by issuers such as the notification of dividends, interest, and principal payment;
- Sending notifications and other information to securities holders and dispute resolution related to the securities ownership involved with services of the securities transfer agent;
- Other services approved by SERC.

7. Paying Agent

The paying agent is registered with SERC to provide the following services:

- Calculating dividends, principal or other payments provided for securities holders or relevant parties following the instructions of the issuers;
- Payment on behalf of the issuers to securities holders or other relevant parties;
- Sending necessary notices related to the payment and other information to the securities holders and preparing reports related to the payments to issuers and the SERC as necessary;
- Other services approved by SERC.

8. Other Participants

Include law firms, accounting and auditing firms, valuation companies, translation companies, printing companies, etc.

E. Public Offering and Private Placement

Offering securities to the market can be done by way of private placement/personal offering or by public offering.

1. Private Placement/Personal Offering

Private placement is a mode of offering securities to be subscribed by a total number of not more than 30 persons. The issuing company is required to make a report and file the result of placement to SERC when the offer is completed.

However, the regulations regarding the issuance of equity securities do not prescribe detailed processes and other requirements for private placements or personal offerings.

2. Public Offering

A public offer of securities involves an invitation or offer to members of the public to subscribe for or purchase securities.

The public offer may be classified as an Initial Public Offering or Supplementary Public Offering. The Securities Law also allows the company to make an Exempt Offer which does not fully comply with the requirements of the

Securities Law but which must be made according to the provisions of government regulations.

a) Tax Incentives for Public Offering

The government has provided the following tax incentives for the securities sector for a period of 3 years:

- 50% of tax exemption on profits for company that issues equity securities or debt securities on the securities market within 3 years from the date of Sub-decree No. 01 on Tax Incentives in Securities Sector, 8 January 2015;
- 5% of tax exemption on profits for company; and
- 50% of exemption on withholding taxes for public investors who hold and/or sell-purchase the government securities, equity securities and debt securities.

b) Requirements for an Approval on Public Offering

Any company that desires to make a public offer must seek prior approval from the SERC. The SERC will review a proposal/application for public offer to ensure that such proposal fulfills corporate, regulatory, accounting, tax and corporate governance requirements.

- i. **Corporate Compliance:** The applicant must comply with the following financial requirements:

For Main Board

- Shareholders' equity of not less than 30 billion Riels (approximately USD7,500,000 at the exchange rate of USD1=4000 Riels) at the date of filing the application;
- Net profit of not less than 2 billion Riels for the latest full financial year prior to the date of application and aggregate net profit of not less than 3 billion Riels for the latest 2 years.
- As of the date of the application, there must be at least 200 shareholders with voting rights of less than 1%, who hold at least 10% of the total shares.
- There must be, among the total shares, at least 7% shares with voting rights of less than 1%.

For Growth Board

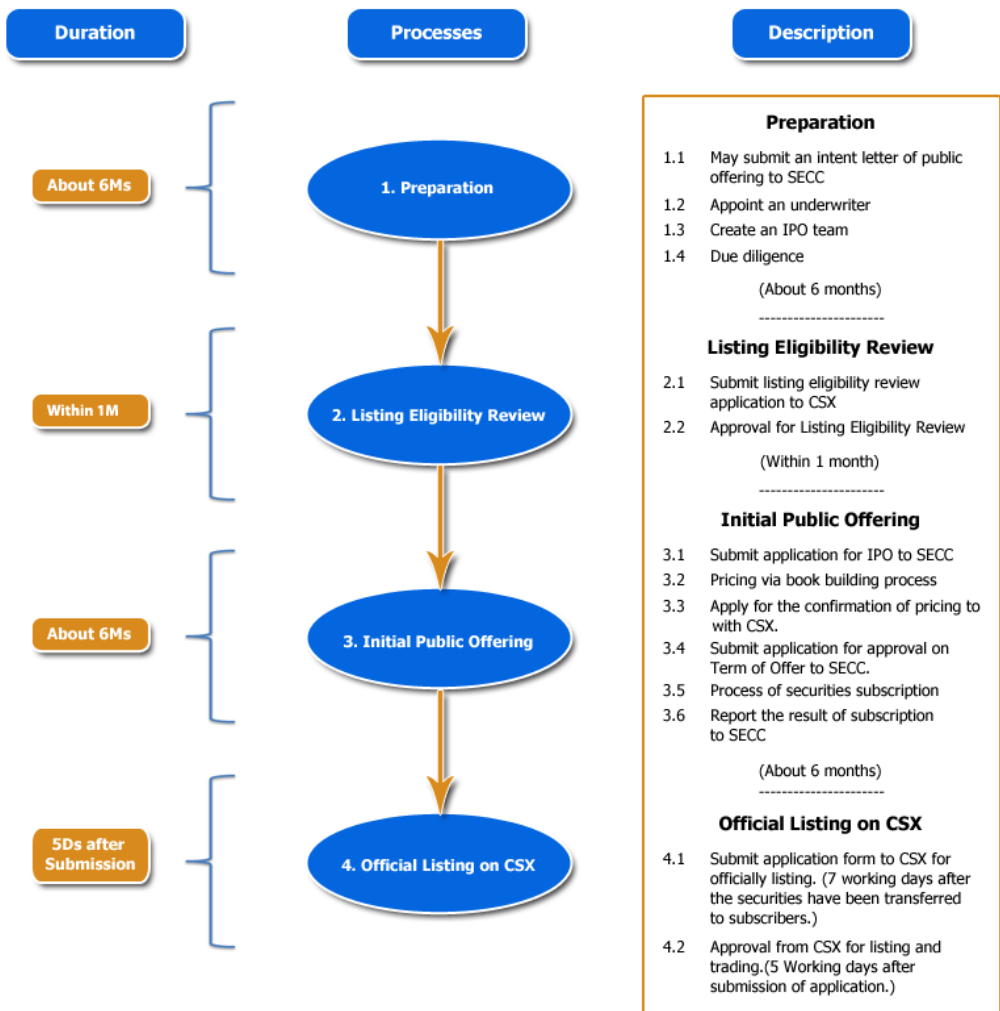
- Shareholders' equity of not less than 2 billion Riels at the date of filing application;
- There is net profit in the last fiscal year (or there is positive operating cashflow and a net profit of at least 10%);
- As of the date of the application, there shall be at least 100 shareholders with voting rights of less than 1%, who holds at least 10% of the total shares;
- There must be, among the total shares, at least 10% shares with voting rights of less than 1%.

Other Requirements: for both the Main Board and the Growth Board are:

- The applicant may not make any change to the shareholders holding the most voting rights between the last one year and the official registration date in the security market; and
 - All the issued securities must be deposited at the authorized security depository operator(s).
- ii. **Regulatory Compliance:** the following regulatory requirements are required to be fulfilled:
- The issuer's establishment must be in good standing regarding company registration, tax registration, labour registration and registration with the NSSF;
 - The issuer must obtain necessary approvals and/or licenses required for its business operations; and
 - The issuer must report to the relevant authorities such as CDC, MOC, GDT and other relevant authorities.
- iii. **Accounting and Tax Compliance:** issuers must prepare financial and accounting documents in compliance with Cambodian accounting standards and maintain the records for 10 years. Issuers must also comply with various tax obligations (See Chapter 3 above).
- iv. **Corporate Governance Compliance:** In addition to the general requirements for the board of directors of a public limited company (See Chapter 1 above), the issuers must comply with the requirements for good corporate governance including:

- The basic and equal rights of shareholders;
- Liability of shareholders;
- Protection of minority shareholders;
- Rights to access information;
- Restricted Behavior (self-dealing, conflict of interest);
- Composition of the Board of Directors (between 5-15 members);
- Appointment of independent directors and executive directors; and
- Procedures for Board Meetings.

Figure 1: Listing Process



(Credit to CSX website <http://csx.com.kh/en/product/listing.jsp?MNCD=40301>)

v. Post Listing Compliance

The SERC and CSX require a listed company or entity to continue to comply with the legal and listing requirements with them. The listed company may be delisted upon the occurrence of any of the following events:

- Failure to submit annual report for the latest fiscal years within 3 months after the submission deadline;
- The auditor's opinion in the audit report is adverse or disclaimed for 2 years;
- Decrease in equity for the last 2 consecutive years by 50%;
- Repetitive breach of disclosure obligations;
- Inability to settle commercial paper, issued cheques; or transactions with commercial banks have been suspended; or
- Corporate dissolution.

The CSX has been operating since mid-2011. Phnom Penh Water Supply Authority (PPWSA) was the first state-enterprise to offer initial public offering (IPO) on 18 April 2012. As of the date of this report, there are 11 companies that have listed their shares on the Cambodia Securities Exchange ('CSX').

CHAPTER 10: INSURANCE

Relevant Laws:

- Law on Insurance 2014
- Sub-Decree on Insurance 2021
- Prakas on Corporate Governance for Insurance Company 2024
- Other sectoral laws and many implementing regulations

Name of Institution	Key Functions and Services
IRC	<ul style="list-style-type: none">• Check and approve applications for insurance business licenses and registration.• Review annual financial reports of insurance companies.• Appoint an insurance inspector to inspect insurance companies.• Handle applications for voluntary liquidation for dissolution of an insurance company, appoint liquidators and monitor and supervise them.• Appoint a provisional administrator of an insurance company.• Provide mediation and conciliation services for the insurance sector.

I. BACKGROUND OF THE INSURANCE INDUSTRY IN CAMBODIA

Cambodia's insurance sector started in 1956 with the existence of some insurers to serve the needs of the country. However, the entire system was destroyed and abandoned in 1975 due to the Khmer Rouge regime. After the collapse of this regime, the insurance sector was stagnant for a couple of decades and resumed its development in the early 1990s but with few necessary regulations available to govern the sector. Since then, the first Insurance Law came into existence in 2000 along with supplementary regulations, which focused mainly on Non-Life "General Insurance" as opposed to Life Insurance. However, Life Insurance started to show a presence in the Cambodian insurance market in 2012.

In the last few years, it has become apparent that the Cambodian insurance market has significant potential for growth fueled by a fast-growing economy and increased income per capita, as well as increasing concern of Cambodians about the need for insurance. This has resulted in more investors and operators in the Cambodian

insurance market. As more companies enter the market, this should increase competitiveness and increase the quality and terms of the insurance business services. Therefore, mentioned as a pillar of Cambodia's economic stability in the RGC's Financial Sector Development Strategy 2016-2025, the insurance industry is becoming a vitally important financial industry in Cambodia and can serve as an indicator for the growth of the general economy. As a result, the growth in the insurance sector has necessitated the promulgation of the more modern and comprehensive Insurance Law in 2014 to ensure:

- sustainable development of the insurance sector;
- promotion of public interest and trust in the insurance sector;
- consistency with the basic principles of the international insurance sector; and
- benefits of the natural person or legal entity who has been insured.

In doing so, this Insurance Law provides rules for:

- strengthening the administration and control over the insurance sector;
- determining the management strategy of the insurance operation and business; and
- encouraging fair and just competition within the insurance sector.

II. KEY PROVISIONS OF THE INSURANCE LAW

A. Insurance Terms and Conditions

The Insurance Law lays down certain formalities that insurance companies must follow, such as the obligation to explain to the insured every condition in the insurance contract and the meaning of the insurance policy, insurance certificate and/or other relevant documents. For instance, the insurance policy or cover note should specify the insurance obligations between the insurance company and the insured.

Furthermore, any loss or damage caused by the risks covered in the insurance policy must be indemnified by the insurance company unless caused by intentional misconduct or by fraudulent act of the insured.

B. Insurance Categories

The Insurance Law divides insurance into two categories: General Insurance and Life Insurance. "General Insurance" includes property insurance, liability

insurance, and health insurance. “Life Insurance” is defined as insurance by which the premium payment is made to cover either death or survival which may include insurance on accidents, serious illness, or normal sickness.

C. Compulsory Insurance

The Insurance Law requires that vehicles be compulsorily insured to cover the vehicle owner, driver and/or keeper. Any third party who is injured or killed due to the vehicle that has obtained insurance, must be indemnified by the insurance company in a timely manner and appropriately according to the actual damage suffered. Liability insurance on vehicles does not apply to the damages caused by accidents occurring outside Cambodia unless there is any bilateral agreement or multilateral agreement with the country where the accident took place.

The Insurance Law also provides for compulsory liability insurance for the owner to take out in respect of any construction project, or any business to transport passengers by any means of transportation either through land road, waterway, airway, or railway.

D. Licensing for Insurance Business

All insurance companies, whether state or privately owned, are allowed to operate an insurance business in the Kingdom of Cambodia only when those companies are public limited companies. A public limited company can apply for an insurance license from the IRC in order to operate a specific insurance business as follows:

- Life insurance;
- General insurance;
- Re-insurance; or
- Micro-insurance.

A general insurance company and a life insurance company can also operate a health insurance and micro-insurance business.

Furthermore, insurance agents, insurance brokers, and loss adjusters may also operate in Cambodia provided that they comply with licensing and other regulatory requirements, the details of which are to be set out in Sub-Decrees.

E. Other Relevant Issues

1. Financial Report

Within three months after the end of a financial year or within any additional time granted by the IRC, each insurance company must submit its annual financial report reviewed by an auditor authorized/recognized by the Accounting and Auditing Regulator of Cambodia. Such report must be prepared in compliance with the standards of an international financial report, and with the law and other regulations in force.

2. Insurance Inspection

The IRC has the right to appoint an insurance inspector to monitor, investigate, review, and enhance the implementation of the Insurance Law. The insurance inspector has the right to inspect the insurance company and satisfy other duties as assigned by the IRC. The insurance inspector has the right to follow up, monitor, enquire, and investigate any offence within the insurance sector.

Any person who is not satisfied with the action taken by the insurance inspector can file an objection within 45 days to IRC from the date the inspector's decision is received. The IRC must decide on the objection within the period ending no more than two months from the date the objection is received. In case such person disagrees with the IRC's decision, he/she has the right to lodge a complaint with the courts.

3. Liquidation for Dissolution of Insurance Company

An insurance company that complies with the relevant solvency ratio requirements can voluntarily apply for liquidation in any of the following cases:

- The term of the company has expired; or
- An ordinary or extraordinary shareholder resolution to do so is passed in compliance with the Articles of Incorporation.

After an application for voluntary liquidation for the dissolution of the company is received, the IRC must approve the request for voluntary liquidation for the dissolution of the insurance company if an appropriate reason is given by the company. After receiving the approval (the voluntary liquidation permit), the insurance company must stop entering into new insurance contracts and must transfer the remaining insurance policies to another company before the commencement of the voluntary liquidation for the dissolution of the company.

The IRC will appoint a qualified liquidator from the approved list of liquidators. The authority and responsibilities of the liquidator are supervised and monitored by the IRC. After receiving confirmation of the end of the voluntary liquidation process for the dissolution of the insurance company, the IRC must rescind the insurance license within no more than three months. The company's legal capacity is eliminated from the date the certificate of dissolution of the company is issued.

4. Provisional Administration

If an insurance company faces serious financial problems, the IRC has the right to appoint a provisional administrator for an initial period of no more than three months to restore the situation of the company. If necessary, the term of the provisional administrator can be extended for an additional three months.

The provisional administrator has the right to manage and lead the work of that insurance company. The essential duties of the provisional administrator are to conduct an assessment on the company's solvency, to take corrective measures to restore the situation of the company, and to protect the public interest.

If the result of the assessment indicates that the insurance company is solvent and can comply with the legal and regulatory requirements, the provisional administrator must submit a report to the IRC to cancel the protective measures imposed on the company, and the mission of the provisional administration will cease.

However, if the assessment indicates that the insurance company is solvent but cannot comply with the legal and regulatory requirements within three months, the IRC must rescind the license of the company and the provisional administration will be converted into a voluntary liquidation process for dissolution of the company, as stated above.

If the assessment indicates that the insurance company is insolvent, the IRC must rescind the license of the company and the provisional administration will be converted into a liquidation process through the court (see below).

5. Liquidation Through the Court

The IRC will file a complaint to the court to start the liquidation process through the court. The court will appoint a liquidator with professional qualifications from the approved list of liquidators. The provisional administrator can also be appointed to be the liquidator by the court.

The liquidator must liquidate the assets and settle all debts of the insurance company under the control of the court and in compliance with the provisions of the Insurance Law and the Law on Insolvency.

The order of priority for liabilities is as follows:

- Fees and other expenses related to the provisional administration and liquidation process;
- Claims by the claimant;
- Claims by insurance policy owners;
- The salary of the workers and employees, administrative fees, filing fees, and other tax duties of the court;
- Claims with secured transactions;
- State taxes for which notice is not filed; and
- Claims without secured transactions which have been accepted.

When conducting liquidation of an insurance company, when the company is either insolvent or solvent, the evaluation of all assets and liabilities, including insurance claims, must comply with IRC's Guidelines.

III. INSURANCE ASSOCIATION OF CAMBODIA (IAC)

The General Insurance Association of Cambodia (GIAC) is an Association that was officially established in 2005 for the following purposes:

- building consensus among members on important issues and concerns in the insurance industry;
- promoting the reputation and fostering public awareness of the insurance industry;
- promoting professional knowledge and standards within the industry; and
- facilitating the exchange of information and statistics on insurance.

At that time, there were only four member companies, comprising three general insurers and one national reinsurer. Since then, more insurance companies have been established, including life insurers, which have also joined the GIAC. Therefore, as some insurer members were not general insurers it was decided to drop the word "General"

and change the name from “General Insurance Association of Cambodia” to “Insurance Association of Cambodia” (IAC) in 2013 to provide membership to all licensed life insurers, non-life insurers and reinsurers.

CHAPTER 11: INFRASTRUCTURE

Relevant Laws:

- Law on Public Procurement 2023
- Law on Public-Private Partnerships 2021
- Law on Management of Petroleum and Petroleum Products 2019
- Law on Telecommunications 2015
- Law on Electricity 2001 (amended in 2007 and 2015)
- Law on Road Traffic 2014
- Other sectoral laws and many implementing regulations

I. TRANSPORTATION AND LOGISTICS

At the turn of the decade there seemed little to enthuse over by way of infrastructure projects in Cambodia. However, in the last several years there has been a gradual increase in confidence and ambition in bolstering Cambodia's much-needed infrastructure to bring it in line with some of Cambodia's trading neighbors and co-members of the ASEAN Economic Community.

Membership of ASEAN should facilitate a freer movement of goods and services between its members. However, although Cambodia is well-situated centrally in the ASEAN territories, its logistics and transportation network is less-developed and competitive compared with neighboring Thailand and Vietnam.

That being said, the MPWT recently announced it will form a Logistics Committee to improve the flow of goods in Cambodia. This Committee will particularly aim at decreasing logistics costs and help Cambodia's agricultural products compete in the foreign markets.

There also seems to be a determined effort to secure funding of major infrastructure projects. At the time of writing, Cambodia's Prime Minister, Hun Manet, said that the Siem Reap Angkor International Airport was inaugurated on 16 November 2023 and that the intention is to expand the Phnom Penh International Airport by 2025. The government is also planning to build a railway from Phnom Penh to Banteay Meanchey province through Siem Reap province.

"For Sihanoukville, we are assessing the possible use or extension of our current airport. Those are the big projects we are planning. However, talking about a small project, we are also planning to construct an airport in Mondulkiri province," Hun Manet said.

To expand infrastructure construction, the government is willing to promote major investment projects by using investment credits from the private sector as well as resources from all sectors.

Besides the Phnom Penh-Sihanoukville Expressway, the China Road and Bridge Corporation is funding construction of the Phnom Penh-Bavet and Phnom Penh-Siem Reap expressways.

A. Roads

Cambodia has 24 provinces with arterial national roads linking its provinces to Phnom Penh capital city. These arterial national roads are managed by the MPWT. After the first and second ring roads were completed and already put into use, the 53-kilometre long third ring road traversing Phnom Penh and Kandal is being constructed and expected to be completed in August 2024. There are also rural roads and local roads which are managed by the Ministry of Rural Development (MRD) or by the local and sub-national administrations. Obviously, for this to work there must be clear and seamless integration of national and regional road networks.

Road transportation is governed by the 2014 Law on Road Traffic, which governs all road users in Cambodia and aims at:

- Maintaining order and safety in road traffic, covering public traffic throughout Cambodia,
- Protecting human and animal lives and the environment,
- Curbing the effect on human health and the damage of State and private properties, and
- Curbing offenses arising from the use of the roads.

B. Rail

Railway is considered as one of the cheapest forms of transportation. However, this service is nowhere near being fully operational in Cambodia. The railway system was started in the era of French colonialism, but has been damaged by war and neglect, there being only two current railway lines in Cambodia. One line built between 1929 and 1942, connects the capital city of Phnom Penh to the city of Poipet which borders Thailand. Another line built between 1960 and 1969, connects Phnom Penh to Sihanoukville Port. This line has been recently reconstructed with funding from the Asian Development Bank and Australian Agency for International Development. It is fully-operational, carrying cargo such as rice, steel, cement, oil and containers. Passenger rail on this line began in April 2016.

Beside this investment, the RGC is also working out a development plan with China to build a railway that connects the city of Kunming of China to the ASEAN countries.

C. Ports

Cambodia has two main water ports: Sihanoukville Autonomous Port which is located at the sea in the Gulf of Thailand, and another Autonomous Port located just outside Phnom Penh. These ports are used for regional and global transportation including that of cargo and passengers. Furthermore, a number of offshore oil fields have been developed or are planned to be developed offshore from Sihanoukville Port, with a new multi-purpose terminal also planned with the assistance of Japan International Cooperation Agency. This will include a supply base for those offshore oil fields and a handling area for bulky materials, such as coal.

Beside the Phnom Penh and Sihanoukville Ports, there are other smaller ports, among them Oknha Mong Port which is quite active for imports of smaller general cargo. However, there are also expansion plans for other larger ports soon, including deep sea, international and tourist ports.

D. Airways

There are three airports for international air transport operations from/to Cambodia (Phnom Penh International Airport, New Siem Reap International Airport, and Sihanoukville International Airport). In addition, a number of domestic airports, including Stung Treng Airport, Battambang Airport, Kampong Chhnang Airport and Koh Kong Airport can be used for domestic air transport operations.

Several new airports have been under construction, including Phnom Penh Techo International Airport, Poipet Airport, and new Mundulkiri Airport.

II. ENERGY

The 2001 Electricity Law as amended in 2007 and 2015, basically aims to:

- Ensure the protection of the rights of the consumers to receive a reliable and adequate supply of electric power services at a reasonable cost;
- Promote private ownership of the facilities for providing electric power services;
- Establish competition wherever feasible in the sector;
- Establish the Electricity Authority of Cambodia (EAC) for regulating electricity power services, granting rights to, and imposing obligations and

- penalties, if necessary, on suppliers and consumers of electricity in relation to electricity generation and supply facilities; and
- Create favorable conditions for investments in the electric power industry and the commercial operation of electric power businesses.

The EAC is an autonomous body set up to regulate and monitor the electric power sector throughout the country. Its duties include issuing licenses, approving and enforcing performance standards for licensees to ensure quality supply and better services to the consumers, and determination of tariffs, rates and charges for electric power services which are fair to both consumers and the licensees.

Any licensee or consumer may refer a dispute relating to electric power services to the EAC for resolution. The EAC's aim is to help the consumer get a better electric power service at a reasonable rate in the home, industry or business.

As regards investment strategy for the development of the electricity supply, the plan is to construct transmission lines between major cities in southern and western regions in order to construct large-scale power plants and to import electric power from neighboring countries during the construction period of such power plants.

Additionally, Cambodia, Singapore and Lao PDR have established a working group to facilitate cross-border electricity trade to drive the ASEAN Power Grid vision. Through the working group, they hope to create a cooperation framework to facilitate cross-border electricity trade projects and coordinate subsea power cable issues in ASEAN.

The following entities distribute electricity in Cambodia:

- Electricité Du Cambodge;
- Private entities including Independent Power Producers in provincial towns;
- Licensees in smaller towns; and
- Rural Electricity Enterprises (REE) in the rural areas.

In order to meet increasing demands, the Government has prioritized renewable energy sources (solar and wind) under the proposed Power Development Plan 2021-2040. In line with the power source expansion, transmission lines are under construction and electric power has been imported from neighboring countries.

The Government anticipates a growth of various renewable energy resources in the future, with the use of installed solar power expected to rise drastically in comparison to other energy resources, from the current capacity of 437MW to 3,155MW by 2040.

By December 2023, the hydro-power plants operate a total installed capacity of about 1,791 MWs and provide about 45.05% of all electricity generated. Coal-fired power plants have an installed capacity of 1,300 MWs and contribute about 32.69% percent of current power supplies.

III. **PETROCHEMICALS**

A. Background

Petrochemicals are chemical products derived from petroleum or natural gas. In Cambodia, the petroleum industry is in its infancy. However, it is progressing and has drawn much attention since the start of this century. Petroleum areas comprise six offshore blocks, 19 onshore blocks and four areas in the Overlapping Claims Area (OCA) with Thailand. The six offshore blocks are located in the internal sea of the Kingdom of Cambodia attached to the coast of Koh Kong Province, Preah Sihanouk Province, and Kampot Province. Meanwhile, the four overlapping claims areas are further away and are equidistant between the respective Cambodian and Thai coast-lines. In fact, the OCA has been an area of international interest for decades and continues to be the subject of negotiation between Cambodia and Thailand.

B. Cambodian Law on Oil and Gas

The Cambodian Constitution states that all mineral resources are the property of the State, and that the management of such resources shall be set out by law. Petroleum operations in Cambodia are mainly governed by Law on Management of Petroleum and Petroleum Products 2019 (“**Law on Petroleum**”) and supporting regulations, and environmental regulations relevant to this sector, including the requirement for Environment Impact Assessments (EIA).

Under the Law on Petroleum, the MME has the competence to manage and supervise all activities in the petroleum sector. However, the Minister of the MME may delegate any functions and resources in relation to certain activities in the Petroleum Sector to subnational authorities in accordance with applicable procedures.

C. Recent Developments

The main development in Cambodia’s oil and gas sector is being noticed in offshore Block A. Block A is geographically located about 160 km from the Preah Sihanouk Ville City, Offshore, Cambodia with its surface area of 6,278 square

kilometers. In 2002, Block A was awarded to Chevron Overseas Petroleum (Cambodia) Limited, MOECO Co., Ltd., KrisEnergy (Cambodia) Ltd. and GS Caltex Corporation to conduct the petroleum operations under Production Sharing Contract and declared a Commercial Discovery of Petroleum Resources from 7 geological trends in 2010 in which there are estimated 728 million Barrels of Oil In Place. In 2014, KrisEnergy obtained the rights to conduct the petroleum operations from Chevron Overseas Petroleum (Cambodia) Limited and was awarded the Production Permit Application in 2017. In late 2020, The first oil production was commenced and produced from five producing wells until KrisEnergy faced financial difficulties in June, 2021 and production was suspended. Based on the results of exploration and appraisal, the production data history analysis and re-evaluation by independent experts, significant oil and gas resources still exist in Block A that can be further developed and produced.

Cambodia's potential oil and gas field has also been observed in the Overlapping Claim Area (OCA) with its Thai counterpart. The actual area of OCA is a 27,000 sq km section in the Gulf of Thailand that both Cambodia and Thailand claim as their territory. Previous estimates have indicated that the OCA area may hold up to 11 trillion cubic feet of natural gas, along with significant amounts of crude oil. Since the elections, the new governments of both countries are in discussions about developing the OCA amicably. This signals a potential easing of a long-standing dispute that has hindered oil and gas exploration in an area that many experts consider to be highly promising.

Currently, Cambodia imports petroleum products from Vietnam, Singapore and Thailand as the Cambodian seabed's oil and gas have not yet been exploited and approximately 40,000 barrels per day of refined products are imported for domestic use. Also, Cambodia currently has no refineries that have the capacity to deal with the significant amounts of oil and gas that may be extracted in the coming years. However, MOUs have been signed for conducting studies into refinery options and feasibility studies.

D. Future Prospects

Cambodia continues to seek investors to help exploit its oil reserves. Cambodia's petroleum industry holds considerable promise for investors and to provide much needed revenue into Cambodia's economy. As stated by Prime Minister Hun Sen in 2007: "The revenues from the recently confirmed discovery of oil reserves will provide additional money for financing development projects in Cambodia. These revenues will be directed to productive investment and poverty reduction. We will make sure that oil is a blessing but not a curse."

IV. TELECOMMUNICATIONS

Due to positive foreign and local investment, and the desire for increased personal communication with others, Cambodia's telecommunications sector continues to show healthy growth, particularly in the domestic market.

Another key element for growth has been the encouragement of foreign ownership in this sector and the willingness to allow private investment and competition, particularly with mobile telephone services. Cambodia's comparative low mobile tariff in relation to others in the South East Asia region has also contributed significantly to this growth. Moreover, the rise in internet usage and its popularity in Cambodia (particularly with senior officials) set the scene for the development of a healthy and growing young market.

The Law on Telecommunications of Cambodia was promulgated on 25 December 2015. This law aims to:

- Ensure effective access to the infrastructure, networks, and services of the telecommunications sector with safety, quality, reliability, and reasonable price for the development of the society and economy;
- Encourage and ensure the participation of the private sector in the effective development of the telecommunications sector and promotion of lawful competition; and
- Ensure protection for users and improve the revenues for the National Budget.

This Law also provides for the specific authority of the MPTC to perform certain duties as follows:

- Implement policies, development strategies, and a legal framework to administer telecom operations, the associated infrastructure, and the required networks in the Kingdom of Cambodia; and
- Be the signatory and representative of the RGC in respect of international cooperation in the telecommunications sector.

Furthermore, the Law provides the specific tasks and duties of the Telecommunications Regulator of Cambodia (TRC) to include:

- Acting as the controlling institution and resolving disputes related to telecommunication operations in accordance with the provisions of the Law on Telecommunications and other regulations;
- Taking appropriate measures in accordance with the Law on Telecommunications to search, investigate, and take down business operations that are illegal, contrary to the code of ethics, to the technological requirements, to the quality and service standard

requirements, and to the standards of telecom equipment specified in the Law on Telecommunications and other regulations; and

- Leading the development of a code of ethics for the telecommunications sector.

Under the Law on Telecommunications, the requirements for obtaining a license are clearly specified and should no longer vary on a case-by-case basis. It is clear that MPTC will set out the policies and requirements on how to grant the license, while the license will actually be obtained from the TRC.

As of the end of November 2022 the TRC has issued 78 licenses, varying from ISP to Optical Cable Network-related services. To conclude, Cambodia's telecommunication sector is well-poised to experience substantial growth in the coming years provided the current free and equitable opportunities continue to arise for investors.

V. GOVERNMENT CONTRACTS

Government (State or administrative) contracts are used in infrastructure concession contracts entered into by the State (or a public legal entity) and a private company.

A. Public Procurement Contracts

The most common Government contract is the public procurement contract. It is concluded between the State administration and a private provider. Normally, the provider is procured to supply goods, services, construction work or consultancy services to the administration.

The 2023 Law on Public Procurement (Procurement Law) applies to all public procurements in the Kingdom of Cambodia irrespective of the source of funds, except for:

- Any procurement that is financed by development partners which shall comply with the standard operating procedures specified under the financing agreement. If the financing agreement has not defined any other procurement procedure, the procurement process shall comply with the provisions of the Procurement Law;
- Any procurement subject to the requirements under the PPP Law; and
- Any procurement that impacts on confidential information regarding the national defense and public order, that needs approval from the Prime Minister.

The 2023 Law on Public Procurement does not provide any legal definition of a procurement contract, but determines the rules, methodologies, procedures, and procurement monitoring and implementing structure to make sure the public procurement process is conducted with transparency, accountability, fairness,

efficiency, quality, equality, cost saving, and uniformity throughout the country. The Law on Public Procurement basically sets out specific methodologies for the procurement and qualifications of bidders.

As for the procurement of goods, services, and construction, the law provides various bidding processes. The open-for-public bidding process is strongly encouraged by the law as this methodology is probably the most transparent one. This bidding process is open for all public bidders and can be conducted (1) internationally for large procurement projects with high technical requirements and (2) domestically where there are sufficient products, production, services or construction capacity in Cambodia itself. As for the procurement of consultancy services, a consultant can be a private individual or a consulting firm. The consultant selection methodologies are mainly based on the criteria of quality, cost, fixed budget, qualification and direct negotiations.

As for the qualification of the bidder, all bidders are given fair and equal opportunity to participate in the public procurement process except those in the blacklist of the MEF or prohibited by the court of law.

Bidders must register with the MEF in order to have the right to participate in the public procurement process. The procedures for the classification of the bidders are determined by regulations issued by the MEF.

The procurement implementing institution shall review and evaluate the qualifications of the leading/successful bidder(s) before signing the contract. The procedures for the evaluation of qualifications are determined by regulations issued by the MEF. The MEF is required to register on a blacklist all the bidders, goods suppliers, service providers or contractors who violate the Law on Public Procurement and other regulations relating to public procurement.

After the bidding process is completed, the successful bidder will sign the contract with the institution implementing the procurement. According to the law, this contract must be made in Khmer language. If necessary, it can be made in a foreign language by translating from the Khmer language contract. In case of conflict, the contract in Khmer language prevails. In addition, the contractual currency is required to be Khmer Riel and exceptionally, for procurement contracts to be performed outside Cambodia, a foreign currency is allowed.

Normally, all public procurement contracts require a performance bond secured by the successful bidder except those contracts that are obtained through canvassing method, contracts with individual consultants, contracts with State agencies, and contracts with local communities. This security bond will automatically be transferred to the institution's account in case of breach of contract by the

successful bidder or premature termination of the contract by the institution. The amount of the security bond shall be fixed by regulations issued by the MEF, which is the institution in charge of the management of public procurement, with the General Department of Procurement as its secretariat.

The successful bidder can sub-contract part of the procurement project to a third party with prior written consent from the procurement implementing institution. If the procurement contract is decided by the MEF, the procurement implementing institution shall ask for approval from the MEF Minister. However, the successful bidder remains responsible for the full implementation of the contract before the procurement implementing institution even if a sub-contract is allowed.

B. Public Private Partnerships (PPP)

Private participation in public physical infrastructure and public service projects are regulated by the PPP Law. PPP refers to an agreement between the State and a private company (Private Partner) to restore, repair, expand, build, operate and/or maintain public infrastructure or project assets (Project Assets) or to provide public services within a specified period. Under the agreement, the Private Partner shall invest, bare part of the risks involved in, and receive benefits based on performance in accordance with the terms and conditions stipulated in the PPP Contract.

According to the PPP Law, the following sectors are eligible for PPPs:

- Public infrastructure and public services for the transportation and logistics sectors such as roads, bridges, rails, airports, ports, public parking and canals;
- Public infrastructure related to telecommunications, posts, information and communication technology (ICT), and digital technology;
- Production, transmission and distribution of electricity, oil and gas pipelines, and other public services in mines and the energy sector;
- Clean water supply and sanitation infrastructure, sewage systems, drainage systems, restoration systems, wastewater treatment, waste management and other public services relating to environmental protection;
- Public infrastructure and public services related to the health sector, education sector, labour and vocational training sector, tourism sector, culture and arts sector, sports sector and social housing;
- Public infrastructure related to industry, science, technology and innovation sectors such as special economic zones (SEZs), clusters of small-and medium-sized enterprises (SMEs), and technology and innovation parks;
- Laboratories and public infrastructure to support processing, product storage, and trade promotion;
- Public infrastructure and public services related to the agricultural sector and irrigation systems; and

- Other public infrastructure and public services as permitted by separate laws.

The common models of PPPs under the PPP Law include, *inter alia*:

- Build-operate-transfer (BOT);
- Build-lease-transfer (BLT);
- Build-transfer-operate (BTO);
- Build-own-operate (BOO);
- Build-own-operate and transfer (BOOT);
- Rehabilitate-Own-Operate (ROO);
- Modernize-Own-Operate (MOO);
- Management Agreement/Operation and Maintenance Agreement (O&M);
- Design-Build-Finance-Operate-Maintain (DBFOM); and
- Design-Build-Lease (DBL).

In practice, of the PPP models listed above, the BOT model appears to be the most commonly used.

PPP projects may be selected through solicited or unsolicited proposals. In other words, the Private Partner may participate in a PPP project either by participating in a call for proposals from the competent institution or by initiating its own project that corresponds to the needs of Cambodia.

The solicited proposals are handled in nine steps as follows:

1. Project Identification: Potential projects identified by the Implementing Agency;
2. Project Selection: Project potential and priorities evaluated by the Implementing Agency before requesting the MEF to review;
3. Project Preparation: Project feasibility study managed by the Implementing Agency;
4. Project Approval: If the Implementing Agency endorses the project feasibility study, it will submit the project to MEF for review;
5. Procurement Procedures: Procurement procedures to be conducted by the Implementing Agency following approval of the project by the MEF;
6. PPP Contract Negotiation: Following the selection of the Private Partner, the Implementing Agency leads the negotiation of the terms and conditions of the PPP Contract;
7. Approval of the Final Draft of the PPP Contract: Following the conclusion of the negotiations and the in-principle approval from the MEF, the Implementing Agency will request approval of the PPP Contract from the government;
8. Signing of the PPP Contract: The PPP Contract will be signed by the Implementing Agency and the Private Partner and witnessed by the MEF; and

9. Implementation and Management of the PPP Contract:

- the Private Partner is responsible for financial and technical aspects of the project; and
- the Implementing Agency is responsible for the management of, monitoring of and submitting reports regarding the implementation of the PPP Contract.

The selection of unsolicited proposals is required to be made pursuant to the following principles and conditions:

- An unsolicited proposal must introduce a new concept, technology or innovation that may be beneficial to Cambodia. In such a case, the Implementing Agency must submit a request for in-principle approval from the government through the MEF.
- Following the in-principle approval, the Implementing Agency will lead the government's working group in preparing a framework agreement or an equivalent agreement to prescribe the cooperation between the State and the Private Partner for the project study and project development.
- The Implementing Agency and the MEF may arrange for an independent agency to conduct due diligence or evaluate the result of the feasibility study of the unsolicited proposal.
- Based on the due diligence of the feasibility study, the Implementing Agency and the MEF may request an approval from the government for the selection of the Private Partner through the competitive bidding methodology or through the direct negotiation methodology.

The PPP Law provides for certain support mechanisms that may be applicable to the respective PPP projects including the following:

- Project Development Facility (PDF);
- Viability Gap Financing (VGF);
- Availability Payment;
- Government Contingent Liabilities;
- Asset Contributions; and
- Investment Incentives.

CHAPTER 12: ENVIRONMENTAL PROTECTION

Relevant Laws:

- Environment and Natural Resource Code 2023
- Law on Investment 2021
- Law on the Management and Exploitation of Mineral Resources 2001 and its amendment in 2018
- Law on Environmental Protection and Natural Resource Management 1996
- Sub-decree on Water Pollution Control 1999 and its amendment in 2021
- Sub-decree on the Management of Electric and Electronic Waste 2016
- Sub-decree on the Control of Air Pollution and Noise Disturbance 2000
- Sub-decree on the Management of Solid Waste 1999
- Sub-decree on the Implementation of the Environmental Impact Assessment (EIA) Process 1999
- Other sectoral laws and many implementing regulations

Name of Institution	Key Functions and Services
MOE	<ul style="list-style-type: none"> • Issue guidelines for implementing the Environmental Law and regulations. • Advise project owners on conducting and preparing ESIA reports. • Review and evaluate/approve ESIA reports for projects with capital investment of more than USD2 million. • Mobilize public participation in environmental protection. • Develop national environmental management plan. • Monitor compliance with project environmental management plans. • Take measures (legal action) to enforce the Environmental Law.
Provincial Department of Environment	<ul style="list-style-type: none"> • Disseminate information publicly about ESIA requirements. • Advise project owners on conducting and preparing ESIA reports. • Review and evaluate/approve ESIA reports for projects with capital investment of up to USD2 million. • Mobilize public participation in environmental protection.

	<ul style="list-style-type: none"> • Monitor compliance with project environmental management plans. • Report and propose measures (legal action) to enforce the Environmental Law to MOE.
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I. DEVELOPMENT OF ENVIRONMENTAL PROTECTION LAW IN CAMBODIA

Environmental protection is enshrined in the 1993 Constitution which mandates the State to protect the environment, balance abundant natural resources and establish a precise plan of management of land, water, air, wind, geological resources, the ecological system, mines, energy, petrol and gas, gems, forests and forestry products, wildlife, fish and aquatic resources.

The Law on Environmental Protection and Natural Resource Management (the “**Environmental Law**”) adopted in 1996 provides for certain rules and conditions for protecting the environment and national resources in Cambodia. Following this law, the RGC also issued a number of implementing regulations, including the Sub-decree on Water Pollution Control (1999) and its amendment in 2021, the Sub-decree on the Management of Solid Waste (1999), the Sub-decree on the Control of Air Pollution and Noise Disturbance (2000), and the Sub-decree on Electric and Electronic Waste in 2016. In addition, the Sub-decree on the Implementation of the Environmental Impact Assessment Process issued in 1999 stipulates the precise nature and format of assessments and the kind of projects requiring such assessment based on the project type, size, and activity. In addition to these, a number of relevant laws and regulations (such as the 2021 Law on Investment, the 2001 Law on the Management and Exploitation of Mineral Resources and its amendment in 2018, and the 2005 Sub-decree on Economic Land Concessions) stipulate the environmental impact clearance requirements that are required to be fulfilled prior to a project’s implementation.

The MOE is responsible for implementing the Environmental Law and the regulations made thereunder. The MOE has delegated some power and functions related to EIA review, monitoring and enforcement to the Provincial Departments of Environment through a Prakas on Delegation of Power to Municipal/Provincial Departments of Environment to Decide on Project Development (2005).

In 2009, the MOE issued a Prakas on the Guidelines for Preparing Initial and Full EIA Reports. Further, the details regarding the types of environmental impact assessment were stipulated in the Prakas on Classification of Environmental Impact Assessment for Development Projects in 2020. It should also be noted that in 2014, the MOE issued a Prakas on Registration of EIA Companies that provide services in relation to the conduct of environmental impact assessments and in 2016, the MOE issued a Joint-Prakas with

the MME concerning environmental projection requirements for small scale and artisan construction material mining projects. The project's owner must pay the service fee for the EIA report. The service fees are determined by a Joint Prakas of the MEF and the MOE. Furthermore, the MOE has issued a number of Prakas providing guidelines for environmental impact assessments for specific sectors namely, animal raising and aquaculture, construction, resort development, small and medium-sized factories, and petrol stations and petrol-gas stations.

The MOE also initiated efforts to develop a draft EIA Law in 2012 and a draft Environment and Natural Resource Code in 2014. The draft EIA Law contains 96 Articles covering the principles and requirements of EIAs, Environment Management Plans (EMPs), Environmental Protection Agreements (EPAs), Environmental Protection Plans (EPPs), sectoral Strategic Environmental Assessments (SEAs), Climate Change (GHG emission) Impact Assessments, Cumulative Impact Assessments (CIAs), Health Impact Assessments, Trans-boundary Impact Assessments, the creation of a project-by-project EIA Expert Review Committee comprising MOE officials and independent EIA experts, a public participation process, a process for resolution of EIA disputes, and penalties for violating the EIA law.

In 2023, the draft Environment and Natural Resource Code ("Environmental Code") was adopted and entered into force on 29 June of the same year, and it will be implemented from 29 June 2024 onwards.

The commencement of the implementation of the Environmental Code will abrogate the Law on Environmental Protection and Natural Resource Management 1996; the Law on Protected Area 2008; and the Law on Biosafety 2008. For other regulations containing provisions contrary to the Environmental Code, only such provisions will be abrogated, while the rest will remain in full force and effect.

The Environmental Code is divided into 12 books and 865 articles. This Environmental Code contains state of the art provisions regarding but not limited to public consultation in environmental impact assessments, access to information regarding development projects, SEA, CIA, sustainable environmental management, renewable and sustainable energy, conservation and management of cultural and environmental heritages, waste management and pollution control, environmental education, research and development, environmental dispute resolution mechanisms and other important provisions. The Environmental Code will integrate, harmonise and modernise the provisions of the existing laws and regulations related to the environment protection. It will also act as a strong base regulation for law enforcement officers, especially officials involved in the suppression of environmental and natural resource crimes.

In order to assist investors and project owners to comply with environmental impact assessment processes and to understand the relevant requirements for their respective projects, in 2012, the EIA Department of the MOE collaborated with the NGO Forum on Cambodia in developing and publishing a “*Guidebook on EIA in the Kingdom of Cambodia*”.⁷

II. PROJECTS REQUIRING ENVIRONMENTAL IMPACT ASSESSMENT (EIA)

The Environmental Law generally requires existing and new public, private or NGO projects to conduct ESIA's and submit the report to the MOE for review and evaluation before submitting the projects to the RGC for project approval. Pursuant to the Environmental Law, the RGC issued a Sub-decree in 1999 on the Implementation of the Environmental Impact Assessment Process, specifying types and scales of projects requiring the conduct of ESIA's. In 2020, the MOE issued the Prakas on Classification of Environmental Impact Assessments for Development Projects in order provide further clarity regarding the types and scales of projects requiring the different types of environmental assessments, namely full environmental and social impact assessment (Full ESIA's), initial environmental and social impact assessment (IESIA's), and environmental protection agreements between a project proponent and the MOE (EPA).

The Annex to the EIA Sub-decree later supplemented by the annex of the Prakas in 2020 lists all of the projects generally requiring IESIA's, Full ESIA's, and EPAs, and covers a wide range of investment aspects including but not limited to industrial projects (food, catering, soft drink, and tobacco manufacturing; textile, garment and footwear factories; wood processing; paper production; rubber and plastic chemical production; non-metallic production; basic metallic industry; metallic processing; and other unspecified industries), agricultural projects (forest concessions; forest annual harvests; land with forest coverage; agro-industry (ELC); flooded areas and coastal zone development; irrigation or water release projects; and fisheries); tourism development projects (tourism resorts and golf courses); and infrastructure development projects (urban development projects; industrial zones; roads and bridges; ports and airports; sand/siltation dredging; and urban waste dumping sites).

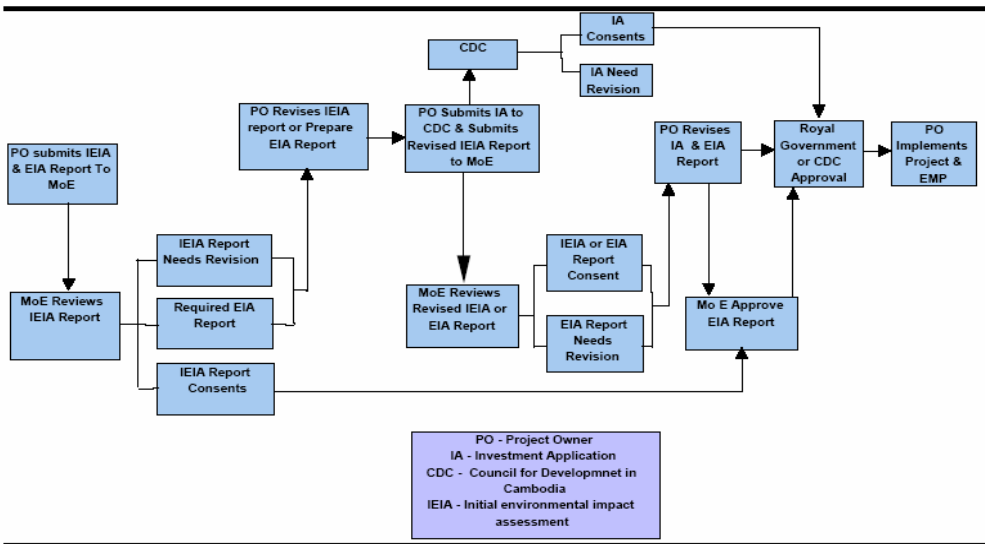
In addition, based on a recent Joint-Prakas of the MOE and the MME, small scale and artisan construction material mining projects also require EPAs, IEIAs or Full EIAs depending on the potential environmental impacts of the projects.

⁷ <http://sustinatgreen.com/uploads/cc55c7b8ee1d4b97a6472138034934c37ed03d35.pdf>.

III. PROCESS OF ESIA

Generally, proposed projects listed in the Annexes to the Sub-decree on EIA Process and the Prakas on Classification of Environmental Impact Assessments for Development Projects 2020 or as specified in the Joint-Prakas of the MOE and the MME require project owners to prepare and submit IESIA reports or Full ESIA reports to the MOE or its provincial line department for review and comment; or the project owners are required to sign an EPA with the MOE depending on the type of the project. If it is determined by the MOE that the proposed project would have significant adverse environmental impact, then the project owner is required to prepare and submit a full ESIA to the MOE or its provincial department for review and evaluation before submitting the project proposal along with the comments of the MOE or approval to the RGC (through CDC) for approval in principle or to the ministry or regulatory authority responsible for issuing relevant licenses or permits in relation to the project development activities.

The following flow chart shows the review process for IESIA and Full ESIA reports.



Source: <http://www.opendevdevelopmentcambodia.net/briefing/eia/#eia> (accessed on 09/05/2016)

The project owners are responsible for conducting the IESIA or Full ESIA and preparing the report which includes environmental mitigation and management plans. If a project owner has no internal qualified human resources to prepare the plans, they can procure the consultancy services of EIA companies registered with the MOE. Before conducting

an EIA, a project owner is required to consult and receive advice from the MOE or its provincial line department on how to conduct the EIA and how to prepare the IESIA or Full ESIA report.

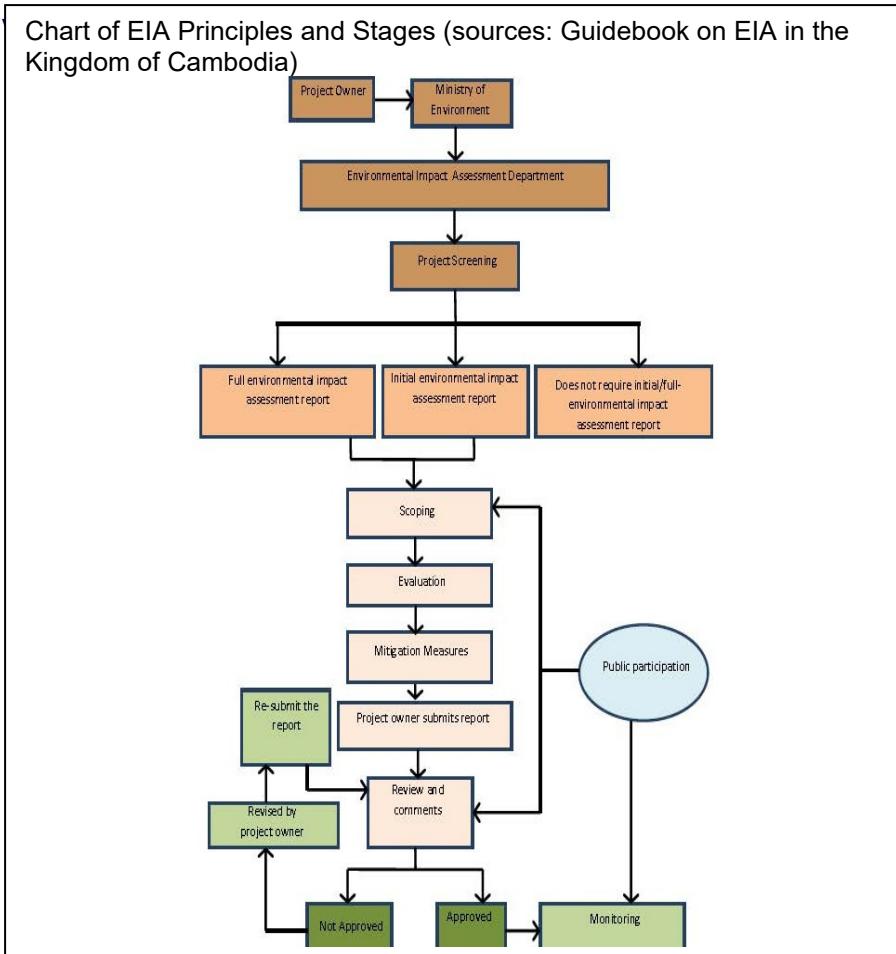
Before completing the review and evaluation of a draft IESIA or Full ESIA report, the MOE mandates itself to conduct consultation with concerned ministries and authorities as well as concerned communities and relevant NGOs.

IV. PRINCIPLES AND STAGES OF ESIA

The principles and stages of ESIA under the existing laws and regulations, together with public participation at the relevant stages, are as follows:

- Project Proposal
- Project Screening
- Project Scoping
- Conducting ESIA (Initial or Full)
- Environmental Impact Mitigation Measurement
- Preparing IESIA or Full ESIA Report
- Review and Decision/Approval on the IESIA or Full ESIA Report
- Project Monitoring

Chart of EIA Principles and Stages (sources: Guidebook on EIA in the Kingdom of Cambodia)



V. CONTENTS OF ESIA REPORT

The Annex to the MOE Prakas on Guidelines for Preparing IESIA or Full ESIA report provides basic and helpful outlines of an IESIA and Full ESIA report. Based on this an IESIA and Full ESIA report must contain: an executive summary, introduction (project nature, objective of the EIA, and method and scale of the study), legal framework, project descriptions, description of existing environmental resources (natural environment such as physical, geological, and biological conditions) and economic and social resources, public participation, environmental impact and mitigation measures, environmental management plan, economic and social value analysis, and conclusion and

recommendations. The report must be annexed with references and supporting documents. Naturally, in developing and implementing an IESIA and Full ESIA report and environmental management plan the relevant issues and regulations must be observed.

A. Water Pollution Control

The Sub-decree on Water Pollution Control (1999) and its amendment in 2021 were adopted to control water pollution and over time to reduce and suppress public water pollution. It also sets out the standards regarding the disposal of liquid waste and specifies some pollution sources that need to obtain permission from the MOE prior to the disposal of liquid waste or transportation of liquid waste by participants in certain industries.

B. Solid Waste Management

The Sub-decree on Waste Management (1999) prohibits the import of waste into Cambodia and requires hazardous waste to be disposed of and stored safely in accordance with certain technical standards.

An authorisation from the MOE is required for the investment in, transportation from or construction of hazardous waste disposal, storage, incineration, or reprocessing sites.

C. Noise and Air Pollution

The Sub-decree on the Control of Air Pollution and Noise Nuisance (2000) was enacted to control air pollution and noise nuisance. It prohibits the import, use or manufacture of motor vehicles and machinery that emits pollutants or noise beyond the permitted levels.

An authorisation from the MOE is required for the emission of pollutants and noise from immovable property sources.

D. Sub-decree on the Management of Electric and Electronic Waste 2016

The Sub-decree on the Management of Electric and Electronic Waste (2016) prohibits the disposal of electric and electronic waste into water sources, waste dump sites, or public areas; and burning or dismantlement of electric and electronic waste harmful to the environment and public health.

Any person wishing to operate a business involving the buying, stocking, dismantling, treating, or running of incinerators and establishing electric and electronic waste dump sites must request a permit from the MOE or the relevant Provincial Department of Environment.

VI. RESETTLEMENT AND COMPENSATION

Currently there is no specific policy and procedure for addressing resettlement impact and payment of compensation to project-affected persons, except for national development projects funded by the national budget and resettlements that are under the management of the MEF/Inter-Ministerial Resettlement Committee (IRC).

For mining projects, the Law on the Management and Exploitation of Mineral Resources requires the mining concessionaire to pay for any damage caused by the project and negotiate compensation with eligible land owners or land users before gaining land use/access for conducting mining project activities. In some mining exploitation projects, the MOE requires the concessionaire or mining license holder to commit certain funds for environmental and social protection. In addition, under the Sub-Decree on the Management of Mining Exploration and Industrial Mining Licenses (2016), a mining project community development fund is envisaged. Creation and management of such a fund requires a Joint-Prakas of the MEF and the MME.

CHAPTER 13: DISPUTE RESOLUTION

Relevant Laws:

- Law on Taxation 2023
- Law on Organization and Functioning of the Courts 2014
- Code of Criminal Procedure 2007
- Code of Civil Procedure 2006
- Law on Commercial Arbitration 2006
- Land Law 2001
- Law on Labour 1997
- Royal Decree on Establishment, Organization and Operation of National Authority for Alternative Dispute Resolution 2023
- Other sectoral laws and many implementing regulations

I. COURT STRUCTURE

The organisation and functioning of the courts are governed by the Law on the Organisation and the Functioning of the Courts (the Courts Law). There is a two-tiered court system: Courts of First Instance (provincial-municipal courts) as lower courts, and Appellate Courts and Supreme Court as high courts. As of 1 December 2023, there were twenty-five provincial and municipal courts, four regional Appellate Courts (Phnom Penh, Sihanoukville, Tbong Khmum, Battambang) and one Supreme Court in Phnom Penh.

The Courts of First Instance have jurisdiction over all types of disputes, including civil, criminal, commercial, labour and administrative cases. Under the Courts Law, the lower court will comprise specialised courts – Civil Court, Criminal Court, Commercial Court and Labour Court. Cambodia also has a Military Court to hear military-related offenses at first instance. However, Cambodia is still in the process of establishing the Commercial Court and Labour Court.

Trials at court are conducted primarily based on the following:

- The Code of Criminal Procedure (CCP), promulgated in 2007, for criminal matters; and
- The Code of Civil Procedure, promulgated in 2006, for civil matters.

- There are several legal or regulatory provisions relevant to court proceedings and mechanisms to settle disputes, such as the following:

Name of Institution	Key Functions and Services
National Authority for Alternative Dispute Resolution (NAADR)	<ul style="list-style-type: none"> • Resolves civil, commercial and other kinds of disputes by way of reconciliation and based on agreement of disputing parties. NAADR was established in 2023 by Royal Decree No.NS/RKT/1123/2381 dated 02/11/2023 on the Establishment, Organization and Operation of NAADR.
National Commercial Arbitration Centre (NCAC)	<ul style="list-style-type: none"> • Resolves commercial disputes among investors or traders, whether they are Cambodians or foreigners, who have agreed to an arbitration of the disputes under NCAC Arbitration Rules. NCAC was officially established in January 2013.
Arbitration Council (AC)	<ul style="list-style-type: none"> • Resolves collective labour disputes in Cambodia. The MLVT is preparing some regulations to lay down the process for individual labour disputes to be resolved by the AC. The AC is an independent, national institution with quasi-judicial authority derived from the Law on Labour. The AC was established in 2003 with the support of the MLVT, employers and unions.
The Ministry of Labour and Vocational Training (MLVT)	<ul style="list-style-type: none"> • Implements the Law on Labour, the Law on National Social Security Fund, and the Law on Trade Unions; implements labour-related national and international regulations, and government policies; protects and facilitates the industrial relations between employers and employees; conciliates individual and collective labour disputes according to procedures stipulated in applicable laws; studies and develops national policies relating to labour and vocational training.
Tax Administration (GDT)	<ul style="list-style-type: none"> • Deals with written administrative protests submitted by taxpayers who are not satisfied with the tax re-assessment or other decisions made by the tax administration. The protests must be made within 30 days after the day the taxpayer receives the letter of notification for tax collection from the tax administration.

<p>General Department of Customs and Excise (GDCE)</p>	<ul style="list-style-type: none"> Receives and examines complaints relating to customs and excise. It is also responsible for any legal action pertaining to duties levied by the government on any imported and exported goods. It curbs and prevents any kind of act regarding customs wrongdoings.
<p>Committee of Tax Arbitration (CTA)</p>	<ul style="list-style-type: none"> Resolves and makes decisions on complaints regarding customs, excise and tax issues arising from decisions or determinations of the General Department of Customs and Excise (GDCE) or the General Department of Taxation (GDT).
<p>Cadastral Commission</p>	<ul style="list-style-type: none"> Conciliates and resolves conflicts related to claim of ownership over unregistered immovable property either: (1) land disputes occurring outside adjudication areas; (2) land disputes arising within adjudication areas, and which cannot be conciliated by the Administrative Commission.
<p>National Authority for Land Dispute Resolution (NALDR)</p>	<ul style="list-style-type: none"> Investigates and resolves land conflicts related to claim of ownership over unregistered land. The NALDR was established by Royal Decree No. ៧៧/២៩/០២០៦/០៩៧ dated 26 February March 2006 on the Establishment of National Authority for Land Dispute Resolution.
<p>Resettlement Grievance Redress Committees</p>	<ul style="list-style-type: none"> These mechanisms are created on a project basis with a multi-stage process at the sub-national level to resolve any disputes related to the resettlement process and impact including questions or disagreements on compensation and relocation options.
<p>Local & Sub-National Administrations</p>	<ul style="list-style-type: none"> Settles general complaints or disputes through negotiation, conciliation and mediation only. If the dispute is resolved the parties are required to put their thumbprint on the formalities to end the dispute. If the dispute cannot be resolved the Commission may seek a solution from a higher authority in its administrative hierarchy.
<p>Courts of First Instance (ordinary/specialized courts)</p>	<ul style="list-style-type: none"> Hears criminal, civil, labour, and administrative cases, except cases under the jurisdiction of special tribunals (like military court or Constitutional Council) or under extraordinary tribunals (like the Extra-ordinary Chamber for Trial of Khmer Rouge) created by a separate law.

Appellate Court	<ul style="list-style-type: none"> Hears criminal, civil, labour, administrative and military cases under its territorial jurisdiction, except cases under the jurisdiction of other courts (like Constitutional Council, and Extra-ordinary Chamber for Trial of Khmer Rouge), as specified by law. The Appellate Court reviews both questions of law and fact.
Supreme Court	<ul style="list-style-type: none"> Hears criminal, civil, labour, administrative and military cases under its jurisdiction in accordance with existing laws. It is the highest court of the country, and its jurisdiction covers the whole territory of Cambodia. The Supreme Court has no jurisdiction over electoral disputes.
Military Court	<ul style="list-style-type: none"> Hears cases related to military offenses. Military offenses are those committed by military members in the Cambodian armed forces and those offenses that concern military discipline or property of the armed forces. In cases where a member of the Cambodian armed forces commits a normal (civilian or criminal) offense, the provincial or capital court with jurisdiction is empowered to hear and decide the cases.

II. COMMERCIAL COURT AND ARBITRATION

A. Commercial Court

The Courts Law provides for the creation of a commercial tribunal within the general court system, as a specialized Court of First Instance. Its establishment and commencement date are much awaited.

When established, the Commercial Tribunal of the Court of First Instance will have competence to hear all commercial cases including insolvency and the enforcement of foreign arbitral awards. The Commercial Chambers will hear all appeals arising out of the Commercial Court.

In commercial cases where the value of the subject matter in dispute is between 100,000,000 Khmer Riels (Approximately USD25,000) and 1,000,000,000 Khmer Riels (Approximately USD250,000), the Commercial Tribunal of the Court of First Instance, when hearing the case and rendering its decision(s), shall consist of one judge, accompanied by two advisors who are businessmen or have knowledge in commercial law.

In commercial cases, where the subject matter is equal to or over 1,000,000,000 Khmer Riels (Approximately USD250,000), the Commercial Tribunal, when hearing the case and rendering its decision(s), shall consist of three judges, accompanied by two advisors who are businessmen or have knowledge in commercial law.

Where a commercial case subject matter is below or equal to 100,000,000 Khmer Riels (Approximately USD25,000), the Commercial Tribunal, when hearing the case and rendering its decision(s), shall consist of one judge with no participation from commercial advisors.

The commercial advisors shall carry out their function by invitation of the President of the Commercial Tribunal of the Court of First Instance.

Commercially related decisions rendered by the Commercial Tribunal of the Court of First Instance can be appealed to a higher court, including the Appellate Court and the Supreme Court.

B. Commercial Arbitration

The Law on Commercial Arbitration was promulgated in 2006. The purpose of this law is to promote impartial and prompt resolution of commercial disputes according to the wishes of the disputing parties, to safeguard their legal rights and interests and to promote sound economic development for Cambodia. This law was based on the principles laid out in the UNCITRAL (United Nations Commission on International Trade Law) Model Arbitration Law.

The key objectives and roles of the NCAC are to:

- Promote settlement of commercial disputes by means of arbitration in Cambodia;
- Create the necessary infrastructure and rules for the administration of arbitration cases in Cambodia;
- Where there is express agreement of disputing parties, to accept reference of disputes to NCAC arbitration; and
- Ensure that a high quality of arbitration is maintained in Cambodia.

The NCAC is also empowered to set a standard of qualification for its arbitrators. Both Cambodians and foreigners who meet these qualifications may be listed in its arbitrator list.

Under the Law on Commercial Arbitration, an arbitration tribunal formed under this law shall have the competence to settle a “commercial dispute” which is defined as “*any dispute arising from all relationships of commercial nature, whether contractual or not.*”

Relationships of a commercial nature include, but are not limited to, the following transactions: any trade transaction for the supply or exchange of good or services; distribution agreement, commercial representation or agency; factoring, leasing, construction of works, consulting, engineering, licensing, investment, financing, banking, insurance, exploitation agreement or concession; joint venture and other forms of industrial or business cooperation; and carriage of goods or passenger by air, sea, rail or road.”

The arbitration tribunal will be formed by a panel of arbitrator(s) appointed by the parties. The parties are free to agree on the appointment procedure. In general, in the case of a panel of just one arbitrator, both parties must agree on the appointment. If no agreement is reached by the parties, the arbitrator may be appointed by the court or the NCAC upon request of the parties. In the case of three arbitrators, each party may appoint one arbitrator and the two arbitrators must appoint the third one. If both party-appointed arbitrators do not agree on the appointment of the third arbitrator, the parties may agree to request the court or the NCAC to make such an appointment.

In making its decision, the arbitration tribunal must follow the agreement of the parties regarding the applicable law for resolving the dispute. The parties may also agree that the arbitration tribunal renders its decision as an *amicable compositeur* or on the basis of *ex aequo et bono* - which basically means they can decide a case on principles of fairness as opposed to following the strict letter of the laws.

The arbitral award rendered by the arbitration tribunal may be challenged, recognised and enforced by the competent courts of Cambodia. The Courts of First Instance are competent to recognise and enforce arbitral awards requested by a party to arbitration proceedings. However, an arbitral award may not be recognised or enforced by the courts of Cambodia for the following reasons:

- At the request of a party, the Appellate Court finds that:
 - An arbitration agreement is invalid due to the incapacity of a party;
 - Improper notice of the appointment of an arbitrator or of the arbitration proceedings;
 - Award containing matters beyond the scope of disputes submitted to arbitral tribunal by the parties;

- The composition of the arbitral tribunal or the arbitral proceedings was not in compliance with the agreement of the parties or the law applicable at the place of the arbitration; or
- The award has not yet become binding or was set aside or suspended by a court in the country where the arbitration takes place.
- The Appellate Court itself finds that:
 - The subject matter is not capable of settlement by arbitration; or
 - The recognition of the arbitral award would be contrary to the public policy of Cambodia.

On 23 July 2001, Cambodia ratified the Law on the Approval and Implementation of the United Nations Convention on Recognition and Enforcement of Foreign Arbitral Awards (also known as the New York Convention). By virtue of this law, parties may choose foreign commercial arbitration as a forum for resolving disputes. An award of a foreign arbitration tribunal may also be recognised and enforced in Cambodia.

For resolving investment disputes, the Law on Investment of Cambodia recognizes various dispute resolution mechanisms such as conciliation and arbitration. Furthermore, foreign investors may also bring lawsuits against state institutions to the Centre for the Settlement of Investment Disputes pursuant to the Convention on the Settlement of Investment Disputes between the Host States and other States, which was ratified by Cambodia in 2001.

III. RESOLUTION OF LABOUR DISPUTES

To date, Cambodia has no specific Labour Court, although the Law on Labour provides for its creation. Thus, the provincial-capital court has competence over labour matters in Cambodia in accordance with the provisions of the Law on Labour. The Law on Labour distinguishes between two kinds of labour disputes: individual and collective disputes.

A. Individual Dispute Resolution

An individual dispute arises between an employer and one or more employees individually. Here the dispute normally relates to the interpretation or enforcement of an employment contract or provisions of a collective agreement, as well as regulations or laws in force. A party may choose to resolve the dispute under the following process:

- negotiation between the worker and the employer within the enterprise;
- conciliation by the labour inspector of MLVT;
- court proceedings; or

- resolution by other means as stated in a collective bargaining agreement or contract.

If the dispute is brought to the labour inspector, the labour inspector shall convene the parties to conciliate the dispute within 15 working days; if the conciliation is unsuccessful, either party may bring such dispute to the court.

B. Collective Dispute Resolution

A collective dispute arises between one or more employers and a certain number of employees over working conditions, the exercise of the recognized rights of professional organizations, the recognition of professional organizations within the enterprise, and issues of relations between employers and employees. A collective dispute is resolved under the following process:

- internal settlement negotiation between the employer and representative of the concerned workers;
- either the employee or the employer brings the dispute to the labour inspector of the MLVT or the existence of a dispute is known by the labour inspector through various sources;
- the labour inspector convenes a meeting of the parties for conciliating such dispute within 15 working days after being designated by the Minister of the MLVT;
- if the dispute is conciliated successfully, the labour inspector must prepare a final conciliation report (minutes of conciliation meeting) to be signed by the parties and the inspector himself/herself; then the case is closed;
- if dispute was not successfully conciliated, unless further conciliation is deemed necessary and an extension of the 15 working days period is requested and agreed by both the employees and the employer, the labour inspector must prepare a final conciliation report describing non-conciliated points of dispute and send the report to the Minister for forwarding such dispute to the AC, for arbitration (except where the parties have collectively agreed on dispute resolution procedure other than going to the AC). The AC, which is provided for in the Law on Labour, is a national state institution endowed with legal and equitable decision-making authority with regard to non-conciliated collective labour dispute cases. These disputes are either 'rights disputes', when they relate to claims under existing Law on Labour, labour regulations, collective bargaining agreements or an employment contract, or 'interests disputes', when they relate to future benefits;
- The AC must render its decision in the form of an award within 15 working days from the date of receipt of the dispute from the MLVT (practically from the date the Arbitration Panel is constituted);

- an award issued by the AC could be binding or non-binding depending on the prior agreement of both parties; and
- in the case of a non-binding award, either party may object to such award within eight calendar days after the issuance of the award by filing its objection to the Minister of the MLVT through the Secretariat of Arbitration Council. However, if there is a failure to file an objection within the specified period, such award will become binding. Thereafter, either party may file a lawsuit to the competent court or take industrial action (such as a strike or lock-out).

IV. MEDIATION AND CONCILIATION OF DISPUTES

The NAADR was established by Royal Decree No.NS/RKT/1123/2381 dated 2 November 2023 (the Royal Decree) to provide an alternative mechanism for dispute resolution in Cambodia. This authority has important roles as an alternative to the existing dispute resolution mechanisms in order to enhance the quality, efficiency and speed of resolution of disputes in the country, particularly to make dispute resolution mechanisms accessible to people in rural areas and to reduce the caseloads at the courts.

The NAADR is competent to conciliate civil, commercial and other kinds of disputes directly requested by disputing parties, or any disputes referred to it by the national and sub-national authorities or by competent courts upon agreement of the disputing parties. The NAADR is not allowed to conciliate criminal cases unless otherwise expressly permitted by special law.

The dispute resolution within the framework of NAADR (by NAADR itself or by its conciliators) applies the reconciliation method. This method would combine both conciliation and mediation as one process even though there is no clear separation between conciliation and mediation under Cambodian law. The conciliator is empowered to evaluate the issues, propose solutions, and give his/her views on the potential consequences of the settlement of the dispute. In any case, the decision to settle the dispute is made by the parties at their own will.

It is important to note that the reconciliatory record of the NAADR's conciliator or a team of conciliators must comply with legal requirements set out under the Royal Decree and applicable laws in order to have legal effect. The reconciliatory record may be objected to by disputing parties within 30 days after signing by all parties if there are reasons to believe that the reconciliatory record was not made in compliance with the legal requirements under the Royal Decree and relevant laws. If there is no objection by any party after 30 days of its signing, the record is deemed as complying with the provisions of the Royal Decree and it will have binding effect.

The reconciliatory record which complies with the Royal Decree shall have legal effect as an authentic instrument/deed and can be considered as *prima facie* evidence for the court. It is irrefutable unless there is contradictory evidence or affected by fraud or defects of parties' consent.

A binding reconciliatory record has the same effect as a final judgment of the court and can be used as execution title pursuant to Article 350 of the Code of Civil Procedure. The enforcement of binding reconciliatory records can be refused by the court if there are grounds for violation of mandatory legal provisions, public order or good morals.

The reconciliatory record must not cause any damage to a third party's legal interests. Any third party whose interests are harmed can file a complaint to a competent court in accordance with the law and procedure in force.

Besides the establishment of NAADR, the NCAC adopted its mediation rules in 2023, which allow disputing parties to bring their disputes for mediation. This mediation is also a voluntary process and is subject to the agreement of the disputing parties.

V. RESOLUTION OF CIVIL DISPUTES

A. Civil Lawsuit Proceedings

The proceedings governing civil litigation in Cambodia are governed by the Code of Civil Procedure. This Code provides three types of procedures namely *i) litigation proceedings* which determine the existence or nonexistence of rights or legal relationships between private individuals by rendering a judgment; *ii) compulsory execution procedures* in which rights are ultimately decided (final decision on claim rights) and *iii) procedures of preservative relief* i.e. interim protection which ensures the future existence and exercise of enforcement rights when a party wins the case.

Individuals may pursue civil lawsuits to the court to confirm rights and obligations or relationships through (competent provincial-capital courts), "*Procedure of the Courts of First Instance*" or simply called "*common proceedings*"; and may also appeal to Higher Courts (Appellate Court and Supreme Court), if they are not satisfied with the decision of the lower court.

The Code of Civil Procedure provides three types of appeals to the "Higher Courts" against the court's not yet final decision, which include: *i) Appeal to the Appellate Court* which is called an *Uttor Appeal*, *ii) Appeal to the Supreme Court* which is called a *Sar-tuk Appeal*, and *iii) Appeal to the Higher Courts* against the courts'

rulings that are not courts' judgments (like a ruling to dismiss a motion) which is called a *Chomtoah* Appeal.

B. Non-Suit (Non-Contentious) Civil Proceedings

Non-suit (non-contentious) civil proceedings are a procedure where a civil complaint can be made to affirm or to recognize the status of existence and non-existence of an obligation as defined by substantive law. There are a number of rights and obligations defined in substantive laws and related to the private lives of citizens where the State can intervene to protect the interests of the public. The lawsuit aims at seeking the truth, thus it is non-disputable, with no plaintiff.

The Courts of the First Instance has jurisdiction over these cases they will issue a ruling.

VI. RESOLUTION OF CRIMINAL OFFENSES

A. Criminal Laws

Criminal laws define crimes and offenses, determine those who may be found guilty of committing them, set penalties, and determine how they are enforced.

B. Criminal Procedure

Criminal procedure refers to the procedures to be followed for criminal cases, including the manner in which an offense/crime is investigated by the police or justice police, the way in which an individual is arrested, the means by which a case is brought to court and the rules by which the trial is to be observed. Article 4 of the CCP, allows only the prosecutor to initiate criminal actions in the general interests of society. The criminal proceedings can be conducted through judicial investigation; a citation (see below); and the procedure of immediate appearance.

In the case of a felony, which refers to the category of crimes that are often classified as the most serious types of offenses (generally punishable by imprisonment of over one year), the Prosecutor must open a judicial investigation. The judicial investigation is based on the initial submission provided to the investigating judge. The judicial investigation may be opened against identified or unidentified individuals. The initial submission (to be prepared by the Prosecutor) includes a summary of the facts; a legal qualification of the facts; an indication of relevant provisions of the criminal law and sanctions for offense; and the name(s) of the suspect, if known. The initial submission must be dated and signed according to these formalities, or it is void.

In the case of a misdemeanor, which is a criminal offense that is less serious than a felony and more serious than an infraction (generally punishable by a fine or jail term of up to one year), the Prosecutor may open a judicial investigation as provided in Article 44 (Opening of Judicial Investigation) of the CCP; directly summon the accused to appear before the Court of First Instance as stipulated in Article 46 (Citations) of the CCP; or order the accused to immediately appear before the Court of First Instance in accordance with Article 47 (Immediate Appearance) and Article 48 (Procedure of Immediate Appearance) of the CCP.

A citation is an order made to the accused to appear before the Court of First Instance. A citation must include: the identity of the accused; a summary of the facts; the legal characterization of facts; the indication of relevant provisions of the criminal law and sanctions for the offense. A citation must specify the relevant court, its location, and the date and time of trial and state that the accused may be defended by a lawyer.

When deciding to implement the procedure for ordering a person to appear immediately, the Prosecutor is required to: check the personal identity of the person brought to him/her; inform the person about the charge and the type of the offense; receive the statement of the person if he/she wants to make one; establish a written record on the application of the procedure of immediate appearance.

The Prosecutor must inform the accused that he/she has the right to a lawyer of his/her choice, or a lawyer appointed in accordance with the Law on Statutes of Lawyers (the Law on the Bar). The chosen or appointed lawyer must be informed immediately about the selection or appointment. He/she may study the file and communicate with the accused. Compliance with these procedures must be noted on the written record; otherwise, such procedure will be deemed void.

The Court of First Instance will accept jurisdiction upon receipt of the written record of immediate appearance. The accused must be guarded until he/she appears before the court in which the trial will be conducted on the same day. During the appearance, after confirming the identity of the accused and confronting him/her with a summary of the facts, the court must inform the accused that he/she is entitled to have a period of time to prepare his/her defense. If the accused requests such time or if the court finds that the case may not be tried immediately, the trial must be adjourned to another trial date.

The court can temporarily detain the accused by making a reasoned order. In the order, the court must apply the conditions provided in Article 205 (Reasons for Provisional Detention) of the CCP. The court issues the detention order. The judgment on the merits of the case must be announced no later than two weeks

after the date of the first appearance before the court. The provisional detention will be automatically terminated following the expiration of the two-week arrest period. If the court has received the case through the procedure of immediate appearance and finds that the requirements of Article 47 (Immediate Appearance) of the CCP were not satisfied or that the complexity of the facts necessitates further investigation, the court will send the case back to the Prosecutor in order to open a judicial investigation. The accused will be brought before the investigating judge on the same day. Otherwise, the accused will be released automatically.

VII. RESOLUTION OF ADMINISTRATIVE DISPUTES

Although there is no Administrative Court yet in Cambodia, Article 39 of the Constitution allows citizens to file complaints against any person for their wrongdoing including the act of a Public Administrator. Likewise, Article 128 of the Constitution bestows all judicial power to the ordinary courts to adjudicate cases including administrative cases.

In practice, before an Administrative complaint is filed to the court, interested persons or persons affected by acts of Administrators may seek resolutions of their complaints/disputes through existing mechanisms defined by law.

For instance, the Law on Electricity provides the power to the Electricity Authority of Cambodia to handle complaints on behalf of the Ministry of Mines and Energy.

Likewise, the Law on Management of Capital, Provincial, City, District, and Khan Administrations allows citizens to file complaints against a territorial Administration. Article 85 of this law stipulates, “...*Any person or persons who have been adversely affected by, or have paid taxes or service charges because of, illegal actions or decisions, may submit their claim to the competent authority to provide compensation and pay back the full amount. Any person or persons whose claim for compensation has been rejected or has not been paid by the competent authority within a two-month period, that person may inform and make a complaint to the Minister of the Ministry of Interior to coordinate and solve the problem. In the event that the person does not agree with the solution made by the Minister of the Ministry of Interior, that person has the right to file their complaint to the courts*”.

In short, an administrative dispute resolution in Cambodia can be sought through (1) local or sub-national authorities, (2) competent institutional authorities, (3) intra-administrative or inter-ministerial complaint resolutions/grievance redress mechanisms/committees, and (4) the courts.

CHAPTER 14: INSOLVENCY

Relevant Laws:

- Law on Insurance 2014
- Law on the Issuance and Trading of Non-Government Securities 2007
- Law on Insolvency 2006
- Code of Procedure 2006
- Law on Banking and Financial Institutions 1999
- Other sectoral laws and many implementing regulations

I. COURT, ADMINISTRATOR, AND COMPETENT AUTHORITY

Name of Institution	Key Functions and Services
Court of First Instance	<ul style="list-style-type: none"> • A petition to open insolvency proceedings must be filed at the court of first instance with jurisdiction over the registered office or place of business of a commercial enterprise or residence of a businessman; • After receiving the petition, the court may issue a ruling to open insolvency proceedings and appoint an administrator; • During insolvency proceedings, the court may render a ruling or judgment on related matters proposed by the administrator or petitioner, and issue a ruling to freeze assets or stay an action involving assets of the debtor; and • After closing insolvency proceedings by the administrator, the court will issue a ruling to terminate the insolvency proceedings.
Administrator	<ul style="list-style-type: none"> • An administrator is appointed by the court upon written application of the debtor, any creditor, director of a company or the public prosecutor; and • Upon his/her appointment, the administrator must take all necessary or appropriate measures to protect the interests of creditors, in particular, he/she may apply, if necessary and unless the court so rules on its own motion, to the court for injunctive relief (ruling of preservation) operating a freezing of assets or a stay of action by secured or unsecured creditors against the debtor or assets of the estate.
Minister of Justice	<ul style="list-style-type: none"> • The Minister of Justice is empowered to set the minimum amount of debt for opening insolvency proceedings, and to

	set the qualification and remuneration of the administrator appointed by the court.
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II. PETITION, RELATED PERSONS AND GROUND FOR OPENING INSOLVENCY PROCEEDINGS

Insolvency proceedings may be opened against the following types of person or legal entity:

- a partnership or legal entity formed under the laws of the Kingdom of Cambodia;
- a natural person who is domiciled and owns assets in the Kingdom of Cambodia;
- a partnership or legal person formed under the laws of a foreign country which owns assets situated in the Kingdom of Cambodia; and
- a natural person who is domiciled outside the Kingdom of Cambodia and who owns assets situated in the Kingdom of Cambodia.

Insolvency proceedings may be opened against the above types of person upon petition by any of the following:

- a creditor;
- a debtor in the case of an individual person;
- a director, partner or manager of a company or partnership as the case may be; or
- a public prosecutor.

The petition to open insolvency proceedings must be made in writing and signed by the petitioner. The petition shall contain the following information:

- the name and address of the debtor;
- the name and address of the petitioner;
- the ground(s) on which the petition is based;
- evidence on which the petition is based, including an attachment of any documents which could substantiate the petition; and
- a list of all known creditors of the debtor (in case the petition is made by the debtor) including the name of each creditor, its address and the amount of its claim.

The petition to the court for opening insolvency proceedings may be filed on the ground that a debtor has ceased to meet its mature and valid obligations to pay a debt in an aggregate amount exceeding 5,000,000 Riels (approximately USD1,250) or other

minimum amount of debt as determined by the Minister of Justice within 30 days of such cessation.

III. COURT'S INSOLVENCY PROCEEDINGS

In case the petition is filed by a creditor, director of a company or a public prosecutor, the court must serve the debtor with such petition no later than seven days after the petition has been filed with the court. The court must hear the petition to open insolvency proceedings no later than 15 days after the petition is filed. The court must issue its ruling to dismiss the petition or open insolvency proceedings no later than 14 days after hearing the petition. Then, the debtor or any creditor may appeal the court's ruling within seven days of issuance of the ruling. Nevertheless, the insolvency proceedings will be considered opened on the date of the court ruling opening the insolvency proceedings. An appeal will not operate as a stay on the execution of the court's ruling.

IV. EFFECTS OF THE OPENING OF INSOLVENCY PROCEEDINGS

After the court ruling opening insolvency proceedings, and until the termination of the proceedings, no action, proceedings or execution process or any other action of any kind by or on behalf of a creditor may be commenced or continued against the debtor or assets of the estate. The stay of these actions does not apply to administrative claims pertaining to the remuneration, fees and expenses of the administrator and other administrative claims incurred by the administrator.

The administrator may, however, whenever it is in the best interests of the estate, allow a secured creditor in writing to foreclose his/her mortgage, repossess and sell encumbered assets (collateral) or in any other way avail himself/herself of his/her security right and make himself/herself paid by individual action.

The management and power over all debtors' assets shall vest in the administrator. The debtor must cooperate fully with the administrator and provide the administrator with all necessary information pertaining to the business of the debtor.

V. PLAN OF COMPROMISE AND CREDITORS' MEETING

The administrator may propose a plan of compromise, where appropriate. Any proposed plan of compromise must be filed with the court no later than seven days prior to the date of the relevant creditors' meeting. The plan of compromise must be submitted for the approval of creditors, and may contain resolutions on the following matters:

- the cancellation, or reduction in the amount of any claim, including exchange for shares or equity in the debtor's business;
- the scheduling of the payment of any claim;
- the continuation of the business of the debtor, or a part thereof, by the debtor or any other person; and
- the sale or disposition of any asset of the estate, either subject to or free of any encumbrances or liens, or the distribution of all or any asset of the estate among those having an interest in such asset.

The creditors' meeting must be convened and chaired by a judge with the assistance of the administrator. At the opening of the creditors' meeting, the administrator will report on the debtor's business situation and the causes thereof. The administrator must indicate whether there is a chance to maintain the debtor's business in whole or in part, what chances exist for the approval and implementation of a plan of compromise and what effects would arise for the satisfaction of the creditors. At the meeting, the creditors may:

- decide based on the administrator's report for that meeting, on the continuation of the insolvency proceedings;
- vote on any plan of compromise that may have been proposed by the debtor;
- verify the claims list;
- decide on other matters related to the insolvency proceedings such as discharge and replacement of the administrator, making a proposal to the Minister of Justice regarding the amount of the administrator's remuneration, and appointment of a creditors' committee.

Any decisions taken at a creditors' meeting will be binding on all creditors, including absent creditors. The creditors may appoint a creditors' committee to represent their interests as a whole. The creditors' committee may request the administrator to inspect the books and accounts of the debtor. The costs for establishment and operation of the creditors' committee are treated as claims incurred by the administrator.

VI. LIQUIDATION AND SATISFACTION OF CLAIMS

Upon the commencement of liquidation, the administrator must convert all non-cash assets of the estate into cash as soon as possible, in so far as it is required for the satisfaction of creditors' claims in insolvency proceedings. In dealing with the assets of the estate, the administrator may use any commercially reasonable method which is likely to yield the highest cash return to the estate. In converting all non-cash assets of the

estate, all assets disposed of by the administrator must be free of any and all encumbrances or liens.

The proceeds of the liquidation of the estate shall be used to satisfy claims in the following order:

- employee wages, administrator's remuneration and fees, administrative fees, and court's fees;
- secured claims, up to the higher of the value of the secured portion of the claims or the relevant net proceeds from an effective sale of the encumbered assets/collateral;
- state taxes for which notice is not filed; and
- all other admissible unsecured claims.

VII. TERMINATION OF INSOLVENCY PROCEEDINGS

The administrator must submit to the court a written report of his/her activities. The report must contain a final account of the distributions made and remaining unsatisfied claims and be submitted no later than 30 days after the depletion of all saleable parts of the estate.

The court shall convene a final creditors' meeting within 14 days of its receipt of the administrator's report. The creditors' meeting will adopt the final account of the distributions made and remaining unsatisfied claims, and decide on the use of the parts of the estate that cannot be sold. Immediately after the creditors' meeting, the court will issue a ruling to terminate the insolvency proceedings which will be published in the official gazette and daily newspapers in Cambodia.

In the case of a debtor that is a company, the debtor will be deemed dissolved upon the issuance of the court ruling terminating the insolvency proceedings unless the termination of insolvency proceedings resulted from the satisfaction of all claims against the debtor.

In the case of a debtor that is a natural person or partnership domiciled in Cambodia, the debtor may apply to the court to be released from all admissible claims which were not satisfied in the insolvency proceedings unless undistributed assets or monies were returned to the debtor.

Any creditor whose claims were included in the claims list and were not satisfied in full, may, within the period of one year from the termination of the insolvency proceedings, make a written application to the court to resume the insolvency proceedings.

CHAPTER 15: NOTARY PUBLIC

Relevant Laws:

- Royal Kram No. 910 on the Status of Notaries 1954
- Code of Civil Procedure 2006
- Civil Code 2007
- Law on Implementation of the Civil Code 2011
- Other sectoral laws and many implementing regulations

I. APPOINTMENT OF NOTARY

Name of Institution	Key Functions and Services
Royal Government of Cambodia (RGC)	<ul style="list-style-type: none">• The RGC issues a sub-decree to appoint notary publics and determine their roles and responsibilities, as well as to establish the office of notaries.
Royal School of Notary	<ul style="list-style-type: none">• The Royal School of Notaries provides training for student notaries prior to their appointment as notaries.
Ministry of Justice	<ul style="list-style-type: none">• The Ministry of Justice may also appoint judges, prosecutors or other dignitaries as officials in charge of notarial affairs.

The consular official of Cambodia located in a foreign country and other officials accredited by the RGC may also perform notarial functions.

II. FUNCTIONS OF NOTARY

A notary public may be defined as an officer of the law whose duty is to draw, authenticate, or certify, under his or her official seal, deeds and other documents. In legal systems, there are two types of notary public: notary public of common law system and notary public of civil law system (or Latin notary).

The main function of a notary public of the common law is generally to witness and authenticate the execution of certain classes of documents conferred by laws, take acknowledgments of deeds and provide notarial copies and perform certain other official acts depending on the jurisdiction. Unlike a notary of the common law, a civil law notary is a public officer constituted by law to serve the public in non-contentious matters usually concerning private laws. They provide legal advice, draft, authenticate, and register legal instruments for private parties. Despite holding a public office, they operate in private

practice and are paid on a fee-for-service basis. Unlike attorneys-at-law, notaries public are not qualified in adversarial process and court procedures. The most common areas of practice of notaries are in contracts, property, family, succession, and commercial law.

A notary duly appointed by the RGC may perform any of the following functions:

- To accept and prepare all legal documents or agreements/contracts of which natural persons or legal persons of the private law, or legal persons of the public law are obliged to provide authenticity in accordance with the determined law or wish to provide authenticity by themselves;
- To accept and certify all legal documents or agreements/contracts of which natural persons or legal persons of the private law, or legal persons of the public law are obliged to implement in accordance with the determined law or their will;
- To authenticate signatures on and dates of documents, letters or contracts;
- To authenticate documents translated from a foreign language to Khmer language and from the Khmer language to a foreign language;
- To make requests for registration and inscription to competent institutions;
- To keep originals of legal documents and agreements;
- To keep original documents of will;
- To issue copies of authenticated documents; and
- To accept, prepare and certify other legal documents authorized by law.

III. THE USE AND EFFECT OF NOTARIAL DOCUMENTS OR CONTRACTS

There are numerous provisions of the Civil Code (CC) requiring a contract or deed to be made in a notarial document. The Code of Civil Procedure also stipulates the use of notarial certificate as a Title of Execution or Execution Clause concerning the demand for payment of a fixed amount of money and the enforcement of a security interest. The following are examples of those provisions:

A. Formation of Contract to Transfer or Acquire Ownership of Immovable Properties

Article 336 of the CC. (Formation of Contract via Offer and Acceptance)

- A contract comes into effect when an offer and an acceptance thereof conform to each other.
- Notwithstanding the provisions of paragraph (1), a contract in which one of the parties bears a duty to transfer or to acquire ownership on an immovable, shall come into effect only when such contract is made by notarial document.

Article 516 of the CC. (Formation of Sale Contract)

A sale contract is formed based only on the agreement of the parties thereto unless otherwise provided by law. However, the parties may require as a condition for the formation of the contract the execution of a notarial document or a written document signed by the parties in their individual capacities.

B. Asserting Hypothec and Effect of Disposal of Hypothec

Article 845 of the CC. (Asserting Hypothec)

A hypothec (receiver of hypothec) may not assert the hypothec against a third party who is not the hypothecator (giver of hypothec) unless the instrument creating a hypothec is authenticated and registered in the land registry.

Article 862 of the CC. (Effect of Disposal of Hypothec)

(1) The disposal of a hypothec described in CC Articles 859 (Sub-hypothecation), 860 (Transfer or waiver of hypothec) and 861 (Transfer, waiver or change of ranking) shall be ineffective unless it is authenticated and entered in the registration thereof.

C. Will by Notarial Document

Article 1173 of the CC. (Will by Notarial Document)

- In order to make a will by notarial document, a testator shall carry out the formalities prescribed in paragraph (2), before a notary.
- A will by notarial document shall comply with the following formalities:
 - That two or more witnesses are present;
 - That the testator orally declares the tenor of the will to the notary;
 - That the notary writes down the contents of the testator's will and reads it aloud to the testator and the witnesses;
 - That, after acknowledging the correct writing of the contents, the testator and the witnesses each note their name, age, address and affix signature on it; provided that if the testator is unable to write or sign, the notary shall note the above matters and sign in lieu of the testator and make an additional note of the reason for so doing;
 - That the notary dates and signs the document.

D. Subrogation by Performance

Article 459 of the CC. (Subrogation by performance)

- A person who has procured a discharge through his own performance or other expenditure and thereby obtains the right to demand indemnification from the obligor may exercise via subrogation the claim held by the obligee and all other rights associated therewith.
- The provisions of Article 503 (Conditions for asserting assignment of claim belonging to specified person) shall apply mutatis mutandis to the situation described in paragraph (1).
- The notification described in Articles 913 (Requirements for indemnification) and 933 (Notification as requirement for indemnification) may be substituted for the notification described in paragraph (2). However, where a date-certified instrument is demanded in connection with provisions as to which paragraph (2) hereof applies mutatis mutandis, the notification described in this paragraph shall also be provided by means of a date-certified instrument.

E. Requirement for Assertion of Assignment of Nominative Claim

Article 502 of the CC. (Establishment of Assignment of Claim)

The assignment of a claim shall take effect only through agreement between the obligee seeking to assign the claim and the assignee. However, in order to assert the assignment of a claim against the obligor or a third party, the conditions established in Article 503 (Conditions for asserting assignment of claim belonging to specified person) must be met.

Article 503 of the CC. (Conditions for asserting assignment of claim belonging to specified person)

- The assignment of a claim belonging to a specified person cannot be asserted as against the obligor or any third party unless the assignor has given notice thereof to the obligor or the obligor has consented thereto to the assignor or the assignee.
- The notice or consent described in paragraph (1) cannot be asserted against a third party other than the obligor unless they are given in a Notarial Document bearing a fixed date.

F. Establishment of Assignment of Contractual Position

Article 513 of the CC. (Establishment of assignment of contractual position)

The assignment of a contractual position takes effect only upon the agreement of the assignee and the party to the contract who is seeking to assign the contractual position. However, in order to assert the assignment against the other party to the contract or a third party, the conditions for assertion set forth in Article 503 (Conditions for asserting assignment of claim belonging to specified person) pertaining to assignment of obligations must be met.

G. Requirements for Assertion of Pledge over Claim in Name of Specific Creditor

Article 841 of the CC. (Requirements for assertion of pledge over claim in name of specific creditor)

- Where a claim belonging to a specific creditor is made the object of a pledge, the pledge cannot be asserted against the original debtor of such claim or any other third party unless such original debtor has been notified of the creation of the pledge or unless he has given consent thereto.
- The notice and consent described in paragraph (1) may not be asserted against a third party other than the original debtor unless they are evidenced by a Notarial Document bearing a fixed date.

H. Notarial Certificate Used as Title of Execution and Execution Clause Pursuant to the Provisions of the Code of Civil Procedure

The Code of Civil Procedure accords executory force to the notarial instruments pertaining to the demand of payment of a fixed amount of money and the enforcement of a security interest. A notary may issue his certificate stating the amount of the claims to be paid by the debtor. The claim of payment of fixed amount of moneys may be based on the obligations stated in a sale contract, lease contract, settlement contract, loan for consumption, labour contract, etc. Such notarial certificate is used as a title of execution as stipulated in Article 350 of the CCP. Additionally, a notarial contract creating a security interest is considered a title of execution for the enforcement of such security interest. The execution of a notarial certificate is implemented on the basis of an authenticated copy of Title of Execution bearing an Execution Clause as stipulated in Article 355 of the CCP. The notary may also issue a Special Execution Clause as defined by Article 356 of the CCP.

The relevant articles are quoted in brief as below.

Article 350 of the CCP. (Title of Execution)

- Execution shall be carried out on the basis of a title of execution.
- Title of execution refers to the following:
 - a binding judgment for performance;
 - a judgment for performance accompanied by a declaration of provisional execution;
 - a ruling ordering payment; provided that this is limited to final and binding rulings in the case of rulings that are only valid upon becoming final and binding;
 - a ruling demanding payment accompanied by a declaration of provisional execution;
 - disposition by a court clerk prescribed in Paragraph 1 of Article 66 (Procedures to fix amount of litigation costs);
 - a certificate prepared by a notary concerning a demand for a fixed amount of money; provided that this only applies to certificates that include a statement that the debt shall be immediately subject to execution;
 - a judgment of a foreign court in respect of which an execution judgment has been rendered that has become final and binding under, Article 352 (Execution judgment of foreign court judgment);
 - an arbitration award in respect of which an execution ruling has been rendered that has become final and binding under Article 353 (Execution of arbitration awards); and/or
 - a protocol having the same effect as a final judgment such as a protocol prescribed in Article 222 (Effect of written compromise settlement, etc.)

Article 355 of the CCP. (Application for Grant of Execution Clause)

- An application for grant of an execution clause must be in writing and include the following particulars:
 - the name or title and address of the creditor in execution and the debtor in execution, together with the names and addresses of their legal representatives;
 - description of the title of execution; and
 - if grant of an execution clause under Article 356 (Special execution clause).

Article 356 of the CCP. (Special Execution Clause)

- If the right of claim stated in the title of execution is subject to a condition precedent or to an uncertain time stipulation, the court clerk or notary may only

grant an execution clause if the creditor in execution proves that said condition or stipulation has been fulfilled.

- In order to carry out execution with a party other than a party noted in the title of execution as the creditor in execution or the debtor in execution, the creditor in execution must obtain an execution clause that states this.
- A court clerk or notary can grant an execution clause prescribed in Paragraph 2 if it is clear that execution with a party other than a party noted in the title of execution as the creditor in execution or debtor in execution can be carried out, or if the debtor in execution provides documentary proof thereof.
- A court clerk must obtain the permission of the court to which he/she belongs for the grant of an execution clause under Paragraph 1 of Paragraph 3 of this Article.

Article 496 of CCP (Title of Execution for Enforcement of Security Interests)

Notwithstanding the provisions of CCP Article 350 (Title of Execution), the enforcement of a security interest shall be based on the following titles of execution:

- A final and binding judgment evidencing the existence of the security interest, or the document having the same effect, or
- A certificate prepared by a notary proving the existence of the security interest.

Besides the executory force, given that a notary is a public officer, his/her instruments have a high degree of authority and are received as primary evidence in court (high evidentiary value).

CHAPTER 16: TRUST LAW

Relevant Laws:

- e) Law on the Organization and Functioning of the Non-Bank Financial Services Authority 2021
- f) Law on Trust 2019
- g) Sub-Decree on Uniforms, Insignia, and Signal-Rank of Trust Inspectors 2022
- h) Sub-Decree on the Organization and Functioning of Line-Entities of Non-Bank Financial Services Authority 2021
- i) Sub-Decree on Trust Registration 2019
- j) Sub-Decree on Financial Trust 2013
- k) Prakas on the Rules for Governing, Organization and Functioning of Trust (2022); and
- l) Other sectorial laws and many implementing regulations.

The Law on Organization and Functioning of Non-Banking Financial Services Authority was promulgated in 2021 to establish a Non-Banking Financial Services Authority (“**NBFS**”) whose role is to regulate and supervise the non-banking financial sector in Cambodia. Under the NBFS, subordinate entities including the Insurance Regulator of Cambodia, the Securities and Exchange Regulator of Cambodia, the Social Security Regulator, the Accounting and Auditing Regulator and the Trust Regulator (“**TR**”) have their respective roles and duties set out therein. The TR is required to carry out the roles and duties of the MEF as stated in the Law on Trust and other laws and regulations applicable to the trust sector.

The Law on Trust covers the scope of implementation for trusts to be established in the Kingdom of Cambodia. According to the Sub-Decree on Trust Registration, the TR retains, regulates and records trust activities in Cambodia.

I. NATURE OF A TRUST

Any transaction which involves the transfer of assets from a person (a “**Trustor**” or “**Grantor**”) into the custody or management of or at the disposal of another person (a “**Trustee**”) (which may be a natural or legal person) for the benefit of the Trustor or another person (a “**Beneficiary**”) is deemed to create a trust (a “**Trust**”).

A Trust will be bound by the terms of a trust agreement (“**Trust Deed**”) which is entered into between a Trustee and a Trustor or a contributor to a Trust fund (“**Trust Fund**”). Only after the establishment of the Trust is approved by the TR can a Trust be registered with

the TR. The validity of the Trust commences from the date of its official registration with the TR.

II. TRUST INSTRUMENTS

A Trust is required to be created by a written instrument, certified by a notary or a lawyer or a Commune/Sangkat chief, in a form which includes, at a minimum, the following:

- name and address of the Trustee, the Beneficiary and the Trustor and/or the replacement Trustor and/or the contributor to the Trust Fund;
- objectives of the Trust;
- juristic instruments certifying the Trust including (1) declaration of the source of the Trust Fund and (2) total amount and/or balance of the Trust Fund;
- the limitation period of the Trust;
- rights and obligations of the Trustee, the Beneficiary and the Trustor and/or the replacement Trustor and/or the contributor of the Trust Fund;
- conditions on termination of the Trust;
- disposition of the Trust when the Trust is terminated;
- conditions regarding amendments of the Trust Deed;
- investment objectives and/or use of the property of the Trust;
- the subject of the Trust;
- other requirements by the trustor and/or the replacement trustor and/or the contributor of the Trust Fund; and
- remuneration of the Trustee which is to be based on the professional qualifications and work experience of the Trustee.

The Trust Law sets out four types of Trust as follows:

- Commercial Trust;
- Public Trust;
- Social Trust; and
- Individual Trust.

A. Commercial Trust

A Commercial Trust is a Trust that is established for the purpose of seeking profit for the benefit of the contributor of the Trust Fund or to any specific individual determined by the contributor of the Trust Fund, including:

1. Retirement pension funds, educational funds and other similar funds/properties which a person transfers to the Trustee and the Trustee

transfers such funds/properties to the person or to any other person if the following conditions are satisfied:

- a) There are regular transfers of property or funds to the Trustee by any person and the Trustee manages and disposes of/deals with the same in the specific interests of that person or of other persons;
 - b) There is/are property/ies or funds of other contributors to be included in the investment project/scheme, and such property/ies or funds is/are invested by the Trustee for the benefit of all contributors in accordance with the conditions; and
 - c) The property and the proceeds/profits received/obtained from the investment is determined, managed and separately reported to the person.
2. Retention service which includes the transfer of property/ies or funds by any person to the Trustee and the Trustee shall transfer such property back to the person or to any other person when the following conditions are satisfied:
- a) There is a property or funds being retained by any person at a notary office or attorney-at-law office or accounting firm; or
 - b) There is a holding of property or deposit of funds for the benefit of the investor, the real estate buyer and for other commercial operations; or
 - c) Other retention services which are permitted by the decision of other regulators, such as the NBC, the SERC, or the MEF in order to manage the activities under the authorities of those regulators.
3. Employee investment projects/schemes or employee benefits in which the Trustee manages the property or funds with the intention to invest in the name of the employees; and
4. For other purposes such as:
- a) When a contributor transfers his/her property or fund to the Trustee for the benefit of such contributor or other persons as determined by the contributor; and
 - b) When applicable laws and regulations set out conditions on the management regarding the operation and activity of the trust.

B. Public Trust

Public Trusts are established for the benefit of the Cambodian people and include:

1. Trusts established to assist with the development of the banking and microfinance sector in Cambodia (a) when a development partner provides its property(ies) or funds for the benefit of the Cambodian people and those property(ies) or funds have been managed and organized in/disposed of by a banking or microfinance institution, or other persons for such benefit; and

- (b) when such establishment is in accordance with the terms and conditions set out in the trust instrument or applicable laws and regulations.
2. Trusts established for public interest when the relevant regulator appoints any Trustee to administer/manage and protect the funds in accordance with the terms and conditions set out in the trust instrument or applicable laws and regulations under the following conditions:
 - a) Funds provided to or by the RGC for a donor's specific purpose for which such funds shall be used, disposed and enjoyed in accordance with its purpose; or
 - b) Trusts protecting the interests of children or incapable persons; or
 - c) Trusts based on a wills/testament of property which becomes state property in accordance with the applicable laws and regulations.

C. Social Trust

Social Trusts are established by a Trustor by way of donating his/her property to a Trustee for public interest such as cultural, educational, humanitarian, religious or scientific purpose, including the following:

1. Special Fund:
 - a) A fund which is created by the Trustor through donation or will;
 - b) A fund created through the receipt of property from a contributor of Trust who is still alive or through a will;
 - c) A property transferred to the Trustee for social purpose;
 - d) A fund established not for corporate or commercial purpose; and
 - e) An initial property and additional property which the Trust contributor has transferred into any fund to be kept for the purpose of the trust, and to allow for distribution only the proceeds received/obtained from the property, unless provided otherwise in the trust instrument.
2. Fund established for cultural, educational, humanitarian, religious or scientific purpose which is received from a person in the form of donation or will, and such fund shall be transferred to serve the said purpose.

D. Individual Trust

An Individual Personal Trust is established for the benefit of the Trustor or a person specified by the Trustor having the following characteristics:

1. The Trustor shall be a natural person who makes a donation of his/her property or funds to the Trustee for his/her personal interest or for other persons; or

2. The transfer of property or funds is made by the Trustor under the following conditions:
 - a) In case the Trustor is alive, the Trustor shall make the trust instrument certified by notary public, lawyer or commune authority, or other persons as stated in the applicable laws and regulations; or
 - b) In case the Trustor has a will or testament on creation of a Trust, upon the death of the Trustor, a Trust will be created in accordance with the provisions of the CC.

III. TERM OF TRUST

The duration of each Trust may not exceed the duration of 100 years counting from the establishment date of that Trust except Social Trusts and Public Trusts or other types of trust established by laws or regulations that can continue for an indefinite period of time or a specific period of time as stipulated by such laws or regulations.

HBS LAW PROFILE

HBS LAW is a leading law firm registered with the Bar Association of Cambodia, that has been providing legal services of the highest quality to many of the world's leading companies, governments, financial institutions and other organizations since 2005. As a registered law firm and a firm with its own associated notary, HBS Notary Public, we can offer a truly one-stop-shop experience for our clients.

We understand that our clients are not simply looking for correct advice but also for excellent service delivery. In this regard, we pride ourselves on being the only registered law firm in Cambodia built on a genuine partnership with and working relationship between our Cambodian and foreign lawyers. This enables us to offer a level of service commensurate with the level of service that our clients expect from lawyers in their own jurisdictions.

Cambodia has taken great strides in enacting laws to facilitate and encourage foreign investment since its accession to the WTO in 2004 and this is reflected in the huge growth of foreign investment into Cambodia and the development of the country, particularly in the last 10 years. Nevertheless, the country's legal system remains a work-in-progress and gaps in the law are often supplemented by practice. HBS LAW has, through years of capacity building and assistance with legal and business development programs, fostered a strong relationship with governmental institutions that enables our advisers to not only be informed as to those practices but also to shape them.

Our clients are required to become more and more agile and nimble-footed, and so do we. Our Innovations Committee (the only one of its kind at a Cambodian law firm) is continually formulating and implementing innovations in the way we deliver our services whether they be of a technological nature or otherwise.

HBS LAW can assist clients with the full range of legal and tax matters and has established dedicated practice groups comprised of seasoned lawyers with substantial experience in each relevant area. Notwithstanding our dedicated practice groups, we appreciate that for our advisers to give full and complete advice, they need to have a working knowledge of issues covered by other practice groups. Our training includes cross-practice group training sessions to achieve this result.

CURRENT PRACTICE GROUPS

Our Practice Groups are made up of lawyers and advisers with appropriate experience and expertise. Some client matters fall under the auspice of more than one Group but we give a seamless service and provide clear points of contact so you can get in touch at any time on any matter we are handling.

Currently, our Practice Groups are as follows:

- AML/CFT
- Aviation
- Banking & Finance
- Capital Markets
- Criminal Law
- Corporate & Commercial
- Dispute Resolution
- Energy, Infrastructure & Mining
- Environmental Law
- Family Law
- Gaming
- Healthcare & Life Sciences
- Hospitality & Retail
- Immigration
- Insolvency & Corporate Restructuring
- Insurance
- Intellectual Property
- Labor
- Media & Entertainment
- Real Estate & Construction
- Securities
- Tax & Customs
- Telecommunications & Technology
- Tourism
- Transportation & Logistics
- Trusts
- Wills & Probate

Please see our website www.hbslaw.asia for further details or contact us at:

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Mr. HAK has been a practicing attorney since 1997. He obtained a Master of Law from the Royal University of Law and Economics in 2006, after obtaining a Bachelor's Degree in Law from the same university in 2000.

Earlier in his career, Mr. HAK served as a provincial court clerk for four years before moving on to private practice. He has been elected as a member of the Bar Council of the Bar Association of the Kingdom of Cambodia for few terms, and is appointed as a lawyer for the Ministry of Interior.

Mr. HAK is the Chairman of HBS LAW and Partner in charge of its litigation and dispute resolution practices.



Mr. Ly is an experienced business lawyer with demonstrated focus and expertise in the areas of Corporate, Banking, Securities, Trusts, Mergers and Acquisitions, Mining and Energy, Real Estate, Tax, Insolvency, Arbitration and Commercial Litigation.

He acts regularly for, and advises local and foreign banks, state enterprises, and other multinational corporations on complex financing projects, equity investments, IPOs, corporate bonds, M&As, aircraft leasing, telecommunications and infrastructure projects.

He is accredited by the Securities and Exchange Regulator of Cambodia to advise on securities laws and regulations, by the Ministry of Commerce as a Mark Agent, is a Labor Arbitrator for the Labor Arbitration Council, licensed to be an Administrator of Insolvency Proceedings by the Ministry of Justice and is licensed to act as an Independent Individual Trustee by the Trust Regulator of Cambodia. He is also a member and/or director of other local and international business chambers and associations.

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