



ក្រុមហ៊ុនមេធាវី អេច ប៊ី អេស

**PRACTICAL GUIDE
DOING BUSINESS IN CAMBODIA**

Practical Guide Doing Business in Cambodia

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ABBREVIATIONS

ADB	Asian Development Bank
ACU	Anti-Corruption Unit
AEC	ASEAN Economic Community
ASEAN	Association of Southeast Asian Nations
AusAID	Australian Agency for International Development
CDC	Council for the Development of Cambodia
CIB	Cambodian Investment Board
CNPA	Cambodian National Petroleum Authority
CNPC	China National Petroleum Corporation
CPC	Cambodian Petrochemical Company
CSEZB	Cambodian Special Economic Zone Board
EAC	Electricity Authority of Cambodia
EDC	Electricité Du Cambodge
EIA	Environmental Impact Assessment
GDT	General Department of Taxation
GIAC	General Insurance Association of Cambodia
IAC	Insurance Association of Cambodia
ILO	International Labour Organization
IPP	Independent Power Producers
JICA	Japan International Cooperation Agency
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
MPT	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	Department of Labour and Vocational Training
PDOC	Provincial Department of Commerce
QIP	Qualified Investment Project
RGC	Royal Government of Cambodia
SECC	Securities and Exchange Commission of Cambodia
SEZ	Special Economic Zone
UN	United Nations
UNTAC	United Nations Transitional Authority in Cambodia
WIPO	World Intellectual Property Organization
WTO	World Trade Organization

PREFACE

After the 1991 Paris Peace Accord, an adoption of a democratic and market-based economic system with good governance principles and practice, and integration into regional and global socio-economic networks such as WTO, WIPO, ILO, and ASEAN, Cambodia has been achieving a remarkably fast socio-economic growth in the region and recently has been named by ADB as an emerging economic tiger in the South-East Asia region.

With ambitious legal reform agenda to meet its local needs and regional and global requirements, from 1993 Cambodia 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 New York Convention on Recognition and Enforcement of Foreign Arbitral Awards.

This legal and regulatory reform is an on-going and speedy process in which new laws and/or 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 businessmen and investors to keep abreast of such reform.

Therefore, the purpose of this book is to give a Practical Guide to anybody looking to do business or invest in Cambodia. The book is not meant to be a definitive compendium of all legal matters the reader may encounter, nor be 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 for the sake of brevity, then we are just an email or phone call away. We wish you every success in doing business or 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 such as Hinduism, Buddhism and 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 legal rules and implemented the policies of communism.

Since its liberation from the Khmer Rouge regime in 1979, the Cambodian legal system has still experienced many changes due to social and political changes and the need to rebuild a legal system to govern and develop the country. Cambodia has been mainly following a civil law tradition which is rooted in Romano-Germanic legal tradition and based on codified legislations, 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, during this period, Cambodian laws and regulations were widely influenced by the social and communist legal concepts taken from the Former Soviet Union and Social Republic of Vietnam.

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 UNTAC, 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-multi-party democracy, the guarantee of protection of property and human rights and the respect of laws, 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 also harmonized the local legal and regulatory requirements within a regional and global

legal framework. In particular, the modernization of the Cambodian legal system continues due to its integration into global and regional communities such as ASEAN in 1997 and WTO in 2004. Many laws and regulations have been promulgated or issued to meet Cambodia's commitment in its accession to WTO.

The Cambodian government has also been updating and improving its legal and regulatory framework in order to attract direct foreign investment to Cambodia as well as to reconcile with the global legal framework. For instance, in the areas of business law, the Law on Investment was promulgated in 1994 and amended in 2003. The Law on Taxation was promulgated in 1997 and amended in 2003.

II. THE CIVIL LAW AND COMMON LAW TRADITIONS

Cambodia mainly adopts and practises a civil law system. The judge makes a decision based on the provisions of codified legislation. It is different from the common law system, where the judge may make a decision based on existing precedents.

The Cambodian legislation shall be published in the government official gazette in order to be effective after it is 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 legislation (Chbab) is adopted based on a proposed law initiated by members of Parliament or a draft law submitted to Parliament by the Executive (the Royal Government of Cambodia).

Most of the current laws originated from draft laws. The competent ministry prepares the initial draft of the law 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 shall submit 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 just accept the adopted law if it fully complies with the format and contents of the draft law sent from the National Assembly, and then sent back to the National Assembly for submitting to the King for promulgation.

After signing by the King, the adopted law will be published in the government 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 Parliament, treaty and international agreements ratified by Parliament, and the 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 the 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. The revisions or amendments of the Constitution shall be enacted by a constitutional law passed by the National Assembly with a two-thirds majority vote of all members of the National Assembly. However, the revision 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 shall be in compliance with the Constitution and the laws in force in Cambodia. If there is any dispute concerning those laws, then the political authorities, juridical institutions or

citizens shall have the right to appeal through the Constitutional Council whose decisions are final.

B. Treaties and International Agreements

Cambodia signed and ratified various international treaties, conventions, covenants, protocols and multi and bilateral agreements, such as 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, Asian 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 the laws of Cambodia.

C. Laws (Chbab)

Laws are legislative acts adopted by Parliament such as 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)

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 public civil servants or military officers, judges and prosecutors.

E. Sub-Decrees (Anukret)

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. Anukret shall comply with the Constitution, laws and the Royal Decrees. Anukret could be used to implement a legislation 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 power.

F. Proclamations, Circulars, Guidelines and Order (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 Secretariat of the government. Prakas shall comply with Anukret and other instruments which have a higher 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)

Provincial/Capital Ordinance (Deika Salar Ket or Deika Salar Reach Teany) is an executive decision issued by the provincial/capital governors. 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).

Beside the above legislative and regulatory acts, there are other executive decisions (sechkeysamrach). In principle, the decision (sechkdeysamrach) is also an executive instrument, which is issued by the Prime Minister or other head of public institution. It can have a regulatory effect or it can be used for 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 (Chbab) 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 elected by vote for a term of 5 years. The National Assembly has power 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 and is also vested with legislative power which has legislative power and performs its duties as determined in the Constitution and laws in force. Some senators shall be nominated and some others shall be elected through indirect election for a term of 6 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 shall be adopted by the National Assembly to administer State affairs and assure the application of the laws. The RGC is composed of central government and the local authorities (sub-national & local administrations). The RGC performs its roles through the office of the Council of Ministers, Ministries, State Secretariats, National Authorities, Provincial Administrations, Capital City Administration, District/Khan/Town Administrations, 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 which shall be impartial and protect the rights and freedom 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 opinion on the 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), Court of Appeal and the Supreme Court.

The Courts of First Instance have 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 shall be 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 competence to hear appeals against rulings or judgements of the provincial, capital and military courts.

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

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 of public and private sectors. Before getting a new position or resigning from membership of National Assembly, senators, governors, appointed public officers, public civil servants, police, military, judges, clerks, notary public and civil society leaders are required to clarify and declare their assets and liabilities. However, there is no provision requiring the shareholders or managers/directors of private sectors to declare their assets and liabilities. However, Anti-Corruption Unit can open the investigation and order a declaration if necessary.

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

A. National Anti-Corruption Council (NAC)

NAC is created to provide guidance and recommendations on anti-corruption works, 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 the strategies and policies for fighting corruption, to provide consultation and recommendations to ACU, oversee the operation of ACU and request for reports or clarification from ACU.

B. Anti-Corruption Unit (ACU)

ACU was first established by the Sub-Decree in 1996 under executive initiative and then in 2006 under legal mandate provided in the Law on Anti-Corruption. ACU is an executive body under the management of the Council Ministers. The establishment of ACU is initially for the purpose of promoting the effectiveness of all forms of services and strengthen good governance and rule of law in leadership and state governance, and to maintain integrity and justice fundamental for social development and poverty reduction.

The Law on Anti-Corruption has an objective to combat corruption through education, prevention, and law enforcement with public participation and support, and international cooperation. Under this Law, ACU has duties 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 the work of 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: Setting up business in Cambodia is governed by the following laws:

- Law on Investment 1994 (as amended in 2003),
- Law on Commercial Rules and Register 1995 (as amended in 1999),
- Law on General Statutes of Public Enterprises 1996,
- Labour Law 1997,
- Law on Taxation 2003,
- Law on Commercial Enterprises 2005, and
- Other sectorial 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 and the 1995 Law on Commercial Rules and Register as amended in 1999. These laws apply to partnerships and companies carrying on 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 Institutions	Key Functions and Services
Ministry of Commerce (MOC)	<ul style="list-style-type: none">• The function of MOC is to provide to the public all services to meet business and investment interests and implement Cambodia's trade policies.• MOC provides an online business registration service that is crucial in a market economy.
Provincial Department of Commerce (PDOC)	<ul style="list-style-type: none">• The functions of PDOC are 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 services of the PDOC are structured into nine

	functional department/divisions and a state owned enterprise, which is related to Intellectual Property Division, Foreign Trade Division, Internal Trade Division, Export Promotion Division, ASEAN and International Organizations Division.
Tax Branch Office	<ul style="list-style-type: none"> • The functions of the Tax Office are to develop tax policies and collect all types of taxes for national budget. • Draft laws, 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 was granted missions by the RGC to lead and take charge of 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 the MOC confirming if such name can be registered to avoid any infringement on the registered mark of another party.

As per MOC Prakas No. 299 of 2015, from 4 January 2016 onwards, all new business registrations with MOC shall be made online. Payment of registration fees can also be made via an electronic banking system in accordance with Joint Prakas No. 1643 of Ministry of Economy and Finance (MEF) & MOC of 2014. The payment receipt is issued by an automated system as evidence of payment.

As above-stated, all business registrations must be done on-line directly at the Commercial Registration Department of MOC, unless the on-line system does not

work, in which case the merchant may apply directly in person at the MOC or the PDOC.

III. FORMS OF BUSINESS ENTITY

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

A. General Partnership

A general partnership is a contract between two or more persons to combine their property, knowledge, or activities to carry on business in common with a view to profit. Once a general partnership is formed, the parties are bound to the contract at the time the contract is made unless it is stated in the contract otherwise. A general partnership has a legal personality separate from that of each of its partners. It shall acquire a legal personality when it is registered in accordance with the Law on Commercial Rules and Register, and shall have the following rights:

- Own movable 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 shall be stated in Cambodia's national currency - Riel.

B. 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 and have rights and obligations of a general partner.

A limited partnership is created upon the date on which the registration is made in accordance with the Law on Commercial Rules and Register. However, if a partnership is not so registered, it is deemed to be a general partnership. In this case, such general partnership does not have a legal personality until it is duly registered as a general partnership at the MOC.

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

C. Limited Company

A similar requirement for Cambodian nationality also applies to a limited company. A company whose 51% of voting rights belong to a Cambodian individual or Cambodian entity 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 finance company is governed by separate laws and regulations. A limited company is a very popular business organization having been established by national and foreign investors. It can be, (a) 100% owned by Cambodian national(s), (b) 100% owned by foreign national(s) and (c) a joint venture company invested in by both Cambodian national(s) and foreign national(s).

A limited company is formed by filing (on-line as above-stated) the articles of incorporation (“Articles”) with the commercial registration department of the MOC and receiving the certificate of incorporation issued by MOC. The Articles may determine the number and the price attached to the shares. However, if the Articles are silent, the company shall issue a minimum of one thousand (1,000) shares with par value of not less than four thousand (4,000) Riels per share. 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 with the commercial registrar pursuant to the prescribed form provided by the MOC.

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. Its requirements are the same as a private limited company except the relationship of 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.

D. 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 representative office, branch office, and subsidiary.

- 1. 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 Office** 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 office 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-VENTURE ENTERPRISES

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: Investment in Cambodia is mainly governed by the following laws:

- Law on Investment 1994 (as amended in 2003),
- Law on Environmental Protection and Natural Resources Management 1996,
- Law on Concessions 2007, and
- Various sectorial laws and many regulations for implementing the above laws.

I. INVESTMENT PROPOSAL

Name of Institutions	Key Functions and Services
*CDC *CIB (see main text below)	<ul style="list-style-type: none"> • The main function of CIB is to deal with investment projects out of special economic zones (SEZs). CIB and CSEZB work together to review investment applications and grant incentives to investment projects meeting the requirements laid out in the 1994 Investment Law.
CDC **CSEZB (see main text below)	<ul style="list-style-type: none"> • To promptly settle all issues occurring in the 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 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 *Council for the Development of Cambodia (CDC) has *Cambodian Investment Board (CIB) and **Cambodian Special Economic Zone Board (CSEZB) as its operational Boards in providing private sector investment. 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 1994 Investment Law.

To be qualified as a Qualified Investment Project (QIP), the investor shall register the investment project with the CDC to obtain the Final Registration Project. A company (the investor) may submit an investment proposal to the CIB and pay a one-off application fee. This application fee covers the administration fees for securing the approvals, authorisations, licences, and registrations from all relevant ministries and government departments.

The CDC will issue a conditional registration certificate (“CRC”) to the investor within three (3) working days after submitting an investment application proposal unless:

- The investment proposal does not contain all the required information; or
- The investment proposal is made in respect of an investment activity that is included in a Negative List included in Annex 1 of Sub-decree No. 111 dated 27 September 2005, or that previously has been, or is currently, carried out by the investor or any other person and which has received investment incentives under the Investment Law.

The CDC will grant a final registration certificate (“FRC”) to the applicant within twenty-eight (28) working days of the date of issue of the CRC if all the approvals, authorisations, clearances, licences, permits or registrations have been obtained.

II. QUALIFIED INVESTMENT PROJECTS (QIPS)

The CDC is the sole and one-stop service responsible for approving a QIP. A QIP is a project eligible for incentives provided by RGC, including tax exemption or customs duties exemption or other benefits.

A. Investment Incentives Granted to a QIP

A QIP commences on the date of issuance of the Final Registration Certificate for that QIP. QIPs are entitled to the following investment incentives:

- QIPs may elect to receive a profit tax exemption or use special depreciation.
- Profit tax exemption (Selective): A tax holiday period is composed of “Trigger period” + three (3) years + Priority Period (Maximum total nine (9) years).
- An annual Certificate of Obligation Satisfaction (or “Certificate of Compliance”) has to be obtained by the QIP to be entitled “Profit Tax Exemption”.
- A QIP shall be subject to a profit tax rate after its tax exemption period as determined in the Law on Taxation.
- Special depreciation (Selective): 40% special depreciation allowance on the value of the new or used tangible properties used in production or processing.
- Duty free import of production equipment, construction materials, etc. as shown in the table below:

Type of QIP	Commodities
Domestically oriented QIPs	Production equipment, construction materials and production input to be used in the production of export goods
Export oriented QIPs (except those which elect or which have elected to use the Customs Manufacturing Bonded Warehouse mechanism)	Production equipment, construction materials, raw materials, intermediate goods and accessories
Supporting Industry QIPs	Production equipment, construction materials, raw materials, intermediate goods and production input accessories. In the case where the Supporting Industry QIP fails to supply 100% of its manufactured products to the export industry or directly export its products, the QIP shall pay the customs duties and taxes on production inputs for the quantity that has not been supplied to the export industry or directly exported

B. Projects Not-Eligible for the Incentives

Sub-decree No. 111 on the Implementation of the Law on Investment dated 27 September 2005 excludes the following investment projects which are not eligible for the incentives:

- All kinds of commercial activity, import, export, wholesale, and retail, including duty free shops
- Any transportation services by waterway, by road, by air except investment in the railway sector
- Restaurants, karaoke parlours, bars, nightclubs, massage parlour, fitness, etc.
- Tourism service
- Casino and gambling business
- Currency and financial business and services such as banks, financial institutions, and insurance companies
- Activities related to newspaper and media, including radio, television, press, magazine, etc.
- Professional services
- Production and processing of wood products using wood from natural forest with a legal domestic supply source for raw materials

- Resort complex, including hotel, theme park, sport facilities, zoo with less than fifty (50) hectares
- Hotel below 3-star grade
- Real estate development, warehouse facilities

C. Projects Eligible for the Incentives

The Sub-decree No.111 sets the minimum amount or other conditions of investment projects in various fields, which are required for granting the incentives as follows:

Fields	Requirements
Supporting industry, which has its entire production (100%) supplying export industry	US\$ 100,000- or more
Production of animal feed	US\$ 200,000- or more
Production of leather products and related products Production of all kinds of metal products Production of electrical and electronic appliances and office materials Production of toys and sporting goods Production of motor vehicles, parts and accessories Production of ceramic products	US\$ 300,000- or more
Production of food products and beverages Production of products for textile industry Production of garments, textiles, footwear and hats Production of furniture and fixtures that do not use natural wood Production of paper and paper products Production of rubber products and plastic product Clean water supplies Production of traditional medicines Freezing and processing of aquatic product for export Processing of any kind of cereals and crop products for export	US\$ 500,000- or more
Production of chemicals, cement, agriculture fertilizer and petrochemicals	US\$ 1,000,000- or more
Production of modern medicines	US\$ 1,000,000- or more
Construction of modern market or trade centre	US\$ 2,000,000- or more More than 10,000 square meters Adequate space for car park
Training and educational institutes that provide training	US\$4,000,000- or more

for skill development, technology or poly technology that serves industries, agriculture, tourism, infrastructure, environment, engineering, sciences and other services.	
International trade exhibition centre and convention halls	US\$ 8,000,000- or more

III. INVESTMENT IN SPECIAL ECONOMIC ZONES

SEZ refers to the special area for the development of the economic sectors which brings together all industrial and other related activities and may include General Industrial Zones and/or Export Processing Zones. Each SEZ shall have a Production Area which may have a Free Trade Area, Service Area, Residential Area and Tourist Area.

SEZ provides businesses within each zone with a number of fiscal incentives, including income tax, customs, and Value Added Tax benefits and are designed to offer a one-stop service for imports and exports, and have specially trained government officials stationed on site to provide administrative services.

CHAPTER 3 TAXATION

Relevant Laws:

- Law on Financial Management (Annual Budget),
- Law on Investment 1994 (as amended in 2003) under which tax exemptions are provided,
- Law on Commercial Rules and Register 1995,
- Law on Taxation 1997 (as amended in 2003), and
- A number of regulations issued by the Ministry of Economy and Finance (MEF).

I. TAXATION SYSTEM

Cambodia's tax system is based on the 1997 Law on Taxation as amended in 2003. Formerly, the tax system consisted of two different tax regimes: the estimated regime and the real regime. However, from 06 April 2016, the government has abolished the estimated regime. Under the current single tax regime, companies in Cambodia are now classified as small, medium and large enterprises. The form of the enterprise and the estimation of annual turnover determine in which class the enterprise falls. All companies are required to register and apply for a Patent Tax certificate for each of their business activities. The Patent Tax amount to be paid depends on the class of the taxpayer.

Business entities registered in the Commercial Register maintained by the Ministry of Commerce (MOC) are classified either as medium or large taxpayer. If a company has obtained a Qualified Investment Project (QIP) status, then such company is classified as a large taxpayer.

The taxation provisions provide for tax administration through tax registration and tax return (declaration).

A. Tax Administration

The General Department of Taxation (GDT) under MEF is the central national authority responsible for collection of taxes and implementation of tax laws and regulations. The GDT delegates its authority to its branches in khans in Phnom Penh Capital City and provincial tax branches and khan/district/town branches in other provinces. The taxpayers are required to submit their tax return and pay the taxes to the relevant tax branch located in their business location.

B. Tax Registration

All enterprises registered with the MOC under the Law on Commercial Rules and Register are required to register with the Tax Administration for tax purposes within 15 days after commencement of their business activities. The tax registration consists of registration for annual patent tax certificate and VAT certificate. During the tax registration process, the Chairman of the board of directors is required to be physically present at the tax department to scan fingerprints and take photos. However, if the Chairman of the board of directors is unable to be present in person and is not a resident of Cambodia, the Chairman can assign by power of attorney a director of the company as his representative in going through the necessary process as required by the GDT in accordance with Prakas No. 496 MEF on Tax Registration.

Name of Institutions	Key Functions and Services
MEF	<ul style="list-style-type: none"> • GDT (below) is under the overall control of MEF • Issue regulations relating to tax
GDT Central Department	<ul style="list-style-type: none"> • Developing tax policies and collect all types of taxes for national budget. • Drafting laws, regulations on taxation, determine other necessary legal documents which taxpayers or withholding agents need to be kept and given to the tax administration • Determining tax bases on taxpayers and withholding agents based on cross-checking • Calculating and collecting taxes and any additional revenues • Establishing programs and performing tax audit • Being responsible for international cooperation in tax sector • Applying penalties for taxpayers and withholding agents who breached law and provisions • Participating in preparing the national annual budget plan for the drafting of the law on annual financial management • Providing taxpayer services including information, education, and guidance for taxpayers to properly comply with the laws and provisions on taxation
Tax Branches	<ul style="list-style-type: none"> • Implementing tax policy issued by GDT • Collecting other taxes which are assigned by GDT • Being responsible for and cooperating in tax matters

	on behalf of GDT <ul style="list-style-type: none"> • Calculating and collecting taxes and any additional revenues • Determining tax bases on taxpayers and withholding agents based on cross-checking.
National Tax School	<ul style="list-style-type: none"> • Tax Education Center for educating on tax, including training of tax officers and tax agents • Assisting company registration for tax payers with GDT and updating information of enterprises for GDT • Recruitment center of tax agent for GDT

C. Double Taxation Agreement (DTA):

Cambodia and Singapore signed an Agreement for the Avoidance of Double Taxation on 20 May 2016. However, the agreement has not yet been ratified and therefore is not yet implemented. This DTA with Singapore is the first double taxation treaty signed by Cambodia. This DTA is important for Cambodia because this treaty will help Cambodia respect its obligations as member of ASEAN, be for Diplomatic reasons, will attract foreign investment, and to respond to requests from other countries that invest in Cambodia. The DTA provides some advantages and disadvantages for Cambodia such as:

1. Advantages of DTA

- Improve international competitiveness and increase foreign investment
- Increase tax bases
- Avoid paying double taxes and provide certainty of taxing rights (concerning residence and source of tax)
- Protect Cambodian residents and overseas investors in Cambodia
- Avoid tax evasion
- Strengthen international cooperation

2. Disadvantages

- Revenue lost in the short-term
- Limit taxing rights
- Risk of treaty-shopping

In preparation of the ratification of the DTA between Cambodia and Singapore, Cambodia is preparing implementation guidelines for the DTA to be released soon.

II. TYPES OF TAXATION

First of all, each business, formal or informal, is required to pay annual Patent Tax. The table below summarizes the different annual Patent Tax fees depending on the business class and estimated turnover:

Real Regime Classification of Taxpayer	Estimated Turnover in Khmer Riel (KHR)	2016 Patent Tax Fee in Khmer Riel (KHR)	2016 Patent Tax Fee in United States Dollars (USD)
Small Taxpayer	From 250M to 700M	400,000	100
Medium Taxpayer	From 700M to 2,000M	1,200,000	300
Large Taxpayer	From 2,000 to 10,000M	3,000,000	750
	Over 10,000M	5,000,000	1,250

One of the differences between the Medium and Large taxpayers is that large taxpayers shall pay patent tax and file monthly taxes return with the Department of Large Taxpayer (DLT) of the GDT under the MEF, while the medium taxpayers can pay and file monthly tax returns with the Khan or Provincial tax branches.

Based on current taxation provisions, the other types of tax applicable in Cambodia are as follows:

- Profit Tax
- Minimum Tax
- Prepayment Tax
- Value Added Tax
- Withholding Tax
- Specific Tax for Specific Merchandises
- Salary Tax
- Public Lighting Tax
- Slaughtering Tax
- Road Tax for Means of Transportation/Vehicles
- Property Tax
- Property Rental Tax
- Accommodation Tax
- Unused Land Tax
- Stamp Duty or Transfer Tax
- Import and Export Duties

All enterprises operating business in Cambodia are required to submit monthly tax returns and annual tax returns. The monthly tax returns comprise salary tax, withholding tax, prepayment tax and VAT, and shall be submitted to the relevant Tax Branches of the GDT by 15th of the following month. The annual tax return comprising minimum tax and tax on profit shall be submitted by 31 March of the following year.

III. TAX RATES

Different types of tax are subject to different rates. The following table shows the current taxes levied in Cambodia, with brief notes on the tax types and their rates.

Summary of Relevant Taxes

TAX TYPE	BRIEF NOTES	TAX RATES
Corporate Profit Tax (Articles 1-23)	<ul style="list-style-type: none"> For legal person 	20% (see Exceptions, as follows)
	Exception 1 Oil and natural gas production sharing contract and the exploitation of natural resource including timber, ore, gold, and precious stones.	30%
	Exception 2 Investor of QIP who is subject to the Advance Tax on Dividend Distributions (Additional Profit Tax shall be paid upon the distribution of retained earnings or annual profit after tax if a firm distributes retained earnings or profit) in the amount of: (a) Distribution x 20/100 (b) Distribution x 11/91	0% tax rate 9% tax rate
Minimum Tax (Article 24)	<ul style="list-style-type: none"> To be applied only to medium and large taxpayer, except QIP If the profit tax amount exceeds 1% of annual turnover, the taxpayer pays only the tax on profit. 	1% of annual turnover

Withholding Tax (Articles 25-28)	<ul style="list-style-type: none"> Income received by individuals for services such as management, consulting, etc. Payment of royalties for intangibles and interests in mineral resources Payment of interest by a resident taxpayer carrying on business, other than domestic banks or financial institutions 	15% of paid amounts
	<ul style="list-style-type: none"> Income from the rental of movable or immovable property 	10% of rentals
	<ul style="list-style-type: none"> Interest payment by domestic banks to residents with fixed term deposit account 	6% of paid interest
	<ul style="list-style-type: none"> Interest payment by domestic banks to residents with non-fixed term deposit account 	4% of paid interest
	<ul style="list-style-type: none"> Payment to non-residents: interest, royalties, rent and other income connected with the use of property, dividends, payment for management or technical services 	14% of paid amounts
Tax on Salary (Articles 40-54)	<ul style="list-style-type: none"> KHR 0-800,000 	0% of salary
	<ul style="list-style-type: none"> KHR 800,001-1,250,000 	5% of salary
	<ul style="list-style-type: none"> KHR 1,250,001-8,500,000 	10% of salary
	<ul style="list-style-type: none"> KHR 8,500,001-12,500,000 	15% of salary
	<ul style="list-style-type: none"> Over KHR 12,500,000 	20% of salary
	<ul style="list-style-type: none"> For fringe benefits 	20% of fringe benefits calculated on market value (or fair value)
	<ul style="list-style-type: none"> Non-residents 	Flat rate of 20% of salary
Value Added Tax (Articles 55-84)	<ul style="list-style-type: none"> Taxable person (any person who is subject to tax under the law on taxation) Registration: All companies must complete registration for VAT before commencing business. Other business must register 	Usually 10% and on occasion 0% [i.e. VAT on export of goods from Cambodia, sale of medicines, postal services, etc.]

	<p>within thirty (30) days after their taxable turnover for the preceding consecutive three (3) months exceeds:</p> <ul style="list-style-type: none"> - KHR125 million for goods - KHR 60 million for services • Taxable supply: supply of goods or services by a taxable person in Cambodia; appropriation of goods for his own use by a taxable person; making of a gift or supply at below cost of goods or services; and import of goods into Cambodia • Standard tax rate • Tax rate for the goods exported from Cambodia and services executed outside Cambodia • Input tax credit is deductible against the output tax amount. • Monthly filing: the VAT declaration must be submitted on or before the 20th day of the following month. 	
<p>Other Taxes (Article 85):</p>	<p>Specific Tax on Certain Merchandise and Services</p> <ul style="list-style-type: none"> • Tickets for local and international air transportation 10% • Local and international telecommunication 3% • All kind of beer 30% • All other kind of alcoholic drinks or wines 35% • All kind of cigarettes. 20% • Entertainment, large automobile, motorcycles from 125cc upwards 10% • Petroleum products, automobile more than 2,000cc 30% • All kind of soft drinks 10% 	
	<p>Public lighting tax is to be imposed on all suppliers of alcoholic drinks, beers and cigarettes.</p>	<p>3%</p>

	<p>Accommodation tax is to be imposed on accommodation in hotel, guesthouses etc.</p>	2%
	<p>Stamp Duties/Transfer Tax</p> <ul style="list-style-type: none"> • For the transfer of ownership of real property and certain types of vehicles as a result of direct transfer or a contribution of share capital to an enterprise • Prohibited to issue certificates of ownership of property until the Property Transfer Tax has been paid. 	4% of the value of properties assessed by Tax Department
	<p>Tax on Unused Land</p> <ul style="list-style-type: none"> • Committee for Evaluation of Undeveloped Land decides whether a plot is “unused” or not and the amount of tax liability. 	2% per annum on the assessed value of unused land
	<p>Patent Tax</p> <ul style="list-style-type: none"> • For initial and annual business registration • For different business locations in different provinces or the capital city, the taxpayer shall pay the tax for each business in each location. 	<p>Accordinging Prakas No. 1821 dated 25 December 2015, Patent Tax shall be divided into 3 categories:</p> <ol style="list-style-type: none"> 1. Patent tax for small taxpayer who shall pay 400,000 Riel (App USD 100.00) 2. Patent tax for medium taxpayer who shall pay 1,200,000 Riel (App USD300.00) 3. Patent tax for larger tax payer who shall pay 3,000,000 Riel (App USD750.00) or 5,000,000 Riel (App 1,250.00), depending on

		level of turnover as stated in 'I' above (Taxation System)
	Annual Property Tax (exempt for agricultural land and to be levied on property with value exceeding 100 million Riels)	0.1% of the assessed value excluding US\$25,000 for calculating taxable base
	Import Duty	Varies (4 bands – 0, 7, 15 and 35%)
	Export Duty	Varies (mostly 10%)

CHAPTER 4 IMMIGRATION AND EMPLOYMENT

Relevant Laws: Immigration, nationality, labour and industrial relations in Cambodia are governed by a number of laws, in particular, the following:

- Law on Immigration 1994,
- Law on Nationality 1996,
- Labour Law 1997,
- Law on Social Security Schemes for Persons Governed by the Labour Law 2002, and
- Law on Trade Unions 2016.

These laws are administered and regulated by different government authorities and independent institutions including the Ministry of Interior (MOI), the Ministry of Foreign Affairs and International Cooperation (MFAIC), the Ministry of Labour and Vocational Training (MLVT) and its provincial Department of Labour and Vocational Training (PDLVT), Arbitration Council (AC), and National Social Security Fund (NSSF).

A number of regulations are issued or are to be issued by the RGC or/and the Ministries responsible for administering such law(s). The main government authorities' and the independent institutions' functions and services are set out in the following tables in each section below:

I. IMMIGRATION

Name of Institutions	Key Functions and Services
MFAIC	<ul style="list-style-type: none"> • Issuing and renewing/extending visa types A, B and C • Managing E-Visa 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 an alien (foreign individual) to stay or live in Cambodia on short-term, long-term or permanent basis, while the 1996 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 diplomatic mission or private visit. This type of visa is also issued to other non-immigrant aliens as discretionarily determined by the MFAIC. The second type of visa called official visa (type B) is issued to non-immigrant aliens who come to Cambodia for 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 private visit. The third type of visa called 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 MFAIC.

The fourth type of visa called a transit visa (type D) is issued to non-immigrant aliens who transit Cambodia, such as a captain or pilot, crews or workers of ships, vessels, or planes. The fifth type of visa called tourist visa (type T) is issued to non-immigrant aliens who enter Cambodia purely for tourism purpose and have no qualification for other types of visa. An “e-Visa” for tourists may be applied online under the system operated by MFAIC. The sixth type of visa called ordinary/business visa (type E) is issued to non-immigrant aliens who do not fall in any of the previous categories. And the last type of visa called special visa (type K) is issued to a person with Cambodian origin who holds 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 MOI.

Under bilateral agreements, visa exemption 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 service or conduct 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.

If a person enters and stays in Cambodia on 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 business (type E) visa. Initially 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 MOI for visa and stay extension for up to one year at a time. Options of extension for three or six month are also available.

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 a Prakas of the MOI. After entering Cambodia, the immigrant alien shall 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 already received investment authorization from the Council for the Development of Cambodia (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 already received investment authorization from CDC and 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 1996 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 done in a form of Royal Decree through the request from the Prime Minister. Nevertheless, MOI is authorized to accept the applications and the Minister of MOI shall then nominate any qualified applicants to the Prime Minister for his/her request to the King.

II. EMPLOYMENT AND LABOUR

Name of Institutions	Key Functions and Services
MLVT (employers in Phnom Penh, and with more than 100 workers)	<ul style="list-style-type: none"> • MLVT has sole authority to approve/reject Quota request for use of foreign workforce and foreign workbooks and work permits, but application request can be submitted through MDLVT and PDLVT; • MLVT, MDLVT and PDLVT have the same functions for approval of various labour registrations, approvals related to workplace relations, such as request for overtime work and suspension of weekly time off, and for carrying out labour inspection, labour enforcement and labour dispute conciliation.
Municipal Department of Labour and Vocational Training (MDLVT) (employers in Phnom Penh, and with 100 workers or fewer)	
Provincial Department of Labour and Vocational Training (PDLVT) (employers in provinces)	
National Social Security Fund (NSSF) (provincial and capital offices)	<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.
Arbitration Council (AC)	<ul style="list-style-type: none"> • Responsible for collective dispute resolution, referred to by MLVT, MDLVT or PDLVT.

The 1997 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 of 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 ordinary laws, customary rules and the Labour Law. Under article 3 of Labour Law, a worker is defined as “every person of all 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, depending on agreement by the parties.

There are two types of employment contract under this 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 and shall not be made for a period exceeding two consecutive years and shall be in writing; otherwise it will be deemed a UDC. FDC can be renewed for one or more times provided that it does not exceed the two years limit; otherwise it will also 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 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 to. 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. 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, only a minimum wage for workers in the garment, textile and footwear industry has been set by the Labour Advisory Council and put into implementation by the Prakas of MLVT. This is subject to periodic review.

C. Work Hours, Overtime, Leave and Holidays

The Labour Law provides that the number of work hours shall not exceed 8 (eight) hours per day or 48 (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 shall be done on a voluntary basis, and permission from a relevant Labour Inspector shall be sought before the commencement of each overtime work. The overtime work shall be paid 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 or/and Saturday) or on public holiday, the rate shall be 200% of the normal work rate.

It is prohibited from using the same worker for more than six days per week. The weekly time off shall last for a minimum of 24 (twenty-four) hours consecutively. All workers shall be given a day off during an entire 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 (one and a half) days for a month of employment, resulting in 18 (eighteen) 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 leaves is provided after one year of service.

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

Special leave is granted for workers' personal and/or family's 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 7 (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 the 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 a Prakas of the MLVT each year. In the event that a paid holiday coincides with a day that is a weekly day off for a worker, the worker will be entitled to the next-work day off with full pay.

D. Foreign Manpower

Under the Labour Law, in order to use a foreign worker, an enterprise shall first apply for an annual quota for using foreign manpower, and then obtain a workbook/employment card and work permit 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 manpower, in principle, shall not exceed ten per cent (10%) of the total local workforce in an enterprise. However, the enterprise can request for more quota if the enterprise has an exceptional need for foreign manpower 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 Workbook/Employment Card

Having annual quota request granted by MLVT just means that an enterprise is allowed to use a certain number of foreign manpower as granted. However, to be able to use particular foreign manpower, an enterprise has to apply to MLTV for a work permit and workbook/employment card for the concerned foreigner.

E. Labour Registration

The labour registration is required by and made at MLVT, MDLVT or PDLVT. It includes, but is not limited to, the following processes listed in (a) – (f) below.

All employers are required to make (a) Declaration of Opening of Enterprise, (b) Declaration of Employees, (c) Application for Enterprise/Establishment Register, (d) Application for (Computer Generated) Payroll Ledger (the format of which needs to be in conformation with that provided by MLVT), (d) Application for Workbook [Employment Card] and Work Permit for Foreign Workers; (e) Application for Health Check and Certificate for each foreign manpower with Occupation Health Department of MLVT (optional for local workers); and (f) Application for Declaration of Staff Movement (for additional hiring and dismissal).

Similarly, not all employers are required to meet all the registrations listed above, depending on the number of workers employed by that particular employer.

Several more labour registrations are required for employers who employ more than 8 (eight) workers: (a) application for Recognition of Shop Steward Election Result, (b) application for Visa on Internal Regulations, and (c) Enterprise Registration with NSSF.

F. 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 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 MLVT, as soon as practical, to have full legal effect for a period of 1-3 years. To be qualified for registration with MLVT, a CBA must contain clauses on clear dispute resolution procedure to ensure minimum service, essential service, other required services, and public order.

G. 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 shall 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.

H. 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 interest 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 provide 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 resolving labour disputes in good faith and with honesty.

I. 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 related to, such as, the number of infirmities, first aid kits, toilets, and clean drinking water for each workplace; and guidance on lifting heavy objects, quality of the air, air circulation, level of noise and sound, level of light and brightness in a workplace. Employers are to take measures or investigation to prevent work-related accidents, which also includes provision of fire extinguishers and clear fire evacuation plan, and reporting to the MLVT any such accident. Employers are also responsible for medical examination, and care and treatment for any worker suffering from work-related accident/illness.

III. THE NATIONAL SOCIAL SECURITY FUND (NSSF)

Under the Law on Social Security and related regulations, all employers that employ 8 (eight) workers or more are compulsorily required to register themselves and their workers with NSSF, and pay contribution for their workers to cover for Occupational Risk Scheme, Pension Scheme and Health Care Scheme. NSSF will, then, process the registration, collect and manage contributions and provide eligible workers or their beneficiaries with their entitled benefits.

Occupational Risk Scheme is responsible for the provision of employment/work-related injury and occupational disease benefit.

Health Care Scheme is responsible for the provision of benefits for health care, treatment and medical care and daily allowance during work suspension for medical treatment for illness or for accidents other than occupational risk and maternity leave.

Pension Scheme is responsible for the provision of old age benefit, invalidity benefit and survivors' benefit.

As of the time of writing, only Occupational Risk Scheme is in full operation, while Health Care Scheme is still under pilot program. A regulation to govern Pension Scheme is still being drafted. This means that, as of now, employers are required to pay contribution for Occupational Risk Scheme only.

CHAPTER 5 INTELLECTUAL PROPERTY RIGHTS

Relevant Laws: The Intellectual Property subject matters are governed by a number of laws as follows:

- Law on Management of Quality and Safety of Products and Services 2000,
- Law on Marks, Trade Names and Acts of Unfair Competition 2002,
- Law on Copyright and Related Rights 2003,
- Law on Patents, Utility Model Certificates and Industrial Designs 2003,
- Law on Seed Management and Breeder Rights 2008,
- Law on Geographical Indication (GI) 2014.

The main three government authorities administering these laws are the Ministry of Commerce (MOC); the Ministry of Industry and Handicraft (MIH); and the Ministry of Culture and Fine Arts (MCFA) and 11 other cooperative Ministries.

Cambodia is also in the process of developing and drafting other intellectual property rights related laws such as Trade Secret Law, Law regarding Integrated Circuit (“IC”), Traditional-Cultural Knowledge and Folklore, Compulsory Licenses for Public Health, E-Commerce, Commercial Contracts, Competition 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.

Name of Institutions	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, trademark owner’s name and/or address • 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

	<ul style="list-style-type: none"> ▪ 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 lyric ▪ Derivative music work with or without lyric ▪ Music performance with or without lyric ▪ Original music with or without lyric 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 ▪ 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

I. DEFINITION OF IP

Intellectual Property (IP) 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 in a form subjected to protection under IP Laws. IP is an intangible asset for many firms doing business in Cambodia.

In order to get the protection of rights over each IP subject matter, some specific requirements are required by law concerning each type of IP.

II. TRADEMARK

A. Definition of Trademark

Trademark and service mark 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, shall not be registrable. Even though the law is silent, three-dimensional trademarks can also be registered as long as they meet the statutory requirements of “distinctiveness.”

B. Requirement for Protection

A mark could be protected if it is distinctive, i.e. not descriptive or deceptive. The law does not allow the Department of Intellectual Property Rights (DIPR) of MOC to accept an application for trademark registration if it falls within the following situations:

1. if it is incapable of distinguishing the goods or services of one enterprise from those of other enterprises;
2. if it is contrary to public order or morality or good custom;
3. if it is likely to mislead the public or trade circles, in particular as regards the geographical origin of the goods or services concerned or their nature or characteristics;
4. if it is identical with, or is an imitation of or contains as an element, an armorial bearing, flag and other emblem, a name or abbreviation or initials of the name of, or official sign or hallmark adopted by, any State, intergovernmental organization or organization created by an international convention, unless authorized by the competent authority of that State or organization;
5. if it is identical with, or confusingly similar to, or constitutes a translation of, a mark or trade name which is well known in the Kingdom of Cambodia for identical or similar goods or services of another enterprise;

6. if it is identical with, or confusingly similar to, or constitutes a translation of a mark or trade name which is well-known and registered in the Kingdom of Cambodia for goods or services which are not identical or similar to those in respect of which registration is applied for, provided that use of the mark in relation to those goods or services would indicate a connection between those goods or services and the owner of the well-known mark that the interests of the owner of the well-known mark are likely to be damaged by such use; or
7. if it is identical with a mark belonging to a different proprietor and already on the Register, or with an earlier filing or priority date, in respect of the same goods or services or closely related goods or services, or if it so nearly resembles such a mark as to be likely to deceive or cause confusion.

The registration procedure takes from 6 to 9 months (ASEAN standard). When it is accepted for registration, the mark owner must submit an Affidavit of Use or Non-Use to the Registrar within the sixth year anniversary from registration date or renewal date, failing which will lead to automatic cancellation by the DIPR.

C. Rights Conferred by a Registered Trademark

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

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

Once the mark is registered, the registered owner shall have the rights to license or transfer to any third party. The Trademark Law requires the license agreement to be recorded with the Registrar otherwise it has no legal effect against a third party. Once a trademark license agreement is recorded, it will be published in the Official Gazette, while keeping the terms of the contract confidential.

D. Border Measures

Also, a trademark owner can request the customs authorities, or a court, to suspend customs clearance and destroy counterfeit goods. The request shall 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 10 working days to notify to the applicant whether the

application is granted. If it is granted, the applicant then has 10 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

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 certificate refers to a certificate which is granted for the protection of a utility model. 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 categorically excluded from patent protection and utility model certificate:

- 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;
- Plant varieties.

The differences between patent and utility model certificate are (i) requirement 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 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 right 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 owner enjoys the exclusive rights for 20 years without renewal, whilst the exclusive rights of utility model is 7 years, non-renewable.

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 – are not protected.

Different from patent and utility model, the law requires only novelty condition 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 not be deemed to 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 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 5 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 Matters of Copyright

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

- 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 words,
- 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 matters 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

Copyright protection begins at the moment that the work is created, i.e. it is protected for the life of the author plus 50 years post mortem, while the moral rights last forever. The latter extends beyond the life of authors and could be passed to their heirs.

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.

CHAPTER 6 CONTRACTS

Relevant Laws: The basic laws for contracts in Cambodia are as follows:

- Civil Procedures Code 2006
- Civil Code 2007
- Law on Application of the Civil Code 2011

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 (hereinafter 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 Application 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/tort, security, relatives, succession and final provisions. 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 shall come 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 seal to form a contract unless otherwise provided for by particular articles of 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. Examples of cases 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 an 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 interests of both parties and make the existence of agreement clear because generally an immovable property is more expensive and important to parties than a movable one. Please note that Art 336-2 of CC is applied only to a contract of an immovable property ownership, and not applied to a contract to establish real rights to use and enjoy the profits of the immovable property like perpetual lease, usufruct, right of use and right of residence and easements.

A claim for interest shall not come into effect unless it is in writing and bears the signature of the borrower (Proviso of Art 583-3 of CC). A contract of loan for consumption shall be formed through the agreement of the lender and the borrower alone (Art 579 of CC). However it is necessary to execute a written contract with 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 Article 583 (Claim for interest) (Art 584-3 of 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 that the interest rate shall exceed the legal interest rate of 5% per annum (Art 318 of CC), the agreement for establishing the claim for interest shall be valid but the agreement for the interest rate shall be void. Therefore the legal interest rate of 5% per annum shall be applied 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 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 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 CC). However, it is not necessary for the amount of guaranty of a floating guaranty to be handwritten by the guarantor because the amount of guaranty of a floating guaranty fluctuates within the maximum amount based on the outstanding obligations of the debtor (Art 902-1).

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

A gift shall come into effect once an offer and the acceptance thereto conform to each other (Art 568 of CC). However, if not put in writing, either party to the contract may revoke the contract (Art 570 of 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 these 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 with regard to the existence of claims.

In addition, there are certain contracts and documents which are required to be in writing and are to be signed by the parties thereto. Some of these are: (i) bill of exchange, cheque, promissory note, 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 agreement and a share transfer agreement under the Law on Commercial Enterprises; (v) agreement to refer a dispute to arbitration under the Law on Commercial Arbitration; (vi) share pledge and other collateral agreements under the Law on Secured Transaction; and (vii) economic land concession, Built-Operate-Transfer and other infrastructure concessions under the Law on Concession, and the Land Law.

III. DEFECTIVE DECLARATION OF INTENT

As previously stated, a contract becomes effective when 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 in order 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 CC). It also stipulates that declarations of intent which are made as the result of following circumstances are defective.

- Mistake (Art 346 of CC)
- Fraud (Art 347 of CC)
- Misrepresentation (Art 348 of CC)
- Abuse of Circumstances (Art349 of CC)
- Duress (Art 350 of CC)
- Act of Receiving Excessive Benefit (Art 351 of 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, (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 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 declaration of intent does not reflect the true intention of the declarant, the declarant may reject the performance of the contract (Art 352 of CC. Mental reservations).

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

IV. REMEDIES FOR BREACH OF CONTRACT

Breach (or non-performance) of 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 CC).

- Cases in which the performance is late
- Cases in which the performance is impossible
- Cases in which the performance is incomplete
- 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 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 CC). The obligee may select any or all of such remedies so long as they are

not mutually exclusive (Art 395 of CC). With regard to termination of 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 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 403-1,403-3 of 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 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 CC). Not only non-performance of the contract but also the existence of material breach of contract is necessary in order 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 where, 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 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 the 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 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 CC).

Upon termination, a party that has received all or part of a performance under the contract shall 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 CC). A party required to return money as a result 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 benefit due to termination shall return any benefit received thereby (Art 411-3 of CC). For example, in the case of termination of sales-purchase contract of land, the buyer of the land has to return the land to the seller together with money equivalent to rent the land. On the other hand, the seller has to repay the sales price to the buyer together with interest on what has been paid towards the sales price.

VI. PARTICULAR TYPE OF CONTRACTS

The CC stipulates 13 types of contract. Particular types of contract stipulated in 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 CC Book 4 (Obligation) and Book 5 (Particular types of contracts) of CC are discretionary provisions. Therefore, both parties basically may make an agreement which is different from articles of obligation and particular types of contracts of CC.

However an agreement which is against mandatory provisions of CC and other laws should be void (Art 354-1-1 of 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 shall be void (Art 354-2). It is not necessarily clear which articles of 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 considered to be 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 considered to be mandatory provisions because these articles aim to protect the interest 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 CC are as follows:

1. Sale
2. Exchange
3. Gift
4. Loan for Consumption
5. Lease
6. Loan for Use
7. Mandate
8. Contracts for Work
9. Contracts of Employment
10. Deposits
11. Partnership
12. Life Annuity
13. Settlement

VII. GOVERNING LAW AND JURISDICTION

There is no Cambodian law or regulation stipulating the governing law of the contract. However, it is considered that parties may agree on the governing law based on the principle of private autonomy (Article 3 of CC). Therefore, parties may make 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 governing law, the laws of Cambodia shall be deemed as the law governing the concerned contract when contract enforcement is sought at the courts of Cambodia.

However, Article 131 of 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 a real right like ownership, perpetual lease and hypothec over movables 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 movables or immovable property which is 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 hypothec over land in Cambodia in order to secure the claim and perfect the 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 the international jurisdiction. However, it is considered that both parties may agree with 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 Article 352 and Article 199 of the Code of Civil Procedure of Cambodia, 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:

1. jurisdiction is properly conferred on the foreign court by law, treaty or convention;
2. 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;
3. the contents of the judgment and the procedures followed in the action do not violate the public order or good customs of Cambodia; and
4. there is a guarantee of reciprocity between Cambodia and the foreign country in which the court is based.

However, there is no reciprocal treaty between Cambodia and any other countries so far. In the absence of a reciprocal treaty, the courts of Cambodia could decide on a case by case basis taking into account 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 an exclusive or selective jurisdiction in the contract. 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 an 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 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:

- (i) the subject-matter of the dispute cannot be settled by arbitration, or
- (ii) 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 Article 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 7 PROPERTY AND CONSTRUCTION

Relevant Laws: Property and construction projects in Cambodia are governed by a number of laws, such as:

- The Cambodian Constitution 1993,
- Law on Land Management, Urban Planning and Construction 1994,
- Land Law 2001 (amending the 1992 Land Law),
- Civil Code 2007,
- Law on Expropriation 2009,
- Law on Provision of Ownership to Private Units of Co-owned Building to Foreigners 2010,
- Law on Application of Civil Code 2011, and
- A number of other land related laws such as Law on Forestry, Law on Fisheries, and Law on Nature Protection Areas.

These are administered and regulated by a number of government authorities at national and sub-national levels. The principal authority regulating cadastral administration, land registration, urban planning and construction is the Ministry of Land Management, Urban Planning and Construction (MLMUPC). A large number of regulations have been issued by the Council of Ministers as well MLMUPC for implementing these laws. Also, MLMUPC has a role in implementing the Law on Expropriation in terms of leading an expropriation grievance redress committee.

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 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.

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 states 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 procedure 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 Land Law basically copied from the 1920s old 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 Buddhism monasteries. The Law regulates two types of State properties: State private property and State public property. Under the 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 adopts 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 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 Buddhism monasteries as the Land Law provides that these properties are not subject to any rules of prescription.

Ownership of land and/or building may be acquired via contract, inheritance or other causes set forth in the provisions of the Civil Code and other laws. The 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 shall be registered in the Land Register by the Cadastral Administration established under the 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 for a criminal penalty against foreigners who obtain Khmer citizenship for the 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 lease: (i) short-term lease and (ii) perpetual lease. A lease of 15 years or more is called perpetual lease (formerly under the 2001 Land Law called long-term lease). Such lease may not exceed 50 years. Under the 2011 Law on Application of Civil Code, if a long-term lease was established under the 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 shall be shortened to 99 years.

A perpetual lease may be renewed one or more times, provided that the renewal terms shall 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.

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 the 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 its 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 Land Law may only be granted 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. The 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 concession, 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 Royal Government. Practically, these ministries include the Ministry of Agriculture, Fisheries and Forestry (MAFF) and the Ministry of Environment (MOE). However, all economic land concessions formerly under MOE have been transferred to MAFF. The economic land concessions are required under the Land Law to be registered with the Land Register managed by Ministry of Land Management Urban Planning and Construction (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 concession:** beneficiaries can build residential constructions and/or cultivate State private land for their subsistence with the right to acquire ownership after 5 years of proper land use;
- **Economic land concession:** 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; and
- **Public physical infrastructure concessions:** could 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 2007 Law on Concessions.
- **Other concessions (resources exploitation concessions):** could be granted on either state and/or private land, and could be in a form of mining concession, forestry concessions, and 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 2006 Law on Fisheries.

Under the 2001 Land Law, economic land concession (ELC) 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 Institutions	Key Functions and Services
MLMUPC (Central Cadastral Administration)	<ul style="list-style-type: none"> • Issue guidelines for implementing the 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 current status of a concerned immovable property through a request for cadastral information of the concerned property from the Cadastral Administration. In other words, a purchaser or lender is advised to check any changes or encumbrances (pledge or hypothec) made to or created on the concerned land and/or building with the Cadastral Administration prior to execution of 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 concerned 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 concerned property as long as such real right has not be discharged by deregistration or nullified by government decision for public purpose.

At present, the majority of 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 rights and generally lack definitive precision in terms of property location, dimension 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.

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 actually 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 party, 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.

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 shall not exceed a ceiling term of 5 years. However, the pledge can be renewed for each term of 5 years counting from the date of renewal. The pledgee has a duty to preserve the property that is pledged and has a duty of care of a good manager of the property.

A pledgee may have a right to reimbursement if:

- The pledgee has defrayed necessary expenses in respect of the property pledged; he may seek reimbursement for such expenses from the pledgor (the property owner);
- The pledgee has defrayed useful expenses in regard to the property retained; he may seek reimbursement from the pledgor of, at his 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 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. Construction Related Permits

Name of Institutions	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 permit application for new construction or renovation of building with total area of more than 3,000 m² after the application has been reviewed and commented by commune/sangkat, district/khan/town, and provincial/capital administrative authorities as well as line district/khan/town office and provincial/capital Department of MLUMPC, and APSARA Authority (for Siem Reap province). • Approve extension of construction permit validity for building with total area of more than 3,000 m². • Review and approve construction site opening permit application for new construction or renovation of building with total area of more than 3,000 m². • Review and approve construction site closing permit (certificate of compliance) application for new construction or renovation of building with total area of more than 3,000 m².
Provincial/Capital Construction Management Authority (Provincial/Capital Administration)	<ul style="list-style-type: none"> • Approve construction permit application for new construction or renovation of building with total area between 501-3,000 m² after the application has been reviewed and commented by commune/sangkat and district/khan/town administrative authorities, and MLMUPC technical offices at district/khan/town and provincial/capital levels, and APSARA Authority (for Siem Reap province). • Approve extension of construction permit validity for new construction or renovation of building with total

	<p>area between 501-3,000 m2.</p> <ul style="list-style-type: none"> • Review and approve construction site opening permit application for new construction or renovation of building with total area between 501-3,000 m2. • Review and approve construction site closing permit (certificate of compliance) application for new construction or renovation of building with total area between 501-3,000 m2.
<p>District/Khan/Town Construction Management Authority (District/Khan/Town Administration)</p>	<ul style="list-style-type: none"> • Approve construction permit application for new construction or renovation of building with total area of up to 500 m2 after the application has been reviewed and commented by commune/sangkat administration, and district/khan/town technical office of MLMUPC, and APSARA Authority (for Siem Reap province). • Approve extension of construction permit validity for new construction or renovation of building with total area up to 500 m2. • Review and approve construction site opening permit application for new construction or renovation of building with total area up to 500 m2. • Review and approve construction site closing permit (certificate of compliance) application for new construction or renovation of building with total area up to 500 m2.

Under the existing Law on Land Management, Urban Planning and Construction and regulations, constructing any new building of permanent nature, or demolishing, renovating or expanding existing building require numerous construction related permits (construction permit, site opening permit and site closing permit/certificate of compliance) from MLMUPC or sub-national administration.

Land possession or ownership certificate and/or land use agreement (i.e. lease agreement) with lawful owner and detailed construction architectural and technical plan, certified by licensed architect or a construction/design company, are commonly required. Lengthy administrative and technical verification procedure involving multi-tier of local and sub-national administrations and line offices, (and in Siem Reap province the APSARA Authority) to review and make “no objection” comment on a construction permit application before a construction permit application could be approved by MLMUPC or delegated provincial/capital administrator (governor or deputy governor), or delegated district/khan/town administrator (governor or deputy governor). The overall process from submitting a complete and correct application

with full supporting documents to the date of final approval on a construction or renovation permit application lasts 30-45 working days. Insufficiency or incorrect supporting documents generally cause delay in completing the permit application process.

In case the concerned land is not construction land, land conversion and development principles from MLMUPC or provincial/capital administration are required before a construction permit application can be approved.

A construction or renovation permit is valid for 1 year, and it can be renewed based on application of the project owner under the same process as for original construction permit application. This application goes straight to the competent construction management authority who finally approved the original construction or renovation permit.

For construction site opening or closing permit, application must be submitted to the provincial/capital line department of MLMUPC or the General Department of Construction of MLMUPC depending on whether the total area of the building to be constructed is up to or bigger than 3,000 M². This application does not undergo review by local and sub-national administrations.

B. Special Requirements for Certain Constructions

Certain constructions such as co-owned buildings or condominium apartments, Borei or gated residential and commercial complexes, or special economic zones with residential complex along with commercial/industrial facilities are subject to additional or special requirements (such as establishing land use and maintenance internal rules and management committee) for obtaining or as a condition of granting construction permit. For some construction with potential adverse environmental impact, the project owner is also required to prepare an initial or full Environmental Impacts Assessment (EIA) Report and obtain from the Ministry of Environment (MOE) an approval on the EIA Report.

Borei refers to 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 separate 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.

In case of co-owned buildings or condominium, only those newly constructed could apply with the Cadastral Administration for special certificate of ownership for private apartment units.

SEZ refers to a special area for development of the economic sectors which brings together all industrial and related activities and may include 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 shall be 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 shall develop and operate the zones in accordance with the investment agreement approved by the Council for the Development of Cambodia and the provisions of Sub-decree approving the establishment of the SEZ and other relevant legislations and regulations.

CHAPTER 8 BANKING, FINANCE AND SECURITIES

I. BANKING AND FINANCE

Relevant Laws: Banking in Cambodia is governed by a number of laws such as the following:

- Law on the Organization and Functioning of the National Bank of Cambodia 1996,
- Law on Banking and Financial Institutions 1999,
- Law on Commercial Enterprise 2005,
- Law on Negotiable Instrument and Payment Transactions 2005,
- Law on Anti-Money Laundering and Terrorist Financing 2007,
- Civil Code 2007,
- Law on Public Financial System 2008, and
- Law on Financial Leasing 2009.

Furthermore, public finance and financial securities in Cambodia are governed by a number of laws such as:

- Law on Financial Management (Annual Budget),
- Law on Government Securities 2007,
- Law on the Issuance and Trading of Non-government Securities 2007, and
- Law on Public Financial System 2008.

These laws are administered and regulated by different government authorities such as the Ministry of Economy and Finance (MEF); the National Bank of Cambodia (NBC), and Securities and Exchange Commission of Cambodia (SECC). A number of regulations are issued or are to be issued by the RGC and/or the Ministry/government bodies responsible for administering the law(s). The main government authorities' functions and services are set out in the following table:

Name of Institutions	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;

	<ul style="list-style-type: none"> • 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 and other relevant establishments such as auditors and liquidators; • Oversee payment systems and to enhance interbank payments; • Act as the sole issuer of national currency; • 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; • License, de-licence, regulate and supervise all those operating in the securities and foreign exchange markets, the market for precious stones and precious metals; and • Set interest rates.
SECC	<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.
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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 the banking operation 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 economy. PBK was transformed to 20 provincial and municipal specialized banks in 1989 when Cambodia started to liberate 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 Authorities in Cambodia following the Paris Peace Agreement in October 23, 1991.

In 1992, PBK was transformed to 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 were more specified in the Law on the Organization and Functioning of the NBC. Its key roles are to "determine and direct the monetary policy" and "supervise the banking operation 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. The long-term vision and strategy described in the first Blueprint and the subsequent FSDS 2006–2015 remain broadly appropriate for the country. Overall, the Government of Cambodia has achieved significant progress; however, some challenges still need to be addressed.

To respond to current conditions and demonstrated needs, in 2011 the Government adopted FSDS 2011-2020. This FSDS focuses on the development of a sound, market-oriented financial sector that will mobilize and allocate resources to support sustainable economic growth.

The FSDS 2011–2020 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. It also serves as a guide to enable development partners to coordinate the capacity building and other forms of technical assistance that they provide.

The FSDS 2011–2020 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, IMF, in its World Economic Outlook, cited Cambodia as one of the five “Growth Take-off Models” in the world.

As of December 2015, Cambodia’s banking system comprised of 36 commercial banks, 11 specialized banks, 58 microfinance institutions (8 of which are deposit-taking MFI), 109 microfinance operators, 8 representative offices, 9 financial lease companies, 6 third party processors, a credit bureau of Cambodia, and 2010 money exchangers (Supervision Annual Report 2015, NBC). We await 2016 end figures to be published in 2017.

C. National Bank of Cambodia

National Bank Cambodia (“NBC”), Cambodia’s Central Bank, undertakes the key functions and services mentioned in the table above. It is an autonomous public entity of a commercial and industrial nature.

NBC is responsible for licensing, de-licensing and supervising banks and other financial institutions such as microfinance institutions, financial leasing companies, money exchanger, 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 shall provide reports on a monthly, semi-annual, or annual basis pertaining to their operational activities and compliance with legal requirements. NBC may audit bank operation, establish credit ceilings and foreign exchange requirements and establish interest rate guidelines.

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 insolvency 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 the 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 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, shall 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 the 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) Collection of non-earmarked deposits from the public; (iii) Provision of means of payment to customers and the processing of said means of payment in national currency or foreign exchanges.

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

For the purpose of licensing a bank, the Banking Law requires NBC to ensure the suitability of the shareholder(s) as specifically prescribed by the law. The idea is to

ensure the bank's financial position is responsive to any financial difficulties that the bank might encounter.

Recently in March 2016, NBC required all commercial banks incorporated as a foreign branch, whose parent bank is rated as "investment grade", to increase its minimum registered capital of 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 shall permanently deposit 10% of its minimum 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 regulations including, but not limited to, the following:

- Maintain solvency ratio (The solvency ratio of their net worth to their aggregate credit risk exposure shall not be less than 15%);
- Maintain 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;
- Fixed assets acquired by banks for operational purpose shall be less than 30% of its total net worth;
- Maintain an allowance for loan losses at a level adequate to absorb expected loss in the loan portfolio;
- Maintain corporate governance requirements.

E. Microfinance Institutions

Microfinance institution is an institution licensed by 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 (MDI). The classification is based on the scope of operations which include:

- (i) MFIs engaged in credit portfolio equal to or greater than 100 million Riels are required to be registered with NBC;
- (ii) MFIs engaged in credit portfolio equal to or greater than 1000million Riels or having 1,000 borrowers or more are required to obtain a license from NBC;

- (iii) Licensed MFIs requesting to mobilize savings from the public shall meet criteria such as holding the license for at least 3 years, having strong financial conditions and sound management, having effective management system, and sustaining positive 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 governances 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

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

2. Financial Lease Institutions

In 2009, a law on financial leasing was promulgated. NBC issues licenses for leasing companies/financial lease institutions. The financial leasing operation may be conducted by banks and financial lease institutions receiving licenses to operate banking business from NBC. Unless it is a bank, a financial lease institution is not allowed to carry out banking operations other than the 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:

- (iv) A description of the leased movable property;
- (v) The amount periodically and terms of financial lease payments;
- (vi) A commencement date of the financial lease; and
- (vii) 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. 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.

5. 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:

- (i) 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.
- (ii) Have the right to participate in the Riel Auction conducted by the Central Bank.
- (iii) Have the right to participate in the training on detecting counterfeit money organized by the Central Bank.

6. Pawnshops

Other than banks and MEFs, 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 Instrument and Transactions

Banks may also be involved in the settlement of negotiable instrument 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 market 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. NBC has duties and functions to participate in the formation and supervision of the money and financial market but can also conduct securities operations to facilitate registration, distribution and trade of securities issued by the Government.

The Law on Government Securities (“Government Securities Law”) and the Law on the Issuance and Trading of Non-government Securities (“Securities Law”) were promulgated in 2007. They formed the basis for the establishment of a securities market in Cambodia. The development and operation of the securities market require additional implementing regulations for these laws. The RGC and the SECC has regularly issued a number of regulations to support the operation of the securities market.

A. The Government Securities Law

The Government Securities Law was aimed at laying out the framework for the government to issue securities in case the government is in need of financing or payment of its obligations, and to contribute to the development of the securities market in the country. Under this law, the government may issue various types of securities such as Treasury bills, Treasury bonds, bonds on which yield is linked to inflation rate, the exchange rate or other rate and non-marketable savings bonds.

The government securities shall be offered and issued by the MEF, and the total amount of funds to be raised by issuing government securities shall be annually approved by the Parliament in accordance with the Law on Financial Management (Annual Budget) for the relevant year and the 2008 Law on Public Financial System.

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 under the Commercial Law to offer and issue securities to members of the public in Cambodia, including:

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

The Securities Law regulates the securities exchange, clearing and settlement system, securities depositories and other operators who trade or provide the roles and responsibilities of the Securities and Exchange Commission of Cambodia, the issue and offer of securities, the conduct of securities market, the licensing requirements for securities market operators, the permissible and prohibited behavior of issuers, officers and other related actors, dispute resolutions mechanism and sanctions.

In addition, the Securities Law, MEF and the government have issued many complementary regulations to establish guidelines for the operation of securities market and the issue and trading of securities.

C. Securities and Exchange Commission of Cambodia (SECC)

Established under the Securities Law in 2007, the SECC is the government body that regulates and supervises the securities markets and securities transactions. The SECC assists the government on 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 SECC. 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 price of those securities to be traded in the securities market approved by the SECC.

D. Cambodia Securities Exchange and Other Actors

To operate 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 SECC, was incorporated in 2010 as a market operator to facilitate securities transaction. The SECC also issued operating rules for other operators and members of the securities market.

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

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

- 2. Operator of Securities Depository.** It holds the deposit of securities that are listed at the Securities Market Operator or are newly issued by a listed

company, securities under the process of initial public offering or under the process prior to the start of initial public offering procedures, and securities prepared to be listed at the operator of the securities depository.

- 3. Operator of Clearance and Settlement.** A clearance and settlement facility provides a regular mechanism for the parties to transactions relating to securities transactions to meet 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 securities to the purchaser.
- 4. Cash Settlement Agent.** It is a commercial bank accredited by the SECC to conduct cash clearance and settlement. Such bank shall be licensed by and obtain a non-refusal from the NBC for acting as cash settlement agent. The cash settlement agent manages clients' securities account for trading securities and conducts cash transfer to other parties for securities trading transaction in a proper way and on time.
- 5. Securities Registrar.** The securities registrar is the person registered with SECC to provide the following services:
 - (i) Ensuring proper management of the subscription process and securities allotment in accordance with the public offering procedures;
 - (ii) Recording securities owners' books after the securities allotment process have been completed in the primary market;
 - (iii) Preparing report on the completion and success of the securities depositing at the operator of securities depository to the issuer and SECC;
 - (iv) Sending notification to securities holders by indicating the ownership of securities under the subscription process of the issuer; and
 - (v) Other services approved by SECC.
- 6. Securities Transfer Agent.** Securities transfer agent is registered with SECC to provide the following services:
 - (i) Maintaining and managing the securities owners' books including the details of securities owners to be conformed to the records of the securities depository operator;
 - (ii) Administration work related to the changes in ownership register, preparing report, statistics and other relevant information related to the activities of the securities transfer agent;

- (iii) Preparing work related to the corporate actions provided by the issuers such as the notification of dividend, interest, and principle payment;
- (iv) Sending notification and other information to securities holders and dispute resolution related to the securities ownership involved with services of the securities transfer agent;
- (v) Other services approved by SECC.

7. Paying Agent. The paying agent is registered with SECC to provide the following services:

- (i) Calculating dividend, principles or other payment provided for securities holders or relevant parties following the instructions of the issuers;
- (ii) Payment on behalf of the issuers to securities holders or other relevant parties;
- (iii) 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 SECC as necessary;
- (iv) Other services approved by SECC.

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

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

However, the regulations regarding the issuance of equity securities do not prescribe detailed process and other requirements for private placement or personal offering.

2. Public Offering

The public offer of securities means 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 it shall be made according to the provisions of government regulations.

1.1. Certain Incentives for public offering

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

- (i) 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;
- (ii) 5% of tax exemption on profits for company; and
- (iii) 50% of exemption on withholding taxes for public investors who hold and/or sell-purchase the government securities, equity securities and debt securities.

1.2. Requirements for an approval on public offering

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

a- 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 application;
- Net profit of not less than 2 billion Riels for the latest full financial year prior to the date of application and the aggregate net profit of not less than 3 billion Riels for the latest 2 years.

- As of the date of the application, there shall be at least 200 Shareholders with the voting right less than 1%, who holds at least 10% of the total shares.
- There shall be, among the total shares, at least 7% shares with voting right 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 the net profit of at least 10%);
- As of the date of the application, there shall be at least 100 Shareholders with the voting right less than 1%, who holds at least 10% of the total shares.
- There shall be, among the total shares, at least 10% shares with voting right of less than 1%.

Other requirements: All the applicants for both the Main Board and the Growth Board shall:

- Not make any change to the shareholders holding the most voting right between the last 1 year and the official registration date in the security market; and
- All the issued securities shall be deposited at the authorized security depository operator(s).

b- Regulatory compliance: the following regulatory requirements shall be fulfilled:

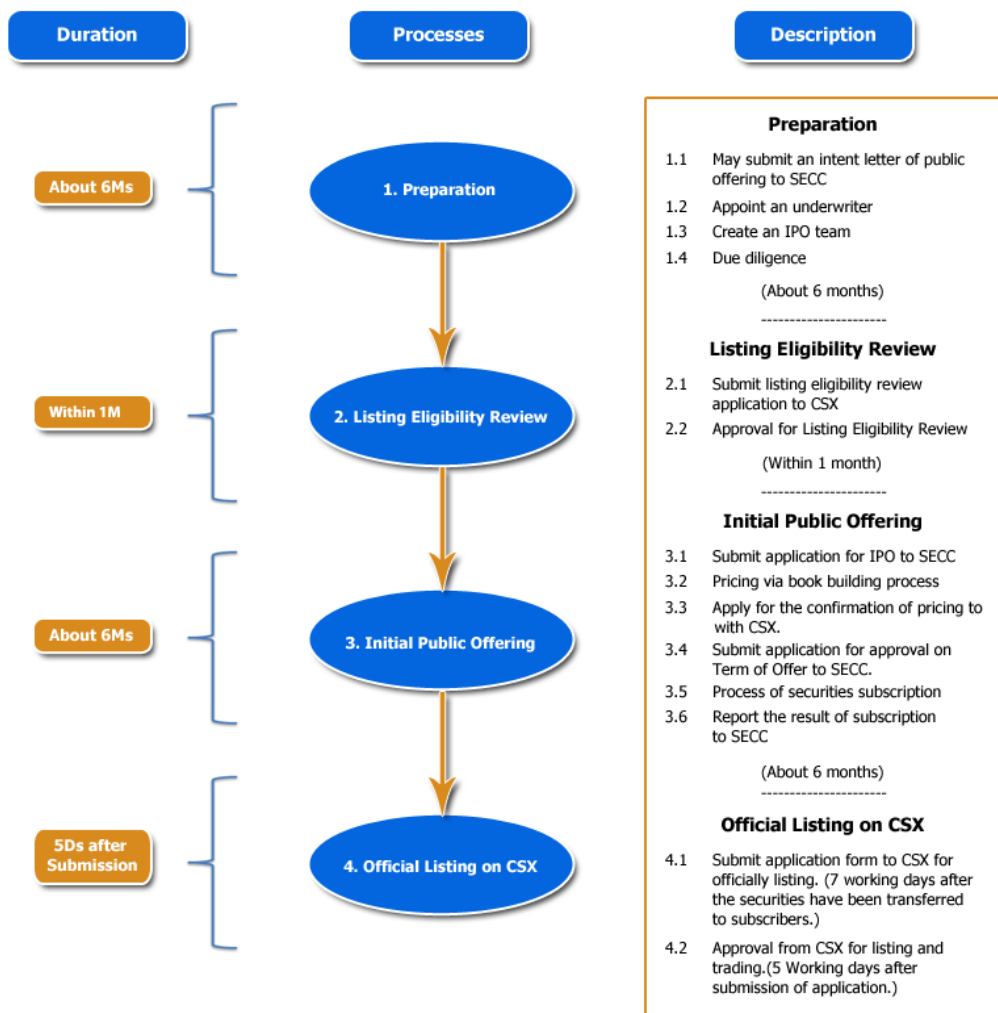
- The issuer's establishment must be in good standing regarding company registration, tax registration, labour registration and the National Social Securities Fund;
- The issuer must obtain necessary approvals and/or licenses required for its business operation; and
- The issuer must report to the relevant authorities such as CDC, MOC, GDT and other relevant authorities.

c- Accounting and Tax compliance: the issuers must prepare financial and accounting documents in compliance with Cambodian accounting standards and maintain the records for 10 years. The issuers must also comply with various tax obligations (See Chapter 3 above).

d- Corporate governance compliance: In addition to the general requirements for the board of directors of the 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 Board of Directors (between 5-15 members)
- Appointment of independent directors and executive directors
- Procedures for Board Meetings.

Figure 1: Listing Process



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

e- Post Listing Compliance

The SECC and CSX require listed company or entity to continue to comply with the legal and listing requirements with them. The listed company may be delisted on the following events:

- (i) Listed company fails to submit its annual report for the latest fiscal years within 3 months after the submission deadline;

- (ii) The auditor's opinion in the audit report is adverse or disclaimed for 2 years;
- (iii) Decrease in equity for the last 2 consecutive years by 50%;
- (iv) Repetitive breach of disclosure obligations;
- (v) Inability to settle commercial paper, issued cheques; or transactions with commercial banks have been suspended;
or
- (vi) Subject to corporate dissolution.

The CSX has been operating since mid-2011. Phnom Penh Water Supply Authority (PPWSA) is the first state-enterprise to offer initial public offering (IPO) on 18 April 2012. About two years later, the second IPO was issued by Grand Twins International (Cambodia) PLC. Then in December 2015, another state enterprise, Phnom Penh Autonomous Port, was also listed on CSX securities market. Also Phnom Penh SEZ Plc was listed on 30 May 2016. A few other government and corporate enterprises, including the Sihanoukville Port Authority, are currently preparing for IPOs.

CHAPTER 9 INSURANCE

Relevant Laws:

- Law on the Amendment of the 2003 Law on Taxation.
- Law on Insurance 2014

The Law on Insurance 2014 is the main law governing the insurance sector in Cambodia and, therefore, the main subject of this Chapter. This law replaces the old Law on Insurance of 2000. A number of regulations were issued by The Ministry of Economy and Finance (MEF) under the old Law on Insurance, and transitionally remain effective and applicable to the extent they are consistent with the new Law.

Under the 2014 Law, MEF continues to be the competent authority in issuing regulations to regulate and control the insurance business in compliance with the provisions of this Law.

Also relevant to the business of insurance enterprises are some relatively new provisions of the Law on the Amendment of the 2003 Law on Taxation which affects the profits of these enterprises.

Name of Institution	Key Functions and Services
MEF	<ul style="list-style-type: none">• Approve application for insurance business license.• Review annual financial report of insurance companies.• Appoint insurance inspector to inspect insurance companies.• Handle applications for voluntary liquidation for dissolution of insurance company, appoint liquidators and monitor and supervise them.• Appoint a provisional administrator of insurance company.• Provide mediation and conciliation services for insurance sector.

I. BACKGROUND OF INSURANCE INDUSTRY IN CAMBODIA

Cambodia's insurance sector actually 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 mainly 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 growth fuelled 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 2011-2020, the insurance industry is becoming a vitally important financial institution 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 Law on Insurance 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 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 LAW

A. Insurance Terms and Conditions

The 2014 Law on Insurance lays down certain formalities that the 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 shall be indemnified by the insurance company. However, the insurance company will not indemnify any loss or damage caused by intentional misconduct or by fraudulent act of the insured.

B. Insurance Categories

The Law on Insurance 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 shall be made to cover either death or survival that may include insurance on accidents, serious illness, or normal sickness.

C. Compulsory Insurance

The Law on Insurance requires that vehicles be compulsorily insured to cover the vehicle owner, driver and/or keeper. Any third party who was injured or died 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. The liability insurance on vehicles shall 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 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 MEF in order to operate a specific insurance business as follows:

1. Life insurance
2. General insurance
3. Re-insurance
4. Micro insurance.

A general insurance company and life insurance company can also operate 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 3 (three) months after the end of a financial year or within any additional time granted by MEF, each insurance company shall submit its annual financial report reviewed by an auditor authorized/recognized by MEF. Such report shall be done in compliance with the standard of an international financial report, and with the law and other regulations in force.
- 2. Insurance Inspection** - The MEF has the right to appoint the insurance inspector to monitor, investigate, review, and enhance the implementation of the Law on Insurance. The insurance inspector has the right to inspect the insurance company and satisfy other duties as assigned by MEF. 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 (forty-five) days to MEF from the date the inspector's decision is received. The MEF shall decide on the objection within no later than 2 (two) months from the date the objection is received. In case such person disagrees with the MEF decision, he/she has the right to lodge a complaint with the courts.

- 3. Liquidation for Dissolution of Insurance Company** - An insurance company that is solvent enough can voluntarily apply for liquidation in any of the following cases:
 - The term of the company is expired;
 - The ordinary or extraordinary shareholder resolution is reached in compliance with the Articles of Incorporation.

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

The MEF shall appoint a liquidator from its list with appropriate professional qualification. The authority and responsibilities of the liquidator are supervised and monitored by MEF. After receiving confirmation of the end of the voluntary liquidation process for dissolution of the insurance company, MEF shall rescind the insurance license within no later than 3 (three) months. The company shall eliminate its legal capacity from the date the certificate of dissolution of the company is issued.

- 4. Provisional Administration** - If an insurance company faces serious financial problems, MEF has the right to appoint a provisional administrator for an initial period of no later than 3 months to restore the situation of the company. If necessary, the term of the provisional administrator can be extended for an additional 3 months.

The provisional administrator has the right to manage and lead the work of that insurance company. 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 norms, the provisional administrator shall submit a report to MEF to cancel the protective measures imposed on this company, and the mission of the provisional administration shall cease.

However, if the assessment indicates that the insurance company is solvent but cannot comply with the legal and regulatory norms within 3 months, MEF shall rescind the license of the company and the provisional administration shall be converted to the voluntary liquidation process for dissolution of the company, as stated above.

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

- 5. Liquidation through the Court** - The MEF shall file a complaint to the court to start the liquidation process through the court. The court shall appoint a liquidator with professional qualification as listed by

MEF. The provisional administrator can also be appointed to be the liquidator by the court.

The liquidator shall 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 Law on Insurance and the Law on Insolvency.

Order of priority for liabilities shall be specified as below:

- Fees and other expenses related to the provisional administration and liquidation process.
- Claims by the insurance identification seeker.
- Claims by the insurance policy owner.
- The salary of the workers and employees, administrative fee, filing fee, and other tax duties of the court.
- Claims with secured transactions.
- State taxes for which notice is not filed.
- 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 the insurance identification, shall comply with the MEF Guidelines.

III. TAXATION OF INSURANCE ENTERPRISE

It is significant for business operators and investors to understand how tax on insurance enterprises is imposed. Under Article 21 of the 1997 Law on Taxation, an insurance enterprise normally is not subject to tax at the generally applicable rate of Article 20 (new) of the Law on the Amendment of the 2003 Law on Taxation (i.e. up to 20% on profit for most legal entities), but an insurance enterprise is instead required to pay a tax on profit equal to 5% of the gross amount of premiums accrued during the tax year with respect to the insurance and reinsurance of risks in Cambodia.

If for any reason, an insurance enterprise engages in activities which are not insurance or reinsurance activities, income from these activities is subject to tax on profit at the appropriate rate of Article 20 (new) of the Law on the Amendment of the 2003 Law on Taxation. In this case the taxable profit shall be calculated in the same manner as the profit on the activities of other enterprises (i.e. up to 20%).

An insurance enterprise must also pay the 20% tax on fringe benefits as provided by Article 48 of the 1997 Law on Taxation. However, under the MEF Prakas on Profit Tax dated 2003 since this tax is not imposed on the net taxable income, an insurance enterprise is not permitted to deduct from its gross premium income the cost of fringe benefits it may provide to its employees.

IV. 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 reputation and fostering public awareness of the insurance industry;
- promoting professional knowledge and standards within the industry; and
- facilitating exchange of information and statistics of 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 also joined 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 10 INFRASTRUCTURE

This Chapter briefly covers the following infrastructure issues namely, transportation and logistics, energy, petrochemicals and telecommunication in Cambodia, and a final section on government contracts. More detail in other Chapters or sections on investment, property and construction, and environmental protection may impinge on infrastructure contracts in Cambodia.

Relevant Laws: Infrastructure development in Cambodia is governed by a number of laws such as the following:

- Law on Electricity 2001 (amended in 2007 and 2015),
- Law on Concessions 2007 (for public physical infrastructure development projects),
- Law on Public Procurement, 2012,
- Law on Road Traffic, 2014 and
- Law on Telecommunications 2015.

These laws are administered and regulated by different government authorities including the Ministry of Mines and Energy (MME); the Ministry of Economy and Finance (MEF); the Ministry of Public Works and Transport (MPWT); and the Ministry of Post and Telecommunication (MPT). A number of regulations are issued or are to be issued by the RGC and/or the Ministry responsible for administering the law(s).

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 6 years or so there has been a gradual increased 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 (AEC).

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, Cambodia's (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, Samdech Akkak Mohasena Padei Techo Hun Sen, said that Cambodia needed to rapidly increase investment in its road, rail, sea and air links if it is to take advantage of regional integration and remain internationally competitive. He also said that the Government was developing a master plan to better coordinate the country's infrastructure ambitions, and that joint funding from public and private investors would become an increasingly important part of that strategy.

"The MEF will lead an initiative to develop public-private mechanisms," the Prime Minister said. "We also want to promote healthy competition in the transport and logistics sector for domestic and foreign firms." The following are some of the areas of infrastructure that seek development in the coming years:

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. 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 trafficking, 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.

As regards investment, recently the Director-General of the (MPWT) said the Government would prioritize investments in the country's rail network and roads ahead of seaports and airports. He was recently quoted as saying: "the railways should have been developed 10 years ago... we are just now working to connect with Thailand, and also want to build a line between Phnom Penh and Vietnam... we also plan to use funds to widen congested roads from two lanes to four."

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 ADB and AusAID. It is fully-operational, carrying cargo such as rice, steel, cement, oil and containers. Passenger rail on this line recently 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 being developed or are planned to be developed offshore from Sihanoukville Port, with a new multi-purpose terminal also planned with the assistance of JICA. 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 in the near further, including deep seawater, international and tourist ports.

D. Airways

There are three international airports operating in Cambodia: at Phnom Penh, Siem Reap and Preah Sihanouk. Aside from tourism, these airports serve as import and export gateways to and from Cambodia.

The main airport of Cambodia in Phnom Penh has recently been expanded and the Government has plans to build new airports to meet the demand of tourism and help Cambodia compete with neighboring countries in importing and exporting goods with regional and global partners.

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 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 the electricity power services, granting rights, obligations and penalties, if necessary, for the supplier and consumer of electricity in relation to electricity generation and supply facilities.
- Create favorable conditions for the investment in and the commercial operation of the electric power industry.

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 tariff, rates and charges for electric power services which are fair to both the consumers and the licensees.

Any licensee or consumer may refer a dispute relating to electric power service to the EAC for resolution. 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 generating plants and to import electric power from neighboring countries during the construction period of such power plants.

The following entities distribute electricity in Cambodia:

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

In order to meet the increasing demand, the Government has developed the power source expansion plan under the Power Development Plan for the period of 2008-2021. In line with the power source expansion, transmission lines are under construction and electric power has been imported from neighboring countries. Currently, the aim is to increase access to electricity to include providing electricity service to all rural households by 2030. This will be aided by the proposed construction of a number of hydro-power plants and coal power plants to be completed by 2020.

At the time of writing, the six hydro-power plants now operating have a total installed capacity of about 928 MWs and provide about one-third of all electricity generated.

Coal-fired power plants have an installed capacity of 370 MWs and contribute about 37 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. In the last decade it is found that the petroleum areas comprise 6 offshore blocks, 19 onshore blocks and 4 areas in the Overlapping Claims Area (OCA) with Thailand. The 6 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 4 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 the Petroleum Regulations, 1991 (amended in 1995 and 1999) and Environmental Regulations relevant to this sector, including the requirement for Environment Impact Assessments (EIA). Currently, other areas affecting the oil and gas industry are still pending, including a new Petroleum Law which is expected to be passed soon.

Under the Petroleum Regulations of 1991, the Ministry of Industry, Mines and Energy (MIME) was the administrative authority responsible for the management of petroleum resources. However, in 1998 this authority was transferred to the Cambodian National Petroleum Authority (CNPA). The CNPA is now responsible for evaluating bids and making recommendations to the government that Petroleum Agreements be granted to specific companies.

The CNPA is the permanent institution of the Cambodian government under the direct administration and management of the Prime Minister, responsible for the management and development of upstream and downstream activities of the petroleum industry. CNPA aims to manage the petroleum resources of Cambodia and support successful development of the national oil and gas industry in order to:

- Bring cheaper petroleum energy for both industrial and domestic use,
- Provide security for the supply of petroleum, and

- Contribute to sustaining Cambodia's economic growth.

C. Recent Developments

In December 2012, the Cambodian Petrochemical Company (CPC) formed a joint venture with China's Sinomach China Perfect Machinery Industry Corp seeking to invest \$2.3 billion in the construction of Cambodia's first oil refinery. More recently, China National Petroleum Corporation (CNPC) and Northeast Refining & Chemical Engineering Company secured an engineering, procurement and construction (EPC) contract from a Cambodian conglomerate to construct the first phase of a \$620 million oil refinery in the southwestern Preah Sihanouk province. Under the contract, CNPC will carry out detailed engineering design of the project, procure all the equipment and materials necessary, and then construct an oil refinery for the CPC. According to CNPC, the construction of the oil refinery in the first phase will be completed at the end of 2018 with oil production capacity at 2 million tons per year. It is anticipated that it will be the first oil refinery in Cambodia which will increase its investment in the project to \$3 billion with the increased capacity of 5 million tons per year in future phases. As preliminary processes are still in progress, there is no oil and gas production at present.

Currently, Cambodia imports petroleum from Vietnam, Singapore and Thailand as 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

Developing the legal framework for oil and gas and developing the regulatory and administrative capacities of the CNPA remain crucial to ensure competitiveness, transparency, and adequately safeguard the interests of investors, consumers, the environment and local people. A number of international development agencies and international financial institutions have provided, or are providing, technical and financial support to the government in order to achieve this and the Cambodian government is working on the development of a complete legal framework for the management of petroleum resources. The new Petroleum Law will be accompanied by an extensive implementing sub-decree.

Cambodia's petroleum industry holds considerable promise for investors and provides 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 telecommunication 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 healthy 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 new Law on Telecommunication of Cambodia was promulgated on 25 December 2015. This law aims to:

- Ensure the effective access to the infrastructure, networks, and services of the telecommunication sector with safety, quality, reliability, and reasonable price for the development of the society and economy;
- Ensure the participation of and encouragement to the private sectors for the effective development of the telecommunication 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 Ministry of Post and Telecommunication (MPTC) to perform certain duties as follows:

- Impose policies, development strategies, and legal framework to administer the telecom operations, its infrastructure, and its networks in the Kingdom of Cambodia;
- Be the signatory and representative of the Cambodian Royal Government in respect of international cooperation in the telecommunication sector.

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

- a. Acting as the controlling institution and resolving disputes related to telecom operations in accordance with the provisions of this Law and other regulations;

- b. Taking appropriate measures in accordance with this Law to conduct a search, investigate, and take down business operations that are illegal, contrary to code of ethics, to the technological requirements, to the quality and service standard requirements, and to the standard of telecom equipment as specified in this Law and other regulations; and
- c. Leading the regulation of professional code of ethics for telecommunication sector.

Under the 2015 Law on Telecommunication, the requirements for obtaining the license became apparent and should no longer vary on a case-by-case basis. Now 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 TRC.

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 and the country continues to embrace social media and the desire to regularly communicate with friends and family at any given opportunity.

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 2012 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 qualification for the bidder.

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 big 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 black list of the MEF or prohibited by the court of law.

The bidders shall 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 shall be determined by MEF Prakas.

The procurement implementing institution shall determine the eligibility of the bidders only for the projects with complex technicality. Moreover, this institution shall review and evaluate the qualification of the leading/successful bidder(s) before signing the contract. The procedures for the determination of the qualification shall be determined by MEF Prakas. The MEF shall register in the black list 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 administration implementing the procurement. According to the law, this contract shall be made in Khmer. If necessary, it can be made in a foreign language by translating from the contract in Khmer. In case of conflict, the contract in Khmer prevails. In addition, the contract currency shall be Khmer Riel and exceptionally, for the 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. This security deposit will automatically be transferred to the administration account in case of breach of contract by the successful bidder or premature termination of the contract by the procurement implementing institution. The amount of the security deposit shall be fixed by MEF Prakas, the institution in charge of the management of the public procurement, with its General Department of Procurement as a 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 Infrastructure Concession Contracts

In Cambodia, there are at least five types of investment concession contracts: economic land concession, forest concession, fishery concession, mining

concession, and public physical infrastructure development concession contracts. In the field of infrastructure we are just concerned with the latter.

Public physical infrastructure development concession is regulated by the 2007 Law on Concessions. The “concession” is a Government contract whereby a state institution entrusts to a private party the total or partial implementation of an infrastructure project for which that institution would normally be responsible, and for which the private party assumes a major part of the construction and/or operating risks, or receives a benefit by way of compensation from Government revenue or from fees and charges collected from users or customers.

According to the law, infrastructure projects include the design, construction, maintenance or operation of new infrastructure facilities or the modernization, rehabilitation, expansion, management or operation of existing infrastructure facilities.

Concession contracts in relation to infrastructure facilities providing direct or indirect services to the general public may be entered into by the relevant institutions in the following sectors:

- Power generation, power transmission and power distribution.
- Transportation facilities and systems including, but not limited to, roads, bridges, airports, ports, railways and canals.
- Water supply and water treatment facilities.
- Telecommunication and information technology infrastructure.
- Infrastructure related to tourism projects, such as tourism sites and museums.
- Gas and oil related infrastructures including oil and gas pipelines.
- Sewerage, drainage and dredging.
- Solid waste management and treatment.
- Hospitals and other infrastructure related to health, education and sport sectors.
- Infrastructure related to special economic zones and social housing.
- Irrigation and agricultural related infrastructure.
- Other sectors for which a specific law allows for the granting of Concessions.

The law provides for the following different forms of concession contractual arrangements:

- Build, operate and transfer
- Build, lease and transfer
- Build, transfer and operate
- Build, own and operate
- Build, own, operate and transfer

- Build, cooperate and transfer
- Expand, operate and transfer
- Modernize, operate and transfer
- Modernize, own and operate
- Lease and operate; or (alternatively)
- Undertake management or management arrangements, or any variant thereof or similar arrangement, including joint public-private implementation of infrastructure facilities.

In practice, among the above ten different forms of concession, the Build-Operate-Transfer (B.O.T.) concession appears to be the most commonly used.

As for the selection of the concessionaire, the contracting institution shall select the concessionaire through international or national bidding procedures, or by negotiated procedure according to the circumstances. The selection of the concessionaire shall be carried out in accordance with the procedures provided for in the implementing Sub-Decree.

Except as otherwise required by the express provisions in the Law on Concession or any other applicable law, the contracting parties shall mention in the concession contract matters such as:

- The nature, scope and standards of works to be performed and services to be provided by the concessionaire;
- Any incentives to be granted to promote cost-efficiency, accelerate construction and increase quality of operation and maintenance to the benefit of the public interest;
- Any fees, tolls, rentals or other charges to be applied by the concessionaire and, when applicable, to be approved by the regulatory agency;
- Agreed risk allocation or risk sharing;
- Service levels and standards required from the concessionaire in the operation and management of the infrastructure facility and consequences of non-compliance with the set service levels and standards;
- Payment mechanisms;
- Required commitment and cooperation of the contracting institution and other competent institutions to support the implementation of the infrastructure project throughout the concession;
- Other matters as the parties deem appropriate.

Also, the concession contract shall specify the concession, which shall not exceed 30 (thirty) years from the date of signing the concession contract. If deemed necessary because of the nature of the infrastructure project, the Government may approve a longer concession.

The concession, as stipulated in the concession contract, shall not be extended except as a result of the following circumstances:

- Completion delay or interruption of operation due to breach of contract by the contracting institution or by acts of other competent institutions;
- Completion delay or interruption of operation due to an event of force majeure as specified in the concession contract and provided the concessionaire would not be able to recover the costs or losses brought about by such circumstances during the original concession, including by way of customary project insurance.

However, the concession may be further extended to allow the concessionaire to recover additional costs arising from new requirements of the contracting institution not originally foreseen in the concession contract if the concessionaire would not be able to recover such costs during the stipulated concession.

At the time of writing, the RGC has growing interest in developing public infrastructure to support economic development. Many bridges, roads, and other public infrastructure facilities have been built and developed with assistance from international donors or investment from the private sector and the Government is encouraging and welcoming further competitive bidders and investors from foreign entities or private sector to invest in the development of Cambodia's bright future.

CHAPTER 11 ENVIRONMENTAL PROTECTION

Relevant Laws: Environmental protection in Cambodia is governed by a number of laws and regulations such as:

- The Constitution 1993
- Law on Investment 1994
- Law on Environment Protection and Natural Resource Management 1996
- Sub-decree on Water Pollution Control 1999
- Sub-decree on Management of Solid Waste 1999
- Sub-decree on the Implementation of the Environmental Impact Assessment (EIA) Process 1999
- Sub-decree on Control of Air Pollution and Noise Disturbance 2000
- Law on Management and Exploitation of Mineral Resources 2001
- Sub-decree on Economic Land Concession 2005
- MOE Prakas on Guidelines for Preparing Initial and Full EIA Report 2009
- MOE Prakas on Registration of EIA Companies 2014, and
- MOE & MME Joint-Prakas on Environmental Projection Requirements for small scale and artisan construction material mining projects 2016.

The Ministry of Environment (MOE) is the principal government authority responsible for administering and enforcing the environmental protection law and regulations. MOE is responsible for reviewing and approving Environmental and Social Impact Assessment (ESIA) and ensuring compliance with approved environment management plan for private or public projects requiring such report and plan.

Name of Institutions	Key Functions and Services
MOE	<ul style="list-style-type: none"> • Issue guidelines for implementing the Environment Law and regulations • Advise project owners on conducting and preparing ESIA report • Review and evaluate/approve ESIA report for project with capital investment of larger than USD2 million • Mobilize public participation in environmental projection • Develop national environmental management plan • Monitoring compliance with project environmental management plan • Take measures (legal action to enforce the Environment

	Law)
Provincial Department of Environment	<ul style="list-style-type: none"> • Disseminate publicly about ESIA requirements • Advise project owners on conducting and preparing ESIA report • Review and evaluate/approve ESIA report for project with capital investment of up to USD2 million • Mobilize public participation in environmental projection • Monitoring compliance with project environmental management plan • Report and propose measures (legal action to enforce the Environment Law) to MOE.

I. DEVELOPMENT OF ENVIRONMENTAL PROTECTION LAW IN CAMBODIA

The environmental protection is enshrined in the 1993 Constitution mandating 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 Environment Protection and Natural Resource Management (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 Sub-decree on Water Pollution Control (1999), Sub-decree on Management of Solid Waste (1999), and Sub-decree on Control of Air Pollution and Noise Disturbance (2000). The Sub-decree on the Implementation of the Environmental Impact Assessment (EIA) Process was also issued in 1999. This Sub-decree stipulates the precise nature and format of assessment and the kind of projects requiring such assessment based on the project nature, size, and activity. In addition to these, a number of relevant laws and regulations (such as the 1994 Law on Investment, the 2001 Law on Management and Exploitation of Mineral Resources, and the 2005 Sub-decree on Economic Land Concession) stipulate the environmental impact clearance requirements prior to the project implementation.

The MOE is responsible for implementing the Environment Law and these regulations. MOE has delegated some power and functions related to EIA review, monitoring and enforcement to the Provincial Department of Environment through a Prakas on Delegation of Power to Municipal/Provincial Department of Environment to Decide on Project Development (2005).

In 2009, MOE issued a Prakas on Guidelines for Preparing Initial and Full EIA Report. In 2014, MOE issued a Prakas on Registration of EIA Companies. And recently in 2016, the MOE issued a Joint-Prakas with the Ministry of Mines and Energy (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 on examination and monitoring the project implementation. The service fees are determined by a Joint Prakas of the Ministry of Economy and Finance (MEF) and the(MOE).

Currently, MOE is developing an Environmental Code including a draft EIA Law. The draft law contains 96 Articles covering the principles and requirements of EIA, Environment Management Plan (EMP), Environmental Protection Agreement (EPA), Environmental Protection Plan (EPP), sectorial Strategic Environmental Assessment (SEA), Climate Change (GHG emission) Impact Assessment, Cumulative Impact Assessment, Health Impact Assessment, Trans-boundary Impact Assessment, Creation of project-by-project EIA Expert Review Committee composing of MOE officials and independent EIA experts, Public Participation Process, Process for resolution for EIA Disputes, and penalties for violating the EIA law.

In 2012, the MOE EIA Department collaborated with The NGO Forum on Cambodia in developing and publishing a "*Guidebook on EIA in the Kingdom of Cambodia*". Investors and project owners are advised to consult this Guidebook for more practical knowledge of the EIA process and requirements via the link below:

<http://sustinatgreen.com/uploads/cc55c7b8ee1d4b97a6472138034934c37ed03d35.pdf>

II. PROJECTS REQUIRING ENVIRONMENTAL IMPACT ASSESSMENT (EIA)

The Environment Law generally requires existing and new public, private or NGO projects to conduct EIA and submit to MOE for review and evaluation before submitting the projects to RGC for project approval. Pursuant to the Environment Law, the RGC issued the Sub-decree in 1999 on the Implementation of the Environmental Impact Assessment (EIA) Process, specifying types and scales of projects requiring EIA.

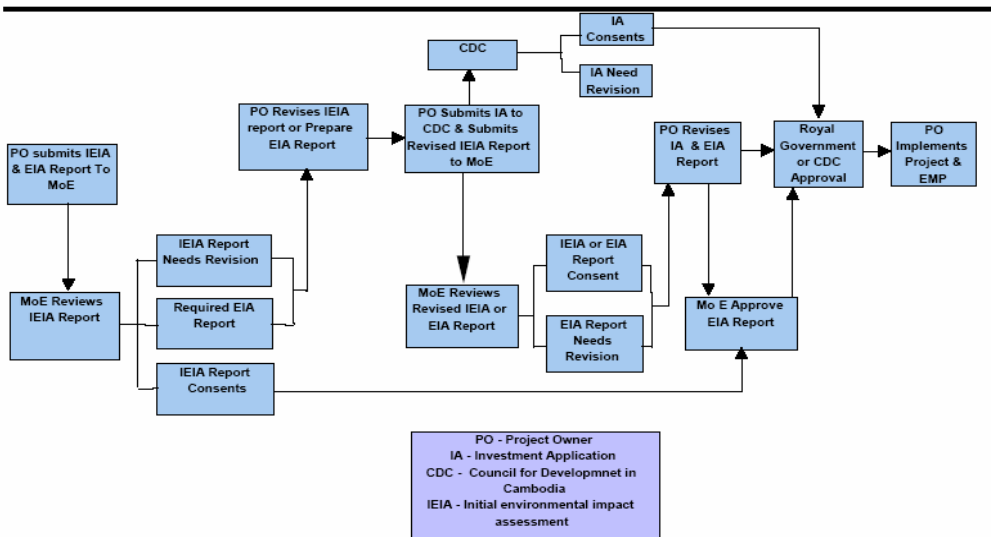
The Annex to this Sub-decree lists all the projects generally requiring EIA, and covers many industrial projects (food, catering, soft drink, and tobacco manufacturing; textile, garment and footwear factory; wood processing; paper production; rubber and plastic chemical production; non-metallic production; basic metallic industry; metallic processing; and other unspecified industries), agricultural projects (forest concession; forest annual harvest; land with forest coverage; agro-

industry (ELC); flooded areas and coastal zone development; irrigation or water release projects; and fisheries port); tourism development projects (tourism resorts and golf courses); and infrastructure development projects (urban development projects; industrial zones; road and bridges; ports and airports; sand/siltation dredging; and urban waste dumping sites).

In addition, based on a recent Joint-Prakas of MOE and MME, small scale and artisan construction material mining projects also require environmental protection agreements, or initial EIA, or full EIA depending on the potential environmental impacts of the projects. The MOE Prakas on Guidelines for Preparation of Initial EIA and Full EIA incorporate social impact assessment. As a result of this, the ESIA report is produced.

III. PROCESS OF ESIA

Generally proposed projects listed in the Annex to the Sub-decree on EIA Process or as specified in the Joint-Prakas of MOE & MME, require the project owners to prepare and submit Initial ESIA (IESIA) to MOE or its provincial line department for review and comment. If it is determined by MOE that the proposed projects would have significant adverse environmental impact, then the project owners shall prepare and submit full ESIA to MOE or its provincial department for review and evaluation before submitting the project proposal along with MOE comments or approval to RGC (through CDC) for approval in principle or to regulatory ministry for issuing relevant license or permit for the project development activities.



Source: <http://www.opendevdevelopmentcambodia.net/briefing/eia/#eia> (accessed on 09/05/2016)

The project owners are responsible for conducting and preparing the ESIA report which includes environmental mitigation and management plans. If the project owners have no internal qualified human resources to prepare the plans, they can procure consultancy services of EIA companies registered with MOE. Before conducting EIA, the project owners are required to consult and receive advice from MOE or its provincial line department on how to conduct the EIA and how to prepare ESIA report.

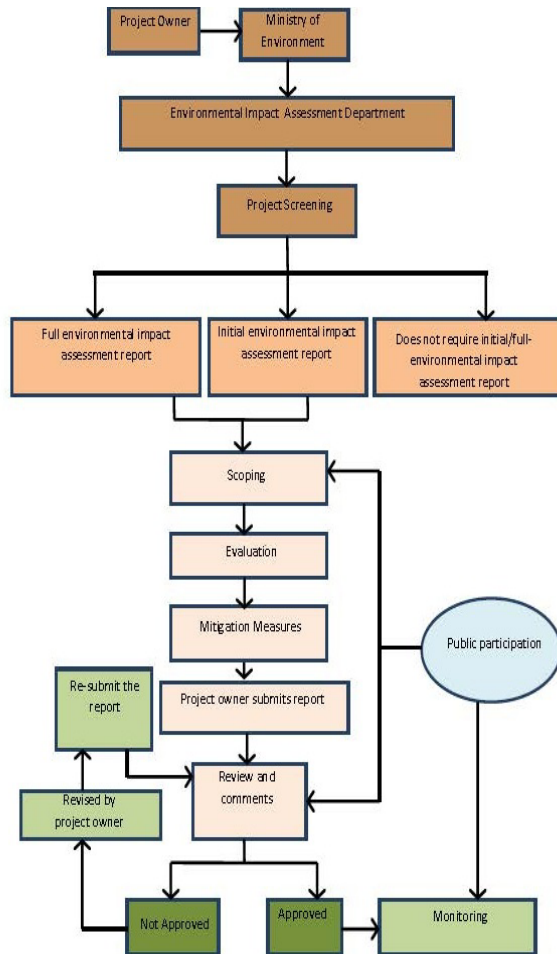
Before completing the review and evaluation of a draft IESIA or ESIA report, the MOE mandates itself to conduct consultation with concerned ministries and authorities as well as concerned communities and relevant NGOs.

IV. PRINCIPLE AND STAGES OF ESIA

The principles and stages of EIA under the existing laws and regulations are as follows:

1. Project Proposal
2. Project Screening
3. Project Scoping
4. Conducting ESIA
5. Environmental Impact Mitigation Measurement
6. Preparing ESIA Report
7. Review and Decision/Approval on the ESIA Report
8. Project Monitoring, and
9. Public Participation.

Chart of EIA Principles and Stages (sources: Guidebook on EIA in the Kingdom of Cambodia)



V. CONTENTS OF ESIA REPORT

Annex to the MOE Prakas on Guidelines for Preparing IESIA or ESIA provides basic and helpful outlines of ESIA report. Based on this an ESIA report shall contain: executive summary, introduction (project nature, objective of 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 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) was adopted to control water pollution and to suppress and reduce public water pollution. It also sets out the standards of liquid waste that can be disposed and determines some pollution sources that need to obtain permission from the MOE prior to the disposal of liquid waste or transportation of liquid waste from 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 and stored safely in accordance with certain technical standards.

An authorisation from the Ministry of Environment is required for the investment, transportation or construction with respect of hazardous waste disposal, storage, incineration, or reprocessing sites.

C. Noise and Air Pollution

The Sub-decree on 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 machineries that emit the pollutants or noise beyond the permitted level.

An authorisation from the MOE is required for the emission of pollutants and noise from immovable property sources.

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 national budget and the resettlement of which is under the management of the MEF/Inter-Ministerial Resettlement Committee (IRC).

For mining projects, the Law on 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 newly adopted Sub-Decree on Management of Mining Exploration and Industrial Mining Licenses (2016), a mining project community development fund is envisaged. Creation and management of such a fund require a Joint-Prakas of the MEF and the Ministry of Mines and Energy.

CHAPTER 12 DISPUTE RESOLUTION

Relevant Laws: There are many existing laws relevant to dispute resolution in Cambodia including:

- The Constitution, 1993
- Law on Investment, 1994
- Law on Statutes of Lawyers, 1995
- Law on Environmental Management and Natural Resources Management, 1996
- Law on Labour, 1997
- Law on Taxation, 1997 (as amended in 2003)
- Land Law, 2001
- Law on Management and Exploitation of Mineral Resources, 2001
- Code of Civil Procedure, 2006
- Law on Commercial Arbitration, 2006
- Code of Criminal Procedure, 2007
- Law on Management of Sub-National Administration, 2008
- Law on Expropriation, 2010 and relevant international Conventions, and executive regulations and guidelines
- Law on Organization and Functioning of the Courts, 2014.

I. COURT STRUCTURE

The organisation and functioning of the courts is based on the 2014 Law on the Organisation and the Functioning of the Courts (the Courts Law). There are three levels of courts: Courts of First Instance (provincial-capital courts), Court of Appeal, and Supreme Court. As of 1 January 2017 there are twenty-four provincial and capital courts, one Court of Appeal and one Supreme Court in Phnom Penh.

A Court of First Instance (which is the lower court) has jurisdiction over all types of disputes, including civil, criminal, commercial, and administrative cases. Under the Courts Law, the lower courts will comprise specialised courts – Civil Court, Criminal Court, Commercial Court and Labour Court. However, Cambodia is still in the process of establishing these specialised courts. Cambodia also has a Military Court to hear military related offenses at first instance.

Trials at court are conducted primarily based on the following:

- The Code of Criminal Procedure promulgated in 2007 for criminal matters; and

- The Code of Civil Procedure promulgated in 2006 for civil matters.
- There are other legal or regulatory provisions relevant to court proceedings and mechanisms to settle disputes before they are brought to court, such as the following:

Name of Institution	Key Functions and Services
National Commercial Arbitration Centre (NCAC)	<ul style="list-style-type: none"> • Resolves commercial disputes among investors or traders, whether they are Cambodian or foreigner, who have agreed to an arbitration of the disputes under NCAC Arbitration Rules. NCAC was established in 2006 under the Law on Commercial Arbitration and officially launched in January 2013.
Arbitration Council (AC)	<ul style="list-style-type: none"> • Resolves collective labour disputes in Cambodia. The Arbitration Council is an independent, national institution with quasi-judicial authority derived from the Labour Law of Cambodia. AC was established in 2003 with the support of the Ministry of Labour, employers and unions.
MLVT	<ul style="list-style-type: none"> • Implements the Labour Law, the Law on National Social Security Fund, the Law on Trade Unions; 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 taxpayer who is 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.
General Department of Customs and Excise (GDCE)	<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 duty levied by the government on any imported and exported goods. It curbs and prevents any kind of act regarding customs wrongdoings.
Committee of Tax	<ul style="list-style-type: none"> • Resolves and makes decisions on complaints regarding

Arbitration (CTA)	customs, excise and tax issues arising from decisions or determination of the General Department of Customs and Excise (GDCE) or the General Department of Taxation (GDT).
Cadastral Commission	<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.
Resettlement Grievance Redress Committees	<ul style="list-style-type: none"> • These mechanisms are created on a project basis with multi-stage process under sub-national level to resolve any disputes related to the resettlement process and impact including questions or disagreements on compensation and relocation options.
Local & Sub-National Administrations	<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 thumb print on the formalities to end the dispute. If the dispute cannot be redressed, the Commission may seek a solution from its higher administrative hierarchy.
Courts of First Instance (ordinary/specialized courts)	<ul style="list-style-type: none"> • Hears criminal, civil, labour, and administrative cases, except cases under jurisdiction of special tribunals (like military court or Constitutional Council) or under extra-ordinary tribunal (like 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 jurisdiction of other courts (like Constitutional Council, and Extra-ordinary Chamber for Trial of Khmer Rouge), which is defined 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.

<p>Military Court</p>	<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.
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II. RESOLUTION OF COMMERCIAL DISPUTES

A. Commercial Court

The Courts Law provides for the creation of a (not yet in making) commercial tribunal within the general court system, as a specialized Court of First Instance. Its establishment and commencement date is much awaited.

When it exists, the Commercial Tribunal of the Court of First Instance shall have competence to hear all commercial cases including insolvency, and enforcement of foreign arbitral awards. The Commercial Chambers will hear all appeals arising out of the Commercial Court.

In commercial cases where the subject matter is over 100,000,000 (one hundred million) Riels to less than 1,000,000,000 (one billion) Riels, the Commercial Tribunal of the Court of First Instance, when hearing the case and rendering its decision, 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 (one billion) Riels, the Commercial Tribunal, when hearing the case and rendering its decision, 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 (one hundred million) Riels, 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 higher levels, to include 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 2006 Law on Commercial Arbitration also established the National Commercial Arbitration Centre (“NCAC”), launched in 2013.

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;
- 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 Cambodian and foreigners who meet these qualifications may be listed in its arbitrator list.

Under the 2006 Law on Commercial Arbitration, an arbitration tribunal formed under this law shall have 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 shall 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 shall 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 shall 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 appointment.

For making its decision, the arbitration tribunal shall follow the agreement of the parties regarding the applicable laws 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 law.

The arbitral award rendered by the arbitration tribunal may be challenged, recognised and enforced by the competent court of Cambodia. The Court of First Instance is 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 court of Cambodia for the following reasons:

- At the request of a party, the Court of Appeal finds that:
 - Arbitration agreement is invalid due to incapacity of a party;
 - Improper notice of the appointment of 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 Court of Appeal itself finds that:
 - The subject matter is not capable of settlement by arbitration; or
 - The recognition of the arbitral award would be contrary to 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 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 1994 Law on Investment of the Kingdom of Cambodia recognizes various dispute resolution mechanisms such as conciliation and arbitration. Furthermore, the 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 1997 Labour Law provides for its creation. Thus, the provincial-capital court shall have competence over labour matters in Cambodia in accordance with the provisions of the Labour Law. The 1997 Labour Law distinguished 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. Either 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 Ministry of Labour and Vocational Training (“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 shall be 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 MLVT or the existence of a dispute is known by the labour inspector through various sources;
- the labour inspector shall convene the meeting of parties for conciliating such dispute within 15 working days after being designated by the Minister of MLVT;
- if the disputes are conciliated successfully, the labour inspectors shall prepare a final conciliation report (minutes of conciliation meeting) to be signed by the parties and the inspector himself; then the case is closed;
- if conciliation was not successfully or fully resolved, unless a 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 shall prepare a final conciliation report describing non-conciliated points of disputes and send the report to the Minister for forwarding such disputes to the Arbitration Council (“AC”), for arbitration (except where the parties have collectively agreed on dispute resolution procedure other than going to the Arbitration Council). The AC, which is provided for in the 1997 Labour Law, 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 it relates to claims under existing Labour Law, labour regulations, collective bargaining agreement or an employment contract, or ‘interests disputes’, when it relates to future benefits;
- AC shall render its decision in a form of award within 15 working days from the date of receipt of the disputes 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 prior agreement of both parties; and
- in the case of a non-binding award, either party may object to such award within 8 calendar days after the issuance of the award by filing its objection to the Minister of MLVT through the Secretariat of Arbitration Council (SAC). However, if failure to file an objection within the specified period then such

award shall become binding. And then either party may file a lawsuit to the competent court or take industrial action (such as strike or lock-out).

IV. RESOLUTION OF CIVIL DISPUTES

A. Civil Lawsuit Proceedings

The proceedings governing civil litigation in Cambodia is provided in the 2006 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 relationship 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, that 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 a status of an 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 are relating to private lives of citizens where the State can intervene to protect the interest of the public. The lawsuit aims at seeking the truth, thus it is non-disputable, with no plaintiff.

The Courts of the First Instance shall have jurisdiction over these cases. The judgment of the cases consists of the issuing of a ruling.

V. RESOLUTION OF CRIMINAL OFFENSES

A. Criminal Law

The criminal law defines crimes and offences, determines those who may be found guilty of committing them, sets penalties, and determines how they shall be enforced. The criminal law also declares what conduct is criminal and prescribes the punishment to be imposed for such conduct.

B. Criminal Proceedings

The criminal proceeding is the procedure to be enforced for criminal cases that include the manner in which an offence/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. The 2007 Cambodian Code of Criminal Procedure (CCP), Article 4, allows only the prosecutor to initiate criminal actions for the general interest of the 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 shall open a judicial investigation. The judicial investigation shall be based upon 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; the indication of relevant provisions of the criminal law and sanction for offense; the name(s) of the suspect, if known. The initial submission shall 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 summons 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 shall 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 sanction for the offense. A citation shall include the relevant court, its location, and the date and time of trial. The citation shall specify that the accused may be defended by a lawyer.

When deciding to implement the procedure for ordering a person to appear immediately, the Prosecutor shall: check the personal identity of the person brought to him; inform the person about the charge and the type of the offense; receive the statement of the person if he wants to make one; establish a written record on the application of the procedure of immediate appearance.

The Prosecutor shall inform the accused that he has the right to a lawyer of his choice or a lawyer appointed in accordance with the 1995 Law on Statutes of Lawyers (the Law on the Bar). The chosen or appointed lawyer shall be informed immediately about the selection or appointment. He may study the file and communicate with the accused. Compliance with these procedures shall be noted on the written record; otherwise such procedure shall be deemed void.

The Court of First Instance shall be seized upon receipt of the written record of immediate appearance. The accused shall be guarded until he appears before the court in which the trial shall be conducted on the same day. During the appearance, after confirming the identity of the accused and confronting him with a summary of the facts, the court shall inform the accused that he is entitled to have a period of time to prepare his defense. If the accused requests such time or if the court finds that the case may not be tried immediately, the trial shall be adjourned to another trial date.

The court can temporarily detain the accused by making a reasoned order. In the order, the court shall 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 shall be announced within a period no longer than two weeks starting from the date of the first appearance before the court. The provisional detention shall 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 shall send the case back to the Prosecutor in order to open a judicial investigation. The accused shall be brought before the investigating judge on the same day. Otherwise the accused shall be released automatically.

VI. 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 wrong doing including the act of 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 person affected by acts of Administrators may seek resolutions of their complaints/disputes through existing mechanisms defined by law.

For instance, Article 7 of Law on Electricity provides the power to the Electricity Authority of Cambodia (EAC) to handle complaints on behalf of the Ministry of Mines and Energy.

Likewise, Article 85 of the Law on Management of Capital, Provincial, City, District, and Khan Administrations allows citizens to file complaint 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 court.

In short, an administrative dispute resolution in Cambodia can be sought through (1) local or sub-national authorities, (2) competent institutional authority, (3) intra-administrative or inter-ministerial complaint resolutions/grievance redress mechanisms/committees, and (4) Court.

CHAPTER 13 INSOLVENCY

Relevant Laws: Insolvency proceedings of a commercial enterprise or natural person in Cambodia are primarily governed by the 2007 Law on Insolvency. The Code of Civil Procedure may supplement the provisions of the Law on Insolvency in connection with court proceedings. This Law on Insolvency does not apply to the provisional administration, liquidation and insolvency of a bank, insurance company or securities company. For these matters the reader may consult the 1999 Law on Banking and Financial Institutions, the 2002 Law on Non-Government Securities and the 2014 Law on Insurance.

I. COURT, ADMINISTRATOR AND COMPETENT AUTHORITY

Name of Institutions	Key Functions and Services
Court of First Instance	<ul style="list-style-type: none"> • A petition to open insolvency proceedings shall 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; • 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; • Upon his appointment, the administrator shall take all necessary or appropriate measures to protect the interest of creditors, in particular, he may apply, if necessary and unless the court so rules on its own motion, to the court for an 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	<ul style="list-style-type: none"> • The Minister of Justice is empowered to set the minimum

Justice	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

The insolvency proceedings may be opened against the following persons or legal entities:

- 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.

The insolvency proceedings may be opened against the above persons upon petition by any of the following petitioners:

- 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
- public prosecutor.

The petition to open insolvency proceedings shall 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 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 the creditor, their addresses and the amounts of their respective claims.

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 five million Riels (5,000,000 Riels) or other minimum amount of debt as determined by the Minister of Justice within thirty (30) days of such cessation.

III. COURT'S INSOLVENCY PROCEEDINGS

In case the petition is filed by a creditor, director of company or public prosecutor, the court shall serve the debtor with such petition within no later than seven (7) days after the petition has been filed with the court. The court shall hear the petition to open insolvency proceedings no later than fifteen (15) days after the petition is filed. The court shall issue its ruling to dismiss the petition or open insolvency proceedings within fourteen (14) days after the hearing of the petition. Then, the debtor or any creditor may appeal the court's ruling within seven (7) days after the issuance of the ruling. Nevertheless, the insolvency proceedings shall be considered opened on the date of the court ruling opening the insolvency proceedings. The appeal shall 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 shall 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 interest of the estate, allow a secured creditor in writing to foreclose his mortgage, repossess and sell encumbered assets (collateral) or in any other way avail himself of his security right and make himself paid by individual action.

The management and power over all debtors' assets shall vest in the administrator. The debtor shall cooperate fully with the administrator and shall 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 shall be filed with the court no later than seven (7) days prior to the date of the relevant creditors' meeting. The plan of compromise shall be submitted for the approval of creditors, and may contain resolution 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 shall be convened and chaired by a judge with assistance of the administrator. At the opening of the creditors' meeting, the administrator shall report on the debtor's business situation and the causes thereof. The administrator shall 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 administrator, making proposal to the Minister of Justice regarding the amount of the administrator's remuneration, and appointment of creditors' committee.

Any decisions taken at a creditors' meeting shall 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 shall be treated as claims incurred by the administrator.

VI. LIQUIDATION AND SATISFACTION OF CLAIMS

Upon the commencement of liquidation, the administrator shall 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 shall 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;
- the 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;
- all other admissible unsecured claims.

VII. TERMINATION OF INSOLVENCY PROCEEDINGS

The administrator shall submit to the court a written report of his activities. The report shall contain a final account of the distributions made and remaining unsatisfied claims. The report must be submitted no later than thirty (30) days after the depletion of all saleable parts of the estate.

The court shall convene a final creditors' meeting within fourteen (14) days of its receipt of the administrator's report. The creditors' meeting shall adopt the final account of the distributions made and remained unsatisfied claims, and shall decide on the use of the parts of the estate that cannot be sold. Immediately after the creditors' meeting, the court shall issue a ruling to terminate the insolvency proceedings. Such ruling shall be published in the official gazette and daily newspapers of Cambodia.

In the case of a debtor which is a company, the debtor shall 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 case of a debtor who 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 (1) year from the termination of the insolvency proceedings, make a written application to the court to resume the insolvency proceedings.

CHAPTER 14 NOTARY PUBLIC

Relevant Laws: Cambodia is drafting a law on notary. Prior to the adoption of that law, the regulations governing notary profession, roles and responsibility of notary are piecemeal. We can find a number of provisions in the following:

- Royal Kram No. 910 on the status of notaries,
- 2006 Code of Civil Procedure,
- 2007 Civil Code and
- 2011 Law on Implementation of the Civil Code, regarding the requirements for notarial documents, appointments of notary and enforcement of notarial documents.

I. APPOINTMENT OF NOTARY

Name of Institutions	Key Functions and Services
Royal Government of Cambodia (RGC)	<ul style="list-style-type: none">• The RGC issues a sub-decree to appoint notary public and determine their roles and responsibility, as well as to establish the office of notary.
Royal School of Notary	<ul style="list-style-type: none">• The Royal School of Notary provides training for student notary prior to their appointment as notary.
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 notary affairs

The consular 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 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 notary of the common law, civil law notary is vested as 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.

The 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 signature and date of documents, letters or contracts;
- To provide authenticity on documents translated from a foreign language to Khmer language and from the Khmer language to a foreign language;
- To make request for registration and inscription to competent institutions;
- To keep original of legal documents and agreements;
- To keep original documents of will;
- To issue copy 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 security interest. The following are examples of those provisions:

A. Formation of Contract to Transfer or Acquire Ownership of Immovable Properties

Article 336 of CC. (Formation of Contract via Offer and Acceptance)

- (1) A contract comes into effect when an offer and an acceptance thereof conform to each other.
- (2) 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 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 of Hypothec and Effect of Disposal of Hypothec

Article 845 of CC. (Asserting of 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 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 CC. (Will by Notarial Document)

- (1) In order to make a will by notarial document, a testator shall carry out the formalities prescribed in paragraph (2), before a notary.
- (2) A will by notarial document shall comply with the following formalities:
 - a) That two or more witnesses are present;
 - b) That the testator orally declares the tenor of the will to the notary;

- c) That the notary writes down the contents of the testator's will and reads it aloud to the testator and the witnesses;
- d) 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;
- e) That the notary dates and signs the document.

D. Subrogation by Performance

Article 459 of CC. (Subrogation by performance)

- (1) 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.
- (2) 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).
- (3) 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 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 CC. (Conditions for asserting assignment of claim belonging to specified person)

- (1) 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.
- (2) 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 CC. (Establishment of assignment of contractual position)

The assignment of a contractual position shall take 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 CC. (Requirements for assertion of pledge over claim in name of specific creditor)

- (1) 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.
- (2) 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 security interest. A notary may issue his certificate stating the amount of 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 Articles 350 of the CCP. Additionally, a notarial contract creating security interest is considered title of execution for the enforcement of such security interest. The execution of 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 CCP. (Title of Execution)

1. Execution shall be carried out on the basis of a title of execution.
2. Title of execution refers to the following:
 - (a) a binding judgment for performance;
 - (b) a judgment for performance accompanied by a declaration of provisional execution;
 - (c) 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;
 - (d) a ruling demanding payment accompanied by a declaration of provisional execution;
 - (e) disposition by a court clerk prescribed in Paragraph 1 of Article 66 (Procedures to fix amount of litigation costs);
 - (f) 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;
 - (g) 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);
 - (h) 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

- (i) 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 CCP. (Application for Grant of Execution Clause)

1. An application for grant of an execution clause must be in writing and include the following particulars:
 - (a) 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;
 - (b) description of the title of execution; and
 - (c) if grant of an execution clause under Article 356 (Special execution clause)

Article 356 of CCP. (Special Execution Clause)

1. 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.
2. 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.
3. 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.
4. 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) A final and binding judgment evidencing the existence of the security interest, or the document having the same effect, or
- (b) A certificate prepared by a notary proving the existence of the security interest.

Besides the executory force, given that notary is a public officer, their instruments have a high degree of authority and are received as primary evidence in court (high evidentiary value).

HBS PROFILE

Established in 2005, HBS Law is a highly regarded multi-service law firm based in Cambodia and registered with and regulated by the Bar Association of the Kingdom of Cambodia (BAKC). We work with a broad client base which includes major international and Asian companies. Our team has solid expertise to assist foreign and local clients in a wide range of sectors. We also assist educational institutions, international organizations, Government agencies and senior Government leaders on numerous projects. We are on the British and US Embassies' lawyer lists, and are also active members of various professional organizations and associations. Since 2008, we have worked in association with HBS Notary Public, the first notary office legally established in Cambodia.

A combination of teamwork, specialist skills and cooperative relationships with Government agencies means that we are at the forefront of Cambodia's rapid legal development. HBS Law is frequently called upon to participate in precedent-setting deals and to draft and advise on new legislation and regulations.

We strive to provide the best possible service for our clients, maintaining our role as a leading law firm in Cambodia and a well-known regional provider of first class legal and commercial advice. We have excellent working relationships with key figures in this process including officials in the RGC, in particular the MOC, MEF, the office of the Council of Ministers, the National Bank of Cambodia, the Securities and Exchange Commission of Cambodia and numerous universities and training institutions. Through this network of key contacts, we are helping to build a regulatory system that properly serves the needs of Cambodian people as well as foreign and local clients.

HBS Law is particularly proud of its role as a corporate citizen. We provide a pro bono service for people who cannot afford legal services, focusing on aid to children, victims of domestic violence and other vulnerable members of our community. Our team also actively provides a learning forum for law graduates, junior lawyers of the Bar Association of the Kingdom of Cambodia, judicial officers and law enforcement officers throughout the country.

Our multi-lingual team includes lawyers and advisers of different nationalities who have acquired the finest legal training in Cambodia and abroad, including the UK, USA, Australia, Japan, South Korea, France, Malaysia and Singapore. Collectively, the team has vast experience in a full array of legal and corporate services. Our team speaks Khmer, English, French, Japanese, Mandarin, Thai and Vietnamese.

Our clients trust us to find solutions for their complex and important legal and commercial issues. Our team has been involved in major multi-million dollar projects in South East Asia, including hydropower and power transmission projects, international financing, aviation, telecommunications, large-scale real estate development, mining and economic land concessions. Our litigation team has represented and defended multinational companies in negotiation and dispute resolution at all levels of courts and government authorities in Cambodia. We have acted for the first three State companies in relation to their listing at the Cambodian Securities Exchange. We have also acted for the lender in the largest syndicated loan to a microfinance company in Asia.

We are thankful to all our colleagues who are striving to maintain HBS Law as a leading law firm and all our valued clients who have trusted us as their business partners. We look forward to welcoming new clients to benefit from our experience and honest, balanced services.

It is with this in mind that we dedicate this Guide and shall continue to do our best for our much-valued clients.

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:

- Banking, Capital Market, M&A
- Civil, Criminal, Commercial Litigation & ADR
- Corporate Registration, Investment and Tax
- Construction, Insurance and Telecommunication
- Intellectual Property Rights
- Japan Desk for Japanese clients
- Labour and Industrial Relations
- Real Estate, Energy and Infrastructure

Please see our web-site www.hbslaw.asia for further details or contact us at:

HBS Law

Levels 4 & 5, SOMA Tower
No. 2C St.120, Psar Thmey 2, Daun Penh
Phnom Penh, Cambodia
T: +855 (0)23 224 337
F: +855 (0)23 224 136
E: info@hbslaw.asia

FOUNDING PARTNERS AND DIRECTORS



Mr. BUN Honn
Chairman

He has been a practicing attorney-at-law since 1998. He has been appointed for various positions such as Under-Secretary of State for the Ministry of Justice from 2007 to 2012, Vice-Chairman of working group of Law Drafting of Ministry of Justice, member of the Council of Jurists of the Council of Ministers of Cambodia since 2004, the Secretary General of the Lawyers Training Center from 2003-2007, a member of the Bar Council of the Bar Association of the Kingdom of Cambodia from 2002-2006 and the Secretary General of the Bar Association from 2000-2003. From 2012-2016 he was President of the Bar Association of the Kingdom of Cambodia having been re-elected for a second 2-year term in 2014.



Mr. HAK Seakly
General Director

He has been a practicing attorney-at-law since 1997. He obtained a Master's Degree in Law from the Royal University of Law and Economics in 2006 following a Bachelor's Degree in Law from the same university in 2000. He served as a provincial court clerk for four years before moving to private practice. He was a member of the Bar Council of the Bar Association of the Kingdom of Cambodia from 2006-2009. He specialises in Civil, Commercial and Criminal Litigation, and Alternative Dispute Resolution.



Mr. LY Tayseng
Managing Director

Tayseng is an experienced business lawyer with a strong focus primarily on Corporate, Banking, Finance and M&As, sectors but has also worked on Commercial, IP, Labour, Dispute Resolution and Litigation. He acts regularly for local and foreign banks and MFIs. Moreover, he frequently advises multinational corporations or world class international banks on complex financing projects, equity investments, IPOs, M&As and infrastructure projects. He is the first lawyer accredited by the Securities and Exchange Commission of Cambodia to advise on securities laws and regulations, by the Ministry of Commerce as Mark Agent and is a Labour Arbitrator for the Labour Arbitration Council. In addition to his private practice, he was also appointed as a member of the Council of Jurists of the RGC, and a legal team in the General Secretariat of the Supreme National Economic Council under the auspice of the Prime Minister's cabinet. He attended world class executive legal education program at Harvard Law School and business management at Auckland University's Business School. He obtained his Master of Laws from Nagoya University, Japan, a Bachelor of Law from the Royal University of Law and Economics, Cambodia, and Bachelor of Law from the University Lumière Lyon 2, France.



ក្រុមហ៊ុនមេធាវី អេច ប៊ី អេស

Skilled labour workforce, improved transport connectivity, abundant natural resources and a stable political and economic environment have made Cambodia one of the most attractive locations for foreign investment in recent years. Furthermore, increasing trade integration (such as WTO accession), membership of ASEAN, and many upcoming bilateral taxation agreements with the most developed countries have enhanced this status. This publication is designed to give those interested in pursuing Cambodian business opportunities an overview of the Cambodian legal framework relating to business and investment.

Levels 4 & 5, SOMA Tower
No. 2C, Street 120,
Sangkat Phsar Thmey 2, Khan Daun Penh,
Phnom Penh, Cambodia

T: +855 (0)23 224 337
F: +855 (0)23 224 136
E: info@hbslaw.asia
W: www.hbslaw.asia

