



Legal Update
**Prakas No. 003 on Rules for Governing,
Organization And Functioning of Trust
Issued on 26 January 2022**

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On 26 January 2022, the Non-Banking Financial Service Authority issued Prakas No. 003 on the Rules for Governing, Organization and Functioning of Trust (the “**Prakas No. 003**”). This Prakas elaborates various rules and procedures in relation to the creation, registration and licensing of trusts in Cambodia. Prakas No. 003 was issued pursuant to the Cambodian Trust Law (the “**Trust Law**”), which was promulgated on 02 January 2019 which was implemented pursuant to the Sub-Decree No. 114 on Trust Registration (“**Sub-decree No. 114**”) dated 02 August 2019 and a Prakas No. 854 on Service Fee for Trust Registration dated 30 September 2019 (“**Prakas on Service Fee**”). Other two relevant regulations are the Law on Organization and Functioning of Non-Banking Financial Service Authority promulgated on 16 January 2021 and the Sub-Decree No. 113 on the Organization and Functioning of Subordinated Entities of the Non-Banking Financial Service Authority dated 14 July 2021. In this legal update, we refer to the Trust Law and associated implementing statutory Prakas and these Sub-Decrees, a referred to in this legal update, collectively, as “**Cambodia Trust Laws**”.

This legal update focuses certain key developments encapsulated within Prakas No. 003. References to Articles in this legal update below, are references to Articles of Prakas No. 003.

In summary, Prakas No. 003 elaborates upon the following:

A. Nature of a Trust

1. Any transaction which involves the transfer of assets from a person (a “**Trustor**” or “**Grantor**”) into the custody or management or at the disposal of another person (a “**Trustee**”) (which may be a natural or legal person) for benefits of another person (a “**Beneficiary**”) is deemed to create a trust (“**Trust**”) [**Article 4**]. Trusts shall be subject to the compliance obligations set out in the Cambodia Trust Laws (as amended or updated, from time to time).
2. Duration –A Trust shall not exist for a period that exceeds 100 years from the date of the establishment except for a social trust and a public trust or other type of trust established by law or regulation that can continue for an indefinite period of time or a specific period of time as stipulated by the applicable law or regulation, [**Article 64**].
3. A Trust shall be bound by terms of a Trust agreement (“**Trust Deed**”) and consent between a Trustee and a Trustor or a contributor of trust fund [**Paragraph 1 of Article 9**].

4. A Trust Deed shall include certain mandatory provisions (see Article 6 of the Sub-Decree No. 114) and follow the standard format which is prescribed by the Trust Regulator. The following terms of a Trust Deed shall be void:
 - Any provision which indemnifies or holds Trustee harmless from their violation of the trust with serious negligence, bad faith or intention;
 - Any provision which permits the use of Trust asset to pay damages or expenses incurred in relation to the responsibility of the trustee for their violation of the trust with serious negligence, bad faith, or intention;
 - Any provision which violates public order and public interests.
[Paragraph 2 and 3 of Article 9].
5. Only after the establishment of the Trust is approved by the Trust Regulator can a Trust be registered with the Trust Regulator [Article 4]. The validity of the Trust commences from the date of official registration of a Trust with the Trust Regulator [Article 54].
6. Any person both legal and natural who desires to act as a Trustee (or Trustee representative) must obtain a license/approval/ registration from the Trust Regulator, noting that this does not apply to the person appointed by the Royal Government of Cambodia to operate a Trust, [Article 12].
7. A licensed and/or approved Trustee must commence their trust operation within 3 months after obtaining the license and/or approval [Article 29]. The license and/or approval is valid for 2 years from the date of obtaining, and can be renewed for another 3 years upon its expiration [Article 12].
8. Any company that has obtained a license as a trust company in the Collective Investment Scheme or a Custodian Person by the Securities and Exchange Regulator of Cambodia are deemed to be a trust under the Prakas No. 003, and must be registered with the Trust Regulator within 6 months after the enter into force of the Prakas No. 003, [Article 50, 51 and 71].

B. Trust Establishment and Registration

1. Before a Trust can be established, first of all, a Trustor (or a contributor of trust fund) must appoint a licensed and/or approved Trustee, [Paragraph 1 of Article 8].
2. The appointed Trustee shall, on behalf of the Trustor (or the contributor of trust fund), apply for the establishment of the Trust with the Trust Regulator within 15 days after the appointment is approved; by submitting an application form and supporting documents as determined by the Trust Regulator (the “Necessary Documents”) [Paragraph 1 of Article 8].
3. The Trust Regulator shall deny the application or provide the principle approval on the establishment of the trust within 15 working days after receiving the application and all Necessary Documents [Paragraph 2 of Article 10].
4. After the establishment of the Trust is approved by the Trust Regulator, a Trustee shall apply for the registration of such Trust within 3 months in order to validate the Trust, [Article 54].
5. The Trustor shall register any Trust that has been established but has not yet been registered with the Trust regulator within the latest 6 months after the enter into force of the Prakas No. 003 [Article 72].

C. Licensing Obligations - Trustees

1. A legal person (a company) that wishes to apply for a trustee license and/or approval is required to possess certain mandatory qualifications including but not limited the following [Article 16]:

- Company registration and tax registration under Cambodian laws and regulations;
 - having a particular amount of minimum capital for each type of Trust; and
 - having some key human resources, one of which is an individual trustee licensed by the Trust regulator.
2. The qualification requirements applicable to Trustees summarized in Article 16 above shall not apply to any commercial bank who wishes to obtain a license for operating only escrow service, save that such commercial bank providing escrow services must:
- Appoint a Head of Operation approved by the Trust Regulator
 - Appoint a person specialized in law approved by the Trust Regulator
 - Appoint an accountant specialized in trust approved by the Trust Regulator
- [Article 17 and 18].**
3. Under Article 27, any individual being natural person (as opposed to a company) who wishes to become an independent individual Trustee shall possess some qualification including but not limited to the following:
- having a residence in Cambodia;
 - having legal capacity;
 - being a lawyer and an associate or a member of a law firm or law office in Cambodia; or a notary and an associate or a member of a notary firm in Cambodia; or a bankruptcy administrator registered in Cambodia; or several other professional persons **[Article 27]**; and
 - Depositing 80,000,000 KHR (Eighty Million Khmer Riel) as business guarantee in a bank account of the Trust Regulator at the National Bank of Cambodia.
4. The total amount of the trust asset that an independent individual Trustee can manage, dispose, and keep custody shall not exceed 10,000,000,000 KHR (Ten Billion Khmer Riel) unless otherwise approved by the Trust Regulator **[Paragraph 1 of Article 23]**.

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