



Guide to Doing Business in Cambodia

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TABLE OF CONTENTS

INTRODUCTION	1
BANKING & FINANCE	2
Banking	2
Insurance	6
Securities Market	9
CORPORATE & COMMERCIAL	14
Overview	14
Nationality & Legal Personality	14
Types of Business	14
Foreign Business in Cambodia	15
Investment	16
Reasons to Invest in Cambodia	17
Investment Procedures	17
Change in Ownership of a Qualified Investment Project	19
Termination of Qualified Investment Project	19
DISPUTE RESOLUTION IN CAMBODIA	20
Structure of Court System	20
Alternative Dispute Resolution (ADR)	22
Commercial Arbitration	22
Labor Dispute Settlement	22
Land Dispute Settlement	23
INTELLECTUAL PROPERTY	25
Overview	25
Trademarks	25
Patents	30
Utility Models	34
Industrial Designs	38

Copyrights	40
Geographical Indications	43
Trade Secrets	44
Right of Publicity	44
LABOR LAW	45
Hiring Employees	45
Classification of Employees	46
Wages	47
Working Hours and Overtime	49
Holidays, Leave and Benefits	49
Disciplinary Action and Dismissal	51
Record Keeping, Documentation, and Posting	55
MINING	58
Overview	58
Legal Framework for Mining Licensing	58
Role of the Ministry of Environment	59
Practical Tips	59
MARRIAGE & FAMILY	61
Marriage between a Cambodian Citizen and Foreign National	61
Matrimonial Property System	62
Citizenship	63
Adoption	64
Succession	66
Gift Planning	69
LAND & CONSTRUCTION	71
Overview	71
Legal Ownership of Land in Cambodia	71
Acquisition of Property in Cambodia	71
Potential Risks	72
Enforcement of Property Rights	72
Establishing Control over Land	72
Perpetual Leases	73
Land Concessions	74
Construction	74
Encumbrances on Immovable Property	74

Recently Issued Regulations, New Procedural Rules	75
TAXATION	76
Tax Registration	76
Tax on Profit	77
Minimum Tax	78
Withholding Tax	78
Value Added Tax (VAT)	78
Tax on Salary	79
Tax Audits and Power of Investigation	81
Tax Return's Amendment	81
Additional Tax	81
Other Taxes	82
Company Dissolution	83
Obligation of Estimated Regime System Taxpayers	83

INTRODUCTION

CAMBODIA: POISED FOR CONTINUED GROWTH

The Kingdom of Cambodia sits at the heart of Southeast Asia, a rapidly expanding region in the world economy. Cambodia's 1999 membership to the Association of Southeast Asian Nations (ASEAN) and 2004 accession to the World Trade Organization (WTO) have opened the country up to the global marketplace. The ASEAN integration of 2015 promises additional opportunities for investment in Cambodia and throughout the ASEAN community. Cambodia's government actively courts foreign investment, offering numerous incentives and tax considerations to qualifying investors. Cambodia provides a solid legal infrastructure that provides a relatively business-friendly regulatory environment. While Cambodia is not without the problems common in many developing countries, its consistent economic growth makes it an attractive, as a potential destination for international investors. Tourism, construction, agricultural products, garment manufacturing and an emerging energy sector are all vibrant contributors to Cambodia's economic growth and expansion.

The aim of this guide is to provide an understanding and an insight to investors in conducting business in Cambodia. The guide focuses on the laws and regulations surrounding commercial law, intellectual property rights, real estate, taxation and other key economic sectors including energy, mining and telecommunications. Moreover, because business does not take place in a vacuum, we also include a section on personal and family law.

BNG Legal is a leading regional law firm with its offices in Cambodia and Myanmar providing comprehensive legal services to foreign and local clients. As a full-service commercial law firm, BNG Legal assist foreign investors with their legal needs in Cambodia for almost fifteen years and has recently extended that tradition of quality legal service to Myanmar. Our legal professionals combine with international standards with local knowledge providing our clients with effective advice and representation. We have developed significant expertise in market entry, mergers and acquisitions, tax, licensing, intellectual property law, real estate and labor matters.

Conducting daily business in Cambodia and Myanmar, BNG Legal keeps pace with the newest procedures and requirements in often rapidly developing legal and regulatory environments, helping clients efficiently and successfully complete any project. If you would like more information regarding any of the matters discussed in this guide, please don't hesitate to contact BNG Legal Cambodia at Cambodia@bnglegal.com.

1. Banking

The banking system in Cambodia has significantly changed with the continuing economic growth, financial stability, macroeconomic stability, enjoyment of full peace as well as the development of other sectors including the regional and global cooperation and integration. The banking system in Cambodia consists of central bank (National Bank of Cambodia-NBC), commercial banks, specialized banks, microfinance institutions, depositing taking microfinance institutions as well as leasing companies. As of June 2015, there are 36 commercial banks including foreign bank branches, 11 specialized banks, 34 microfinance institutions, 7 microfinance depositing taking institutions, 8 representative offices of foreign banks and 6 leasing companies. The National Bank of Cambodia (“NBC”), is the central bank and the sole regulatory body that has power to grant license, revoke license, and supervise all banking and financial institutions within the country. Cambodia has also issued A Financial Sector Development Strategy 2011-2020 issued by Cambodia describing the progress, challenges and government action plans in banking sectors.

1.1 Banking-Related Regulations

Compared with other sectors, with the NBC’s updates of existing laws and introduction of new regulations, the legal framework governing the banking industry is one of the most comprehensive in Cambodia. The following laws main law governing the banking activities in Cambodia:

- Civil Code, dated 8 December 2007;
- Law on Implementation of the 2007 Civil Code, dated 31 May 2011;
- Law on Anti-Money Laundering and Combating the Financing of Terrorism, dated 24 June 2007;
- Law on Negotiable Instruments and Payment Transactions, dated 24 October 2005;
- Law on Commercial Enterprise, dated 19 June 2005;
- Law on Banking and Financial Institutions (“Banking Law”), dated 18 November 1999;
- Law on Foreign Exchange, dated 22 August 1997; and
- Law on Organization and Conduct of the NBC, dated 26 January 1996.

1.2 Type of Banks

The Cambodian banking system consists of commercial banks, specialized banks, and microfinance institutions, as defined below.

1.2.1 Commercial Bank

According to Article 2 of the 1999 Banking Law, a commercial bank conducts the following operations:

- Loan operations for valuable consideration, including financial leases and commitments under signature;
- Collection of non-earmarked deposits from the public;
- Provision of means of payment to customers and the processing of said means of payment in national currency or foreign exchange.

Commercial banks are legal entities licensed to carry out other banking operation including: the credit operations for valuable consideration such as leasing, guarantees and commitments under signature;

Minimum capital requirement:

Commercial banks having shareholders as individuals or companies must have a minimum capital of at least KHR 150,000,000,000 (150 billion) which is approximately US\$37.4 million.

Commercial banks locally incorporated as companies which have at least one influential shareholder as a bank or financial institution with a rating “investment grade,” extended by a reputable rating agency, must have minimum capital equal to at least KHR 50,000,000,000 (50 billion) which is approximately US\$12.5million;

The percentage of minimum capital that shall be permanently deposited with the National Bank of Cambodia, as per article 16 of the Law on Banking and Financial Institutions, amounts to 10%.

1.2.2 Specialized Bank

A specialized bank is a bank that carries out only one of the three basic activities of a commercial bank. The establishment of a specialized bank was viewed as a supplement to the commercial bank or as a specialist in a particular sector under the priority of the Royal Government of Cambodia (RGC). Investors have established specialized banks as a first step before expanding them into commercial banks. Cambodia has also introduced the Specialized Bank of Rural Credit.

Minimum capital requirement:

Specialized banks having shareholders as individuals or companies must have a minimum capital of at least KHR 30,000,000,000 (30 billion) which is approximately US\$7.5million.

Specialized banks locally incorporated as companies which have at least one influential shareholder as a bank or financial institution with a rating “investment grade,” extended by a reputable rating agency must have minimum capital equal to at least KHR 10,000,000,000 (10 billion) which is approximately US\$2.5million;

An applicant, including a foreign bank branch, must possess fully paid-up capital of US\$2,500,000 for locally incorporated specialized banks with an “investment grade” rating granted by a reputable agency, and US\$7,500,000 for Specialized banks with shareholders who are individuals or companies. The NBC retains this capital and returns it to the bank if, after a voluntary liquidation, the bank has no outstanding liabilities to existing customers.

1.2.3 Microfinance Institution (“MFI”)

Microfinance institutions are institution that provides financial services such as loans and deposits, to poor and low-income households, and to micro-enterprises.

Unless prohibited by the Microfinance Registrations Prakas or licensing terms, the license for microfinance institution shall permit the institution to provide credit and saving services.

However, the license does not permit the institution to provide the following services:

leasing, derivatives and dealing in gold, precious metals, raw materials and commodities, whether spot and forward;

providing payment services through checking accounts or swap or forward dealings in foreign currencies.

An applicant for an MFI license must be a limited liability company or a cooperative.

Minimum capital requirement:

Microfinance shall deposit minimum capital of KHR 250 million that is approximately US\$62,500.

1.2.4. Microfinance Deposit Taking Institution

The microfinance deposit taking institution refers to any MFI receiving additional license from NBC to collect the deposit from the public.

Minimum capital Requirement:

Upon the Microfinance Deposit Licensing Prakas, in order for MFI to apply to NBC for depositing taking license, the institution must have MFI license for at least 3 years, have paid up capital of at least KHR 10,000,000,000 (10 billion) equivalent to around USD 2.5 million, and have a sound profitability

for the last two consecutive years Foreign Bank Branch or Subsidiary

Article 13 & Article 14 The foreign bank may establish a branch or representative office in Cambodia. The foreign bank branch must hold an operating license granted by NBC and can conduct banking operation upon that banking license. An information, liaison or representative office, does not carry out banking operations, financial intermediation or canvassing operations. In this way, the branches may use the business name of the foreign bank they represent.

1.3 Procedure for Obtaining a Banking License

Obtaining a banking license involves several steps and the submission of a significant amount of information and documentation. Until now, the NBC has issued various regulations regarding timeframe, official fees and license validity.

1.3.1 Stages Involved

In order to set up a bank, an applicant is required to first search the proposed bank name at the Department of Intellectual Property (“DIP”) and Department of Company Registration (“DCR”) of the Ministry of Commerce (“MOC”). Legally, a commercial bank and specialized bank takes the form of a public limited company (“Plc.”).

Before processing their application with the MOC, applicants generally request an “Approval in Principle” from the NBC. The Approval in Principle will outline the requirement regarding the incorporation at the MOC, the selection of the board of directors, the opening of a corporate bank account at the NBC, the 5% deposit of registered capital as bank guarantee, and the fulfillment of other documents required by the NBC. After examining the required conditions, the NBC will issue an Operating License that applicants can renew indefinitely.

1.3.2 Required Information and Documents

In order to obtain an Approval in Principle from the NBC, a duly authorized person (manager or person expressly empowered to such effect) shall provide the following information :

1. Name or business name of the entity;
2. Address of the head office or branch in Cambodia in case of a foreign entity;
3. Legal form and the Articles of Association or other incorporating documents;
4. Type of securities representing the capital in connection between the holding of such securities and the exercise of voting rights;
5. Amount of existing or planned capital (or amount of capital endowment in case of a branch of a foreign company);
6. Distribution of shares and voting rights;
7. Identity of contributors of at least 5% of capital;
8. Identity of at least two persons responsible for the effective direction of the banking business;
9. Identity of the members of the decision-making body;
10. Description of its business and certified copies of its last three audited balance sheets if the legal entity for which the application is made has already been founded;
11. Description of the planned activity over the next three years;
12. Composition of internal audit committee and procedure for ensuring compliance; and
13. Identity of proposed external auditors and nature of auditors’ assignment.

After obtaining an Approval in Principle and a Memorandum and Articles of Association from the NBC, an applicant is required to register at the MOC by submitting the following documents:

1. Power of Attorney;
2. MOC Application Form;
3. Memorandum and Articles of Association (from the NBC);
4. Approval in Principle (from the NBC);
5. Notarized Board Resolution;

6. Bank Statement;
7. Passport/ID Card of Directors & Shareholders;
8. Valid Business Visa of Chairman of Board of Directors;
9. Photo of Directors and Shareholders;
10. Notarized Certificate of Incorporation (of Holding Company);
11. Notarized Articles of Association (of Holding Company); and
12. Lease Agreement.

After obtaining an Approval in Principal and a Certificate of Incorporation from the MOC, an applicant is required to submit these documents accompanied with other required documents to the NBC for an Operating License. Further, an applicant is required:

- To register for VAT and Patent Certificate at his local tax branch;
- To register his business address at Phnom Penh Municipality;
- To register the Declaration of Commercial Enterprise Opening at the Municipal Department of Phnom Penh; and
- To register his employees at the National Social Security Fund.

1.3.3 Timeframe

Within six (6) months upon the receipt of application and necessary documents, the NBC shall provide written notification of its decision to the applicant. Where appropriate, the Approval in Principal will set out the specific conditions laid down by the NBC for its entry into force and the timeframe of the project. If the project is not completed upon the expiry of the deadline and if no extension has been requested, the Approval in Principal becomes void.

1.3.4 Official Fee

Item	Commercial Banks	Specialized Banks	Microfinance Institutions	
			Deposit-Taking MFIs	MFIs
Head Office	US \$37,500	US \$17,500	US \$17,500	US \$5,000
From 1-7 provincial and municipal branches	US \$25,000 each	US \$10,000 each	US \$10,000 each	US \$1,250 each
From the eight provincial and municipal branches	US \$10,000 each	US \$5,000 each	US \$5,000 each	US \$250 each
Branches in Districts	US \$2,500 each	US \$1,250 each	US \$1,250 each	US \$125 each
Postal Service	US \$250 each	US \$125 each	US \$125 each	US \$50

Please note that these fees are extracted from the 2013 Regulation on Fee Determination for Bank and Financial Institutions. Additional fees may be applicable. All these institutions shall pay the annual license fee by 15 January. Meanwhile, every request to change a license fee will be charged an additional US\$500 for processing.

1.3.5 License Validity

The NBC will issue an indefinite license to all qualified commercial banks, specialized banks and microfinance institutions operating in the Kingdom of Cambodia. The NBC will also issue a certificate of registration once the financial operators meet the set standards and criteria. The NBC can withdraw this certificate and cancel the registration if the operators do not comply with the conditions set by

the NBC. The NBC will reimburse the capital deposit to a bank if it voluntarily liquidates and has no deposit liabilities.

1.4 Foreign Bank Branches and Representative Offices

Cambodia allows foreign entities to operate under the form of a branch or a subsidiary. With prior approval from the NBC, a foreign bank may open an information, liaison or representative office. These offices cannot carry out banking operations, financial intermediation or canvassing operations. Foreign entities must register these establishments in the Commercial Registrar and can locally incorporate the offices. The NBC can authorize the office to use the business name of the foreign bank they represent for a two-year period. The foreign entity can only request renewal of this authorization once. The license fee is US\$25,000, which shall be renewed annually.

Penalty

In the event that the banks and financial institutions breach any laws, regulations or fail to comply with injunction, the NBC may impose the following sanctions:

- caution,
- reprimand,
- prohibit the execution of certain operations and any place any other limitation on the business,
- temporarily suspend one or more of the executives,
- require a resignation of one or more of the executives,
- set up a provisional administration, or
- revoke the license and liquidate the entity.

The NBC may impose a fine not exceeding the minimum capital of the institutions in replace of or in addition to the sanctions.

It is important to note that carrying out the banking operations as main profession without a license is considered as a criminal offense and is punishable to imprisonment from 1 to 5 years and/ or a fine from 5 million to 250 million riel. The person who acts on his own account or legal entity which is not as regular business and on behalf of the public shall imprisonment from 1 to 5 years and/ or a fine from 1 million to 10 million riel.

2. Insurance

Insurance business is not only a domestic issue, but also regional, especially for the upcoming ASEAN Economic Community (AEC) at the end of 2015. The ASEAN Insurance Council (AIC) is planning to execute a two-year master plan to drive the industry's growth in the region by introducing a strategic quality control framework and the need for benchmarked standards are among the strategies needed to be implemented to encourage the development of highly competent ASEAN talent in the sector. The dialogue is being processed regularly to develop the sector. In this regard, Cambodia will host the 41st ASEAN Insurance Council meeting and the 18th ASEAN Insurance Regulators' meeting, at Phnom Penh, on 26-28 October 2015.

In order to respond to the constant growth of the sector as well as its coming regional integration and to regulate the market effectively, the Law on Insurance dated 04 August 2014 has been adopted and promulgated. This new Law aims to develop the industry in order to serve the public interest, that of the insured, and to ensure confidence in the insurance sector, with regards to the consistency with international fundamental principles of insurance. Therefore, it is important to enforce the supervision of insurance business, and to promote its competitiveness, honesty, and transparency.

The Law entrusts the Ministry of Economy and Finance ("MEF") as the competent authority in supervising and inspecting the insurance business. In fulfilling this function, MEF is also empowered to create and manage the Insurance Development Fund for promoting, supporting and induce the public awareness on the benefit of insurance. MEF is responsible for issuing licenses, revoking licenses, and controlling and supervising the insurance industry in Cambodia.

2.1 Insurance-Related Regulations

The following laws mainly govern the insurance activities in Cambodia:

- Civil Code, dated 8 December 2007;
- Law on Insurance dated 04 August 2014;
- Law on Implementation of the 2007 Civil Code, dated 31 May 2011;
- Law on Commercial Enterprises, dated 19 June 2005;
- Law on Insurance, dated 25 July 2000;
- Law on Taxation, dated 24 February 1999;
- Sub-decree on Insurance, dated 22 October 2001;

2.2 Type of Insurance

Article 2 of the Law on Insurance defines an insurance company as a life insurance company, general insurance company, small insurance company and re-insurance company. There are three types of insurance:

- General insurance is an insurance contract covering the risk related to property, liability and health. Therefore, the general insurance products are:
 - Property insurance,
 - Liability insurance and
 - Health insurance.
- Life insurance is an insurance contract covering the risk related to the death or the survival, including personal accident, serious illness or general illness. The life insurance products include
 - Term life insurance,
 - Whole life insurance,
 - Endowment life insurance,
 - Life annuity insurance .
- Re-insurance is insurance operation where a principal insurance company is insured by another insurance company (called re-insurance company) for a part or a whole risk under an insurance contract it signed. The use of re-insurance does not exempt the principal insurance company regarding its insured.
- Micro-insurance is a kind of insurance for low income person. It can be a micro insurance on property, life, or personal injury .

The following are the current compulsory insurances required by law:

- Motor vehicle third party liability insurance for physical persons or legal entities owning and operating a commercial motor vehicle business on the road.
- Construction insurance covering responsibility of entrepreneur, contractor or sub-contractor in charge of construction, repair or erection work for government or public entities.
- Insurance for passenger transport whether by road, sea, river, air or railroad.

2.3 Types of Insurance Business and Institutions

Upon the provision of the Article 43 of the Law on Insurance, the insurance businesses cover: the life insurance business, the general insurance business, the re-insurance business and the micro-insurance business. In this regard, the insurance company is referred to:

- o a life insurance company,
- o a general insurance company,

- o a micro insurance company or
 - o a re-insurance company .
- Anyway, talking from bigger view, the “insurance institution” can be:
- o an insurance company,
 - o an insurance agent ,
 - o an insurance broker , or
 - o an insurance loss adjuster .

2.4. Procedure for Obtaining an Insurance License

Obtaining an insurance license involves several steps and a significant amount of information and documentation. As per the previous law on insurance, MEF has issued various regulations that govern license approval, timeframe, its official fee and license validity. Upon the provision of the article 44 and 47 of the Law on Insurance, the detail requirement and procedure to grant the license to the insurance institution will be defined in a specific sub-decree.

The Law on Insurance set three important conditions related to the legal business form, the capital requirement and the qualification of the director of the applicant for license as an insurance company:

- All insurance companies, whether state-owned, private, or jointly owned, maybe permitted to operate in the Kingdom of Cambodia only in the legal form of a public limited company.
- The minimum capital requirement will be set in a specific sub-decree which shall not less than the 5,000,000 (five million) SDR rate at the date of grant of license. Anyway, the minimum capital requirement for a micro insurance business will be fixed in a sub-decree.
- The direction, management or settlement power must not be entrusted to any person used to be imprisoned for any misdemeanor or crime.

Anyway, for other required conditions and procedures for licensing, either as for an insurance company or insurance agent, insurance broker or insurance risk assessment company, will be defined in a sub-decree .

In according to the legal framework issued under the old Law on Insurance, the minimum registered capital in riels for a life insurance company or general insurance company is at least equivalent to 5,000,000 (five million) SDRs considered at the rate the license is issued. If the company wishes to be a life and general insurance company, the required capital in riels is at least equivalent to 10,000,000 (ten million) SDRs considered at the rate the license is issued. The insurance company must make a deposit equivalent to 10 (ten) percent of registered capital at the National Treasury of the Kingdom of Cambodia. The process requires the submission of application form for license to the MEF. The validity of license varies upon the types of the insurance institution.

Official Fee

Item	General/Life Insurance Company	Insurance Agent	Insurance Broker	Loss Adjuster	Micro-Insurer
Initial License Fee	Approx. US\$12,500	Approx. US\$750	Approx. US\$1,000	Approx. US\$750	Approx. US\$1,250
Administration Fee	US\$5,000	US\$500	US\$500	US\$250	US\$250

Please note that these fees are extracted from the 2015 Regulation on Public Fee for General Department of Financial Industry (GDFI) of Ministry of Economy and Finance.

License Validity

The validity of license varies as follows:

- Insurance company: 5 years;
- Insurance agent: 1 years;
- Insurance broker: 1 year;
- Loss adjuster: 1 years; and
- Micro-Insurer: 1 year.

The MEF can withdraw this certificate and cancel the registration if the operators do not comply with conditions set by the MEF. The MEF will reimburse the capital deposit to an insurance company if it voluntarily liquidates and has no deposit liabilities.

3. Securities Market

When Cambodia joined ASEAN on 30 April 1999, the goal to modernize the financial sector so that the country can better benefit from ASEAN financial sector development became a priority. The reliance on short-term and intermediate sources of capital provided by commercial banks was insufficient to fund long-term development. The commercial lending interest rate is relatively high and loans granted are usually limited to 50 percent of collateral value.

To overcome these challenges, the Cambodia Securities Exchange (“CSX”) was officially inaugurated on 11 July 2011. Phnom Penh Water Supply Authority (“PPWSA”) became the first domestically listed company on the CSX. Until today, there are 7 securities underwriters, 1 securities dealer, 3 securities brokers and 1 investment advisor.

In order to encourage further public listings, listed companies are eligible for a tax incentive of a 10% deduction on corporate income tax.

3.1 IPO-Related Regulations

The following regulations mainly govern Initial Public Offerings (“IPO”) in Cambodia:

- Civil Code, dated 8 December 2007;
- Law on Implementation of the 2007 Civil Code, dated 31 May 2011;
- Law on Commercial Enterprise, dated 19 June 2005;
- Law on Government Securities, dated 10 January 2007;
- Law on the Issuance and Trading of Non-government Securities, dated 19 October 2007;
- Sub-decree on the Implementation of the Law on Issuance and Trading of Non-Government Securities, dated 8 April 2009;
- Sub-Decree on the Conduct and Organization of the Securities and Exchange Commission of Cambodia dated 23 July 2008.

3.2 IPO Key Players

3.2.1 The Securities and Exchange Commission of Cambodia: SECC

According to Article 7 of the 2007 Law on the Issuance and Trading of Non-government Securities, the SECC has the power:

- To regulate and supervise the securities market, both government and non-government, in the Kingdom of Cambodia;
- To enforce policy with respect to the securities market;
- To formulate conditions for granting approvals to the operators of the securities market, clearance and settlement facility, and securities depository;
- To formulate conditions for granting licenses to securities companies and securities

- companies' representatives;
- To promote and encourage legal compliance;
- To examine and resolve complaints against licensed legal entities' decisions affecting the benefits of participants or investors;
- To consult with any qualified person to create policies for the purpose of developing a securities market in the Kingdom of Cambodia;
- To fulfill other duties prescribed by sub-decree.

3.2.2 The Cambodia Securities Exchange: CSX

The CSX is Cambodia's equity market. The Cambodian Ministry of Economy and Finance ("MEF") and the Korea Exchange ("KRX") own 55% and 45% of the CSX respectively. The CSX is the sole securities exchange operator licensed by the Securities and Exchange Commission of Cambodia ("SECC"). The CSX is required to report regularly to the SECC.

3.2.3 The Issuer

The listing procedure is difficult. Before applying for listing eligibility at the CSX the applicant must appoint a licensed underwriter and conduct a company audit. After the CSX approves eligibility, the applicant can apply for a public offer from the SECC under the form of approval in principle. Then the applicant is required to prepare and submit a term of sales. After determining the submission is satisfactory, the SECC will register disclosure documents that allow the issuer to open for IPO subscription and apply for an official listing at the CSX. The trading of the issuer's stocks takes place from that time.

3.2.4 The Securities Underwriters

According to Article 5 of the 2009 Regulation on Licensing of Securities Firms and Securities Representatives, the securities underwriting business:

- Provides important advice on issues of securities such as pricing, issue amount and number of securities to be issued of the offering, a distribution timeline and so on;
- Acquires from an issuer all or part of securities in order to distribute or resell;
- Acquires the unsold portion of the securities in a public offering hoping to ensure the success of the issuance; and
- Arranges for a public offering on behalf of an issuer or participates directly or indirectly in a public offering.

Additionally, this Regulation authorizes the underwriters to offer securities dealing, securities brokerage and/or an investment advisory business. In order to become an underwriter, the SECC requires the applicant to apply for a license and meet the following requirements:

- Requirements regarding the applicant's quality as specified in Article 40 of the 2009 Sub-decree on the Implementation of the Law on Issuance and Trading of Non-Government Securities.
- Meet the following capital requirements and lodge at the NBC a security bond and/or security instruments determined by the SECC, in respect of each type of securities business:
 1. To carry out a business as a securities underwriter, the applicant shall have minimum capital of US\$10,000,000, with net capital of at least US\$500,000, and lodge a security bond and/or security instrument in the sum of US\$1,000,000.
 2. To carry out a business as a securities dealer, the applicant shall have minimum capital of US\$6,250,000, in which net capital of at least US\$312,500, and lodge a security bond and/or security instrument in the sum of US\$625,000.
 3. To carry out as a securities broker, the applicant shall have minimum capital of US\$1,500,000, in which net capital of at least US\$75,000, and lodge a security bond and/or security instrument in the sum of US\$250,000.
 4. Meet the following requirements for human resources:

5. Have at least a chief executive officer and director or partner, who has fulfilled the requirements as stipulated in Article 18 of this Regulation.
 6. Have a head of securities representatives, who has fulfilled the requirements as stipulated in Article 19 of this Regulation.
 7. Have a head of operations who has fulfilled the requirements as stipulated in Article 20 of this Regulation.
 8. Have a compliance officer who has fulfilled the requirements as stipulated in Article 21 of this Regulation.
 9. Have qualified staff with respect to the scale of each type of business stipulated in Article 25 of this Regulation.
 10. Have other senior staff and employees.
- Have physical facilities as prescribed in Article 27 of this Regulation.
 - Prepare a business plan for a period of three years from the date on which applicant filed the application.
 - Comply with the following requirements for risk management and internal controls:
 1. The results of a comprehensive evaluation shall be either good or superb.
 2. The evaluation score of each item shall not exceed 2.4.
 - Have an applicable and updated risk management plan in order to manage all risks that may occur.
 - Never been a controlling shareholder or specially-related person of any securities firm or financial institution that declared bankruptcy, either inside or outside the Kingdom of Cambodia, during the last five years from the date on which the application is made, except a person recognized by a court judgment as not being responsible for the bankruptcy.
 - Never been a controlling shareholder or specially related person of any securities firm or financial institution whose license has been revoked, either inside or outside the Kingdom of Cambodia, during the last five years from the date on which the application is made, except a person recognized as not being responsible for the revocation.
 - Never been a person subject to procedures such as bankruptcy, liquidation, composition or other similar proceeding, either inside or outside the Kingdom of Cambodia, during the last five years from the date on which the applicant filed the application.

3.2.5. The Auditor and Accounting Advisor

The SECC is in charge of issuing a license to the auditor and accounting advisor of the issuer. Currently, the SECC authorized five auditors and accounting advisors. Their roles are as follows:

- Advise the issuer on the application of accounting standards.
- Perform due diligence review of financial information.
- Read and provide comments on disclosure of document.

3.2.6. The Law Firm

Finally, the law firm also acts as a key player in IPO listing. Their roles are as follows:

- Providing legal due diligence:
 1. Any potential issues, any non-compliance.
 2. Material contracts: with partners, creditors, suppliers and other related parties.
 3. Whether the issuer meets the requirements to become a public company, if not, whether any changes can be done, for instance, capital restructuring.
 4. License: whether the issuer has all the required licenses to operate such as MOC approvals, CDC approvals (if any), approvals from other related governmental institutions and a technology license or transfer agreement.
 5. Shareholding and structure: bylaws, shareholder or control agreements (including unanimous shareholders agreement), proxies, share rights, calls or puts and convertible loans.
 6. Loan portfolio: non-trade, out of ordinary course of business, guarantees, to related persons.

7. Secured transactions: registered security interest over shares or assets.
 8. Lease and immovable property: mortgages or hypothecs, long-term leases and land title ownership.
 9. Intellectual property: trademarks, service marks, brand protection and trade secrets.
 10. Material contracts: related party contracts, over US\$250,000 in value or duration of more than one year, guarantee of debt, sampling as permitted by time.
 11. Labor: work permit, work rules, registrations.
 12. Claims filed in court: whether the issuer has any pending lawsuits.
 13. Any pending disputes.
- Advising on disclosure documents:
 1. Ensuring that the content is not misleading.
 2. Ensuring that all relevant documents are disclosed, no omission.
 3. Providing preventative measures.

3.3 The Process

There are three steps in the process for a company to be listed in stock exchange:

- An issuer submits an application regarding its company and shareholders to CSX for listing eligibility review.
- After approval, the issuer submits prospectus reports including disclosure documents and other related documents to the SECC for its IPO.
- When the IPO process is approved by the SECC, the issuer shall go back to CSX for listing.

The first two steps are for IPO processes in the “Primary market”, while the third step is for securities trading in the “Secondary market”.

3.3.1 Primary Market: The IPO

An IPO is the selling of securities to the public in the primary market. Generally, an IPO can be made through the fixed price method, book-building method or a combination of both. Cambodia employs the book building method.

“Underwriting” is the process by which the issuer hires a securities firm to raise capital by issuing stock. Normally, the issuer and the securities underwriter will confer to decide the target amount of money to raise, the number of shares to issue and all the details in the underwriting agreement. The underwriter must then prepare a “Prospectus” describing all the necessary information that is necessary for the investors.

Following the approval in principle from the SECC, the underwriter then organizes a book building and invites interested investors to bid. Investors are allowed to bid within a 20% price range offered by the issuer. The issuer determines the final price after the closure of the bidding. Along with the application, qualified institutional bidders and first category bidders are required to make a 10% advance. The other categories of investors have to pay a 100% advance. 70% of shares offered are reserved for first category of bidders, while 30% of shares are reserved for the second category, essentially retail investors and unsuccessful bidders from the first category.

IPO Listing Requirements

Securities cannot be publicly issued and traded unless they are authorized by the SECC after all requirements are satisfied. The applicant must submit disclosure documents as required by SECC; and receive the approval of listing ability and security pricing from the SECC.

In addition to the above-mentioned prerequisites, the SECC also considers the following:

- Quality of corporate governance and financial history of the listing company;
- Likelihood of success of IPO by taking into consideration the existence of firm commitment in underwriting arrangements to ensure that all shares will be taken up;
- Actual needs and development of the securities market; and
- Protection of public interest.

3.3.2 Secondary Market

Following the book building and price determination for IPO shares, the request from the SECC and the CSX for authorization to trade the stock on the CSX can be made. The sets the trading hours to two periods and limits the daily price changes to +/- 5% for each trading period. All buying and selling of stock must be done through licensed securities intermediaries.

In order to trade, an investor needs to open an account with a broker or dealer. The orders to buy and sell stocks are then sent to the CSX computerized trading system. Only securities intermediaries have access to the CSX system. Once the trade is processed, the CSX will proceed to:

- Operators of clearance and settlement facility:
 1. Checking securities of sellers;
 2. Checking cash of buyers;
 3. Transferring the ownership of securities from seller to buyer;
 4. Giving order to cash settlement agent to settle cash from buyer to seller;
 5. Informing securities depository about the securities traded.
- Operator of securities depository:
 1. Safe-keeping of securities;
 2. Changing the ownership of securities holders after settlement (updating the securities holders' book);
 3. Depositing and withdrawing of securities.
- Other players:
 1. Cash settlement agent;
 2. Securities registrar;
 3. Transfer agent – Paying agent;
 4. Professional accounting firms and external auditors;
 5. Asset valuation firms and professional valuers;
 6. Credit-rating agent.

3.4 Conclusion

The goal of introducing a securities market is to provide long-term equity capital to larger corporations. In order to raise capital, listed companies must meet the criteria of transparency and sustainability. An IPO listing improves corporate governance and provides separation between management and ownership. This mechanism will play a pertinent role in attracting foreign and local capital to develop the economy and prepare a gateway for the ASEAN Free Trade Area that will be implemented in 2015.

1. Overview

This chapter focuses on Cambodian Commercial Law and its relation to establishing a business in Cambodia. Under Cambodian Investment Law, there are a number of incentives available to businesses. Companies wishing to make use of these incentives or benefits must register at the Council for Development of Cambodia. The Guide discusses these incentives in Chapter 2.

The Law on Commercial Enterprises (LoCE), passed on 19 June 2005, governs commercial law in Cambodia. The law permits various businesses to operate including sole proprietorships, partnerships and limited liability companies, foreign businesses, branch operations and public enterprises. Foreign investors usually choose to register a limited liability company as a subsidiary of the parent company to conduct business in Cambodia. If their activities are more limited, a foreign investor may prefer to open a branch or representative office of the parent company.

Under the Law on Commercial Rules and Commercial Register and the LoCE, the investor must register the business and file an annual declaration at the Ministry of Commerce (MOC). From 4 January 2016, Ministry of Commerce has launched the online commercial registration for new company, and online commercial re-registration for company incorporated prior to 4 January 2016. A company must also have a legally competent natural person as a registered agent continually maintained in the Kingdom of Cambodia. Additionally, the company must maintain a number of corporate records at their registered office.

2. Nationality and Legal Personality

A company has Cambodian nationality if it has a registered office in Cambodia, and Cambodian nationals own at least 51% of its voting shares. Only companies with Cambodian nationality can register corporate names that imply such nationality. Under the Constitution of the Kingdom of Cambodia, only Cambodian national or company having Cambodian nationality is entitled to own land. A general partnership that has acquired legal personality is deemed to be of Khmer nationality only if the general partnership has a place of business and a registered office located in the Kingdom of Cambodia, and natural or legal persons of Khmer nationality hold more than 51% of the record ownership interest.

A company must display its name in the Khmer language on all seals, signs, letterhead, forms and documents used for public purpose, and on public advertisements within the Kingdom of Cambodia. The Khmer name must be placed above and be larger than the name in another language. It must also sound phonetically the same as the name in the other language. The company, however, may use and be designated by a name in another language outside of the Kingdom of Cambodia.

All companies have to conduct a name search with the MOC to determine whether the name already exists. The company must file the name search application with the Department of Intellectual Property and the Department of Commercial Registration located at the Ministry of Commerce. The MOC will issue the result of the name search within seven to eight business days.

3. Types of Businesses

Companies that conduct commercial activities in Cambodia must register at the commercial register. The company's incorporator or director must register the company during the month of formation and within 15 days prior to the commencement of its operations.

Whereas the Civil Code provides that a limited liability juristic person must have at least KHR 20 million in capital, the LoCE requires instead the company to have, by default, its capital divided by 1,000 shares and each share must be valued at least KHR 4,000. Therefore, the Ministry of Commerce

requires a deposit of KHR 4 million into a company bank account to satisfy the Commercial Incorporation's Capital Requirement.

3.1 Sole Proprietorship

A sole proprietorship is an enterprise established and operated by a single natural person who owns all of its capital. The obligations and liabilities incurred in the operation of the business are thus his/her sole and exclusive responsibility.

3.2 Partnership

The partnership is the favored method of business organization for many professionals like doctors, lawyers, and accountants. According to the LoCE, a partnership can consist of a general partnership or a limited partnership.

3.3 Company

A company is managed by its directors and is funded by capital contributed by shareholders. It is the most common legal business form; however, forming a company is more complicated and expensive than forming a sole proprietorship or partnership. Constituting a company requires the filing of a Memorandum and Articles of Association (MAA) to the MOC.

The administration of a company lies with its board of directors. The LoCE and the company's constitution limit the precise nature of the administration. The LoCE also controls most aspects of how a company is formed, how business is conducted and how the company is dissolved.

The company must issue a minimum of one thousand shares with a par value of not less than KHR 4,000 per share. As above mention, therefore, the minimum share capital for setting up a LLC is KHR 4 million (approximately US \$1,000). A company must have a registered office address in Kingdom of Cambodia.

Profit tax is payable on profits generated in Cambodia. See tax section below for further details.

There are two major types of the company, the private limited company and the public limited company.

3.3.1 Private Limited Company

A Private Limited Company may have 2 to 30 shareholders. It cannot offer its shares or other securities to the public; however, it can offer them to shareholders, family members and managers. Additionally, it can have at least one restriction on the transfer of each type of its shares.

3.3.2 Public Limited Company

A Public Limited Company (PLC) is a form of the company that the law authorizes to issue securities to the public. Unlike private limited companies, it may have more than 30 shareholders. In Cambodia, only PLCs can conduct banking business, insurance business or be a financial institution.

4. Foreign Business in Cambodia

According to the Law on Commercial Enterprises, a foreign business is a legal person formed under the laws of a foreign country, which has a place of business and conducts business in the Kingdom of Cambodia. It is subject to registration at the Ministry of Commerce. The three main forms of a foreign business are a representative office, a branch and a subsidiary.

4.1 Representative Office

An eligible foreign investor may establish a Representative Office (RO) to facilitate the sourcing of local goods and services and to collect information for its parent company. ROs also serve as a channel for promoting and marketing the home company's products and services in the host country.

An RO is regarded as a cost center and should derive no income from its activities. The RO, however, is subject to tax requirements with regard to the withholding tax on salaries paid to employees in Cambodia, a patent tax and an annual business operation tax.

The RO is subject to a commercial registration requirement, which the Ministry of Commerce handles. The words “Representative Office” must be placed before or after the name of the main company.

4.2 Branch of Foreign Company

A Branch Office is an office opened by a company of another foreign country for conducting a particular commercial activity in Cambodia. The Branch Office is the same entity as the parent company, and therefore has the same name as the parent company. It can conduct the same activities as the RO. In addition, it may purchase, sell or conduct regular professional services or other operations engaged in production or construction in the country. The branch and parent company have joint liability with respect to losses and debts of a branch office, and the Branch Office must meet local taxation obligations.

The Branch Office is also subject to the commercial registration requirement, which the Ministry of Commerce handles. Additionally, the word “Branch Office” must be placed before or after the name of the main company.

4.3 Subsidiary

A subsidiary is a company that is incorporated in the Kingdom of Cambodia and has at least 51% percent of its capital held by a foreign company. The memorandum and articles of association of the subsidiary detail the subsidiary’s formation, management, rights and other obligations. Each subsidiary is subject to commercial registration requirement, which the Ministry of Commerce handles.

4.4 Rights and Obligations of Directors and Shareholders

The LoCE limits a shareholder’s liability to the price of the shareholder’s subscription. However, a 2005 Prakas mentions circumstances where shareholders may be liable for unpaid company taxes. The Prakas gives authority to the tax office to withhold the property of shareholders, directors or managers that are liable for unpaid taxes of their company.

A director may be any legally competent person over the age of 18 and does not need to be a shareholder in the company. A private limited company must have one or more directors and a public limited company must have at least three directors. Shareholders who have the right to vote elect the directors.

The Law on Commercial Enterprises imposes a number of obligations on directors. Like shareholders, directors may be liable for the unpaid taxes of a company where the director had knowledge and an intention not to report to the taxation office. A director or officer of a company also has a duty to disclose in writing, the nature and extent of his or her interest in the company in relation to any contracts with the company or his or her material interest in any person who is a party to a contract or proposed contract with the company.

5. Investment

5.1. Overview

Cambodia is positioned for a surge in investment and business development. Foreign Direct Investment (FDI) in Cambodia has increased significantly since the Paris Peace Accord of 1993. The Council for the Development of Cambodia (CDC) have approved over 1,000 projects worth roughly US \$6.6 billion. In order to create an attractive investment climate, Cambodia has joined international and regional investment organizations, signed a number of multilateral conventions and bilateral treaties, and established business-friendly regulations and incentives to generate productive business

operations in the Kingdom.

5.2. Reasons to Invest in Cambodia

5.2.1 Location

Cambodia is located in the heart of Southeast Asia. It is surrounded by Thailand to the west and northwest, Laos to the northeast, Vietnam to the east and southeast, and the Gulf of Thailand to the south. The country has easy access to seaports and airports, and is rich in natural resources and world wonders. Cambodia is strategically located for a world-connected business operation.

5.2.2 Membership in International and Regional Organizations

Cambodia is a member of various international and regional organizations that facilitate trade. Among these are the World Trade Organization (WTO), Association of Southeast Asian Nations (ASEAN) and ASEAN-China Free Trade Area (ACFTA), in which Cambodia enjoys duty-free privileges for exports and Most Favored Nation (MFN) treatment. Cambodia also accedes to the ASEAN Free Trade Area, ASEAN-China Comprehensive Economic Cooperation Agreement, ASEAN-Japan Comprehensive Economic Partnership, ASEAN-Korea Comprehensive Economic Cooperation Agreement and a dozen other multilateral agreements. Through this regional integration, there is the potential for investors to reach billions of customers; the population of ASEAN alone is roughly 600 million, while the population of ACFTA consists of approximately 1.7 billion people.

5.2.3 Investment Incentives

Cambodia has adopted a variety of legislation to create an open economy and encourage foreign investment. Consequently, Cambodia offers investors one of the most liberal incentive schemes in Southeast Asia. Tax incentives, a “one-stop service” for the swift process of investment applications, and the ability to develop within Special Economic Zones, all offer extra reasons to invest in Cambodia.

Except for the ownership of land, the country does not discriminate against foreign nationals. Therefore, investors can own 100% of their business. Additionally, Cambodia does not fix prices on products and services, allowing business owners greater control of company operations.

Cambodian law also offers investors various tax and duty exemptions and employment allowances. Concerning tax exemptions, investors can enjoy a corporate tax exemption for up to eight years depending on the nature of the project. Additionally, there is a 100% exemption of export tax available for some investors. Cambodia also allows investors to employ foreign nationals if the business requires skilled workers, managers or.

Cambodia has recently introduced Special Economic Zones. All industrial activities combined into one special development under the auspices of the Special Economic Zone. Each zone contains a production and service area and may include a residential area to accommodate workers.

6. Investment Procedures

The MOC and the CDC are the institutions responsible for overseeing foreign direct investment and business development in Cambodia. FDI projects, which are eligible for business incentives, are called Qualified Investment Projects (QIPs) and must be registered with the CDC. The Law on Investment awards investment incentives to QIPs unless the Negative List of Sub Decree No. 111 names them.

QIPs fall under four types of business plans: contracts, transfers, ownership, and state management. There are various schemes within these plans open to the investor, which include, but are not limited to Build, Operate & Transfer (BOT), Build, Lease & Transfer (BLT), Build, Own, Operate & Transfer (BOOT), and Build, Own & Operate (BOO).

6.1 CDC’s Decision Process

There are two stages in the CDC approval process. First, the investment project must obtain a Conditional Registration Certificate. Second, the investment project must obtain a Final Registration Certificate.

The CDC must make its decision about the Conditional Registration Certificate within three working days after receiving the Investment Proposal. In its review, the CDC may ask for more information or an amendment to the Investment Proposal. However, they must make this request within three working days of the Investment Proposal's submission.

The CDC may either refuse the Investment Proposal by issuing a Certificate of Non-Compliance or accept the proposal by issuing a Conditional Registration Certificate. If the CDC does not make its decision within three working days, the Investment Proposal is registered, and the CDC must immediately issue a Conditional Registration Certificate.

A Certificate of Non-Compliance will be issued for a prohibited investment activity listed in Sub-Decree No 111, an Investment Proposal that has already been utilized by the Investor or an incomplete Investment Proposal. The refusal must state the reason for the denial of the Investment Proposal and where applicable provide information that will enable the CDC to register the Investment Proposal.

The CDC must include the following details when granting a Conditional Registration Certificate: a list of all the required approvals, authorizations, licenses, permits and registrations for the QIP approval; the ministries, departments or agencies responsible for issuing the permits; the applicant's choice of tax exemption; recognition of the status of the legal entity which will have responsibility of the QIP; and the investment guidelines and assessment criteria for each of the approvals, authorizations, licenses, permits and registrations.

6.2 Final Registration Certificate

The CDC is in charge of obtaining all required approvals, authorizations, licenses, permits and registrations on behalf of the investor within 28 working days after the issuance of the Conditional Registration Certificate.

The CDC or the sub-committee must issue the Final Registration Certificate within 28 days after the issuance of the Conditional Registration Certificate regardless of whether all approvals authorizations, clearances, licenses, permits and registrations are obtained.

6.3 Prohibited Investment Projects

Prohibited investment projects concern national security, social safety, and national economic necessity. Prohibited projects include:

- production and processing of psychotropic substances or narcotic substances;
- production of poisonous chemicals, agriculture pesticides and insecticides, and chemicals prohibited by international agreements and the World Health Organization (WHO);
- processing and production of electrical power from imported waste;
- exploitation of forests prohibited by the Forestry Law; and
- any other investment activities prohibited by other laws.

6.4 Requirement for approval by the COM

The CDC must seek approval from the COM for projects concerning the following:

- investment capital over US\$ 50 million;
- politically sensitive issues;
- exploration and exploitation of mineral and natural resources;
- environmentally unsound practices;
- long-term strategies; and
- infrastructure schemes such as Build Operate Transfer (BOT) projects.

7. Change in Ownership of a Qualified Investment Project

According to Sub-Decree 111 on Merger of Investors and Acquisition of Entity, investors with qualified investment projects that are the subject of a merger or acquisition must apply to the CDC in order to inherit all rights, guarantees, privileges and obligations.

7.1 Merger

An application for a merger must be submitted within 10 (ten) working days before the merger. It must include the name of the new registered investor and a request to have the Final Registration Certificate transferred to the new entity.

Within 10 working days after the submission of the application, the CDC must review the application and provide the new entity written confirmation or refusal.

The investor must notify the CDC when the transfer of shares results in a transfer of at least 20% of the voting rights. Within ten working days of the transfer, the investor must notify the CDC of the transfer and the name and address of the transferee.

7.2 Acquisition

Within 10 working days of acquiring a QIP, an investor must notify the CDC. Within 10 days of receiving the notification, the CDC must then review it and provide written confirmation of acceptance or refusal to the purchasing investor.

8. Termination of Qualified Investment Project

8.1 Voluntary termination

The investor must inform the CDC when he is concluding investment activities by a registered or hand-delivered letter, which the investor or attorney-in-fact must sign. Additionally, the investor must provide proof of all settled debts, including any complaints and claims from the Ministry of Economy and Finance and pay applicable dues if imported machinery and equipment have been used for less than five years. Meeting these requirements will cancel the Final Registration Certificate.

Upon cancellation, the investor must cease activities and dissolve the company in the appropriate manner subject to commercial law. An investor may transfer the remaining proceeds of the assets upon cancellation. All investment incentives are void after cancellation.

8.2 Decision of the State

The CDC may withdraw the privileges and incentives granted to a qualified investment project when the investor violates or fails to comply with required conditions. The state may terminate an investment activity by revoking the Final Registration Certificate. The CDC will revoke the certificate if an investor obtained a Final Registration Certificate or a Certificate of Compliance through fraud or misrepresentation. The CDC may also revoke the certificate if investment activity does not commence within six months of receiving the Final Registration Certificate.

The CDC must immediately notify the investor of the revocation in writing. Revocation of the Final Registration Certificate immediately divests the investor of all investment incentive. An investor may appeal to the Chairman of the CDC in writing within 20 working days of receiving the notification of revocation.

1. Structure of Court System

The structure of Cambodian judiciary may be divided into three tiers: lower courts (consisting of provincial, municipal and military courts), an Appeals Court, and the Supreme Court, which is the highest court in the nation.

There is an administrative unit, at all levels of courts, which is under central administration of the Ministry of Justice of the support of court and prosecution operation.

1.1 Lower Courts

Provincial courts have jurisdiction covering the entire territory of the provinces while municipal courts have jurisdiction over their respective municipalities. Military courts, however, have jurisdictional competence over the whole territory of Cambodia. These are courts of the first instance. Currently, there are 25 courts at the provincial and municipal levels.

The court of first instance shall be divided in specialized courts. The court of first instance is a general court which has a jurisdiction to deal all cases, except a case is under the jurisdiction of a special court or extraordinary court which is established by other law.

Each court of first instance is divided in specialized courts as following:

- A Civil Court
- A Criminal Court
- A Commercial Court
- A Labor Court

Each specialized court of first instance can independently issues its decision in its jurisdiction on behalf of the court of first instance where the specialized court of first instance sits.

1.2 Higher Courts

The higher courts comprise of an Appeal Court and a Supreme Court. If a party is not satisfied with the judgment or a decision rendered by the court of first instance, that party may file an appeal to the Appeal Court through the Clerk's Office of the court. The Appeal court reviews both questions of law and fact, whilst the Supreme Court only hears questions of law. A further appeal may be made to the Supreme Court which renders final decisions in all matters except electoral and constitutional issues.

The Appeal Court: The appeal court is the court of second degree. The appeal court includes Phnom Penh appeal court and provincial appeal court.

The Appeal Court comprises of specialized chamber as following:

- Criminal Chamber
- Civil Chamber
- Investigating Chamber
- Commercial Chamber
- Labor Chamber

The Supreme Court: There is only one Supreme Court, which sits in Phnom Penh.

The Supreme Court comprises of specialized chamber as following:

- Criminal Chamber

- Civil Chamber
- Commercial Chamber
- Labor Chamber

1.3 Civil Procedure

A civil case arises when a civil suit is filed with a competent court. The documents to submit comprise of a written complaint which includes the names and addresses of the parties, the names and addresses of their legal representative, the contents of the judgment sought, and the facts necessary for the claim. In addition, the plaintiff shall make efforts to describe concretely in the complaint the facts necessary to support the claims contained therein, and shall set forth, for each matter requiring proof, important facts and evidence relating to such facts.

Once the complaint is submitted, it will be then examined if the suit conforms to the legal requirement. If a suit is not found defective, the case continues to the next phase in which the preparatory proceeding for oral argument (PPOA) and oral argument (OA) might occur. The first preparatory proceeding for oral argument generally starts within 30 days of submission of the complaint. The PPOA aims to arrange and organize the allegations and arguments of the parties, clarify the points in dispute and prepare the evidence.

Examination of evidence shall be carried out upon the offering of evidence by the parties. The court may also examine evidence on its own authority where such examination is otherwise necessary. Evidence can normally be submitted at any time during the preparatory proceedings.

When the PPOA is concluded, the court sets a date for oral argument and summons the parties to appear. Oral arguments are compulsory before the judge will render a judgment. During the OA phase, the court reviews the submitted evidentiary dossier, which generally includes the defense, and hears the presentations of the parties. As this is a civil matter, the same judge will preside over both the PPOA and OA proceedings.

1.4 Criminal Procedure

Plaintiffs bringing penal actions can bring civil as well as criminal claims. The prosecution department is responsible for initiating criminal actions. In practice, an aggrieved party can report an offense to the local police authority. The police will then submit a report to the prosecutor who will commence a penal action. Civil actions are for the sole purpose of recovering financial damages for the victim. Civil actions may be brought as a result of a felony, misdemeanor or even a minor offense. It should be noted that criminal actions cannot be settled by outside agreements.

According to court procedures, there are three stages before a case is sent to trial:

Judicial Police Stage: the judicial police build a case by collecting documents and evidence and submitting a report to the prosecutors' office.

Prosecution Stage: upon receiving a complaint the prosecutors will commence an investigation, or a preliminary investigation, based on the police report and decide whether or not to prosecute the case.

The prosecutor can decide to either hold a file without processing or to conduct proceedings against the offenders. Before making the decision, a Prosecutor can conduct preliminary investigations or order supplemental investigations.

Criminal proceedings can be conducted through:

- *Opening of judicial investigation:* In the case of a felony, 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.
- *Citation:* A citation is an order made to the accused to appear before the Court of First Instance. 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.

- *Immediate appearance*: Prosecutors may order the accused to appear before the Court of First Instance immediately

If all of the following requirements are satisfied:

- The offense is flagrant in accordance
- The offense carries a sentence of imprisonment for not less one year and not greater than five years
- The accused reaches a legal age; and
- There are substantial facts to be tried.

Investigating Judge Stage: upon receiving an Introductory Submission from the Royal Prosecutor, the investigating judge will begin his investigation. An investigating judge may not conduct any investigative acts in the absence of an introductory submission.

2. Alternative Dispute Resolution (ADR)

2.1. Informal Dispute Resolution

In addition to the abovementioned legal mechanisms, Cambodian people often resort to traditional methods of dispute resolution, such as assisted reconciliations. Often, when disputes are not particularly serious parties often submit them to village elders or other respected or prominent persons in their villages or communes for reconciliation. Because of the peculiarities of the Cambodian culture this method often produces remarkably good results. Local authorities, village elders, commune chiefs and the like have long held a great deal of influence over their respective constituencies. Nevertheless, while reconciliations are often successful, they are non-binding and parties are free to process the case to the court, in case the decision cannot provide satisfaction for the involved parties.

3. Commercial Arbitration

Resolving commercial disputes through the court system can be a very time-consuming and expensive process. Cambodia established a legal framework for commercial arbitration in 2006 in order to let investors enjoy more effective alternative dispute resolution mechanisms. Under the Law on Commercial Arbitration, the Arbitral tribunal is organized in accordance with the wishes of the contracting parties, including the number of arbitrators and the criteria for their selection. The law also envisages a National Arbitration Center (NAC), which is described in Sub-Decree No. 124 on the Organization and Functioning of a National Arbitration Center (2009).

4. Labor Dispute Settlement

In accordance with the Labor Law (1997), the Arbitration Council (AC) was established in 2003 as an independent entity charged with solving collective labor disputes that could not be solved by conciliation between the parties. A collective labor dispute is defined as any labor dispute that arises between one or more employers and a certain number of their staff.

When a labor dispute arises, if the parties are not able to settle the matter, the Ministry of Labor will attempt to conciliate the dispute. If the Ministry is unsuccessful, the dispute is forwarded to the Arbitration Council via the Secretariat of the Arbitration Council.

In cases of rights disputes, the Arbitrator Panel will decide according to the law. In cases of interest disputes, the Arbitrator Panel will decide according to the principles of equity or fairness. Before any award is made the Arbitration Panel invites the parties to attend a hearing in order to present their cases. The Arbitration Panel also tries to encourage the parties to settle their cases by agreement if possible.

The arbitration council has a tripartite structure. This means that the council is comprised of members nominated by unions, employer associations, and the Ministry of Social Affairs, Labor, Vocational Training, and Youth Rehabilitation (MoSALVY). The council has some 15 members that the Minister appoints for one-year-terms. Each party chooses one arbitrator and these two arbitrators will

then choose a third arbitrator. The Arbitration Panel consists of these three arbitrators. The Arbitration Panel is formed within three days and will provide a final written decision called an Arbitral Award within 15 days, unless both parties agree to an extension of time.

The Arbitral Award will be immediately enforceable only if the parties have chosen to be bound by the Award prior to the decision of the Arbitration Panel. If, however, the parties have not agreed to be bound by the outcome then either party may file an opposition to the decision with the Secretary of the Arbitration Council within eight calendar days of the date the decision is issued.

It must be noted that the Secretary of the Arbitration Council can only provide assistance with the procedure to follow. The SAC cannot give legal advice.

Representative parties including lawyers, company administrators, unions, etc. must fill in the form of letter of authority for representation (obtained from the SAC) and give that document to the Secretary before the hearing begins.

4. Land Dispute Settlement

In vast majority of cases, land disputes involve disputes over unregistered lands, particularly cultivated lands and lands that are co-owned.

The municipal and the provincial courts are competent to hear all matters including land disputes. Today, however, land dispute settlement may also be resolved through an alternative dispute mechanism. Thus, it is now possible to settle land disputes either in court or out of court.

4.1. The Cadastral Commission

On May, 31 2002, the Cadastral Commission was established. The Cadastral Commission has the mission to resolve the following disputes related to unregistered immovable property: (1) disputes occurring outside adjudication areas; (2) disputes arising within adjudication areas and that cannot be conciliated by the Administrative Commission.

The Cadastral Commission has offices at District, Provincial and National levels. According to the law the conflict resolution through this body is free of charge. Through each level, except for the highest level which is a National Cadastral Commission, the settlement is performed upon conciliation basis. The conciliators may facilitate discussions, examine, and offer opinions on evidence as well as non-binding suggestions for solution and compromises. However, only the parties can agree to settlements in accordance with their wishes. If parties are able to reach an agreement, the conciliators shall record the details of the agreement and shall submit copies of agreement signed by conciliators and parties to the Office of Land Management, Urban Planning, and Land administration (OLMUPLA), and the Provincial Cadastral Commission. The OLMUPLA will confirm the details of settlement with the parties. Upon receipt of confirmation from all the parties the land will be registered in the cadastre according to the terms of the agreement. In case that the parties cannot reach an agreement, the dispute will be forwarded to the higher cadastral commission in the hierarchy. The highest body in the hierarchy is the National Cadastral Commission which hears cases that reach national level and disputes forwarded by the municipal or provincial level. Only this body can decide the case and render a binding decision (subject to parties' rights to appeal to the court).

4.2. National Authority for Resolution of Land Dispute

Acknowledgement of the inability to resolve land disputes by Cadastral Commission, the National Authority for Resolution of Land Dispute (NARLD) was recommended to establish in 2006 by the Royal Decree. The main duties and mission of the NARLD is to accept all land disputes beyond competence of the National Cadastral Commission and from all relevant individual or institutions on the land disputes.

In addition, the authority has duty to report to the royal government of Cambodia on land dispute settlement and work result, and to watch the activities of the cadastral commission and all level of competence authorities on their land dispute settlement.

Even though the authority has been involved as the top decision-maker, the recognition of the lawful possessor and issuing of land title shall be under the sole competence of the Cadastral Commission.

1. Overview

Intellectual property is a vital asset for many firms doing business in Cambodia. Whether it is to distinguish goods from competitors, protect the fruits of research investment, or maintain the confidentiality of financial plans, IP considerations surface in virtually all industries.

Cambodia's 2004 accession to the World Trade Organization prompted the adoption of several laws regulating intellectual property rights. While it will be a number of years before Cambodia comes into full WTO compliance, investors can take advantage of this developing regulatory framework and seek out protection for their inventions, trademarks, industrial designs, and other creative products.

Although the laws are still in the early stages of development, relatively efficient procedures for registering and enforcing important IP rights are in place. Ignoring or postponing registering IP assets can be very costly in the end.

2. Trademarks

Trademarks provide their owners the right to prevent rivals from using identical or confusingly similar marks and trade names on their goods and services. This publication serves as a straightforward guide to registering and enforcing trademarks within the Kingdom of Cambodia.

In February 2002, the National Assembly adopted the Law on Marks, Trade Names and Acts of Unfair Competition (Trademark Law). Following its adoption, a Sub-Decree on its implementation passed in 2006. As the legislation, and indeed much of the Cambodian legal system, is so recent, trademark law is not as developed or sophisticated as in many countries. There remain significant gaps and unresolved questions in the law, as well as many provisions not uniformly applied in practice.

2.1 Protectable Subject Matter

Cambodian trademark law protects trademarks, service marks, collective marks, and trade names. The definitions resemble those of many other countries and treaty agreements.

The law defines trademarks and service marks as any visible sign capable of distinguishing the goods (trademark) or services (service mark) of an enterprise. This definition excludes non-visible marks, such as smell, sound, or taste marks. Although not specifically addressed in the law, businesses can register three-dimensional trademarks if they comport with the statutory requirements of "distinctiveness". Depending on the circumstances, it may be easier to register a product as a three-dimensional trademark than as an industrial design.

Collective marks must be a visible sign capable of distinguishing the origin or any other common characteristic, including the quality, of goods or services of different enterprises that use the sign under the control of the registered owner of the collective mark.

A trade name means the name and/or designation identifying and distinguishing an enterprise. Article 21 of the Trademark Law protects unregistered trade names against any "unlawful act". It is wise to register one's business name as a trademark, as it strengthens one's rights and simplifies enforcement.

2.2 Registering a Trademark in Cambodia

Trademarks are registered with the Ministry of Commerce's Department of Intellectual Property Rights (DIPR). Cambodia uses a first-to-file system, so the use of a mark is not required when filing an application. Applications and supporting documents may be in either Khmer or English; a Khmer or

English translation must accompany documents in other languages. A lawful mark agent residing and practicing in Cambodia must represent foreign applicants.

The application process begins by filing an application form (provided by the DIPR free of charge), fifteen specimens of the mark, and if filed by an agent, an original notarized power of attorney. The accuracy of the power of attorney document is particularly important, as the DIPR will use that information when drafting the Final Certificate of Mark Registration. The applicant must also pay the filing fees upon filing, which are proportional to the number of marks and classes desired.

For priority claims under the Paris Convention, the applicant must include information regarding any previous international registration of the mark including the office of priority filing, priority dates and application number.

Although not a signatory, Cambodia follows the Nice Agreement in classifying goods and services. The applicant must specify the particular goods or services, as the Nice class heading is not acceptable. The applicant must describe marks with figurative elements using the Vienna Classification. An applicant can register marks containing foreign words but the applicant must provide a transliteration and translation. Once an applicant submits complete documentation, and unless the DIPR rejects the mark, the process of registration typically takes around six (06) months. If the DIPR decides that the documentation fulfills all the legal requirements, they will issue a certificate of mark registration to the applicant and publish the mark in the official website of the Department of Intellectual Property Rights.

Trademark Official Fees (US\$)	
Official search (Word)	\$10 per mark, per class
Application and registration (10-year term)	\$102.5 per mark, per class
Filing of affidavit of use or non-use	\$15 per mark, per class
Record of mark assignment	\$15 per mark, per class
Record of name change or merger of mark owner	\$15 per mark, per class
Record of address/name change	\$15 per mark, per class
Acknowledgement of Exclusive Rights	\$70 per mark per class?
Record of License	\$30 per mark per class
Cancellation of mark registration	\$75 per certificate
Opposition of mark application/registration	\$20 per mark per class
Renewal Filing	\$75 per mark, per class

2.3 Bars to Registration

The Trademark Law sets forth seven (7) specific bars to registration. The DIPR cannot validly register a mark, subjecting it to opposition and invalidation, if the mark is:

- Incapable of distinguishing the goods or services of one enterprise from those of other enterprises;
- Contrary to public order or good custom;
- Likely to mislead as to the origin of the goods or services concerned or their nature or characteristics;
- 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;
- 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; 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 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 interests of the owner of the well-known mark are likely to be damaged by such use; or

- 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 it is so nearly resembles such mark as to be likely to deceive or cause confusion.

In practice, if the DIPR decides that it should not register a mark, it will inform the applicant via a Notice of Preliminary Rejection. The reason for rejection is typically only a short phrase, and a list of the prior registrations where the DIPR finds it would be confusingly similar or indicate the mark is a generic/descriptive to the designated goods or services. The applicant then has sixty (60) days to submit written arguments and supporting documents as to why it should be registered. Failure to respond constitutes an abandonment of the application.

2.4 Maintaining a Trademark

The initial registration is valid for ten (10) years from the date of filing, and may be renewed indefinitely for consecutive ten-year periods. The application for renewal may be made within six (06) months preceding the expiration, or six (06) months after expiration with payment of a late fee.

In the sixth year of the initial term, and of each renewal term, the mark owner must submit an Affidavit of Use or Non-Use, and pay the official fee. The owner thereby states that either the mark is currently in use in Cambodia (and must submit supporting evidence), or that it is justifiably not in use but is intended to be used, and there is no intention to abandon the mark. Failure to submit the affidavit will lead to automatic cancellation by the DIPR.

The owner also has continuing obligations to register changes of name, address, mergers, assignments, and changes of agent. Each of these procedures requires submission of a form and supporting documents, and payment of the official fee.

2.5 Publication and Opposition

Once the mark is registered and the certificate of registration issued, the DIPR will publish a reference in the official website of Department of Intellectual Property Rights (www.cambodiaip.gov.kh). The published information contains the mark itself, application number, application date, applicant's name and address. Currently, the Department of Intellectual Property Rights publishes the information very lately. Within ninety (90) days of publication, an interested person may give notice of opposition to the DIPR. The person may oppose registration because it does not meet the definitional requirement for a mark, one of the (seven) statutory bars described above bars it, and/or the procedures were improperly followed. DIPR then forwards the notice of opposition to the applicant, who can choose to submit a counter-statement within ninety (90) days from the date issuing the notice of opposition. If the applicant does not submit a counter-statement, the DIPR considers the registration abandoned. However, if an applicant submits a counter-statement following a hearing, the DIPR will decide if it should cancel the registration. The Law does not provide for any appeal process, and so the DIPR's decision is final. The final decision of DIPR subjects to court proceeding.

2.6 Invalidation, Removal, and Cancellation

Even after the 90-day opposition period, interested parties can request the invalidation, removal from the Register, or cancellation of a registered mark.

Any interested party may request the invalidation of a mark because it does not meet the definitional requirements, or is barred by a statutory bar. Failure to abide by proper procedure, while a valid basis for opposition, is not applicable to invalidation requests. Invalidation is effective as of the date of registration.

Furthermore, any interested party may request the removal of a mark from the Register because, up to one (01) month prior to the request, the owner or a licensee had not used the mark during a continuous five-year period. However, the Law provides an affirmative defense for when “special circumstances” prevented the use of the mark, and there was no intent to not use or abandon the mark. In practice, this article allows interested parties to request removal for marks where the owner has not filed the required Affidavit of Use.

Finally, the DIPR has the right to cancel a mark under certain conditions. While the Law is silent on this matter, there is nothing to prevent an interested party from requesting the DIPR to cancel a mark under these provisions. They therefore act as a second set of grounds for third-party invalidation. DIPR may cancel a registration if:

- The owner has not renewed the mark within the proper period,
- The owner requests the removal,
- The owner failed to timely comply with registration procedures,
- The owner ceases to have an address for service in the Kingdom of Cambodia,
- It is convinced through evidence that the owner of the registration is not the legitimate owner, and
- It is convinced that the registered mark is similar or identical to a well-known mark owned by a third party.

Although the text of the Law treats opposition, invalidation, removal, and cancellation as separate concepts in different articles, there is considerable overlap in substance and procedures.

2.7 Collective Marks

The Law defines collective marks as “any visible sign [...] capable of distinguishing the origin or any other common characteristic, including the quality, of goods or services of different enterprises which use the sign under the control of the registered owner of the collective mark.” Collective marks follow the same registration, opposition, cancellation, invalidation, and removal procedures as regular marks.

The only additional requirement for collective marks is that the applicant must submit a copy of the regulations governing its use. These regulations must define i) the common characteristics or quality of goods or services, ii) the conditions which the users must follow, iii) the means for effective control of the users, and iv) adequate sanctions for breach of the regulations. Furthermore, the owner has an ongoing obligation to notify the Registrar in writing of any changes to its regulations.

The Law provides three more grounds for invalidation in addition to those applicable to regular marks. The DIPR can invalidate collective marks if:

- Only the registered owner uses the mark,
- The owner uses or permits its use in contravention of its stated regulations, and
- The owner permits its use in a manner liable to deceive trade circles or the public as to the origin or any other common characteristics of the goods or services concerned.

Finally, applications for and registrations of collective marks may not be licensed. Only the owner of a collective mark has the right to authorize others to use its mark, they may not license others this right. In order for an owner to grant another person such authorization, the owner must assign the collective mark to the other person.

2.8 Licensing

Only registered marks may be the subject of license contracts. Licenses must provide for effective control by the licensor of the quality of the goods or services of the licensee. Further, the licensor must effectively enforce these quality-control provisions. Failure to include or enforce such provisions can lead to the invalidation of the license.

Of particular importance is the requirement that every license contract be submitted to the DIPR. Therefore any unrecorded license contract has no effect as against third parties. The DIPR

will publish a reference to the license in the Official Gazette, while keeping the terms of the contract confidential. However, we have not seen such publication in the current practice.

2.9 Infringement

There are two standards of infringement for regular (not well-known) marks, a strong, narrow standard, and a weak, broad standard.

Under the narrow standard, the unauthorized use of the exact registered mark infringes only if (it is) used in relation to the exact goods or services for which it was registered. A slight modification of the mark, or the use of the exact mark but on a slightly different product from that registered, would not infringe.

Under the broad standard, use of a sign similar to the registered mark on goods or services similar to those for which the mark was registered, infringes only if confusion may arise in the public.

The Law accords greater protection to well-known marks. The Law applies the same standards used to evaluate infringement of regular marks are to evaluate infringement of *unregistered* and *registered* well-known marks. The law provides additional protection for registered well-known marks by protecting them from use on any good or service that would indicate a connection with the owner and likely damage the owner's interests.

A trademark owner has the right to prevent others from infringing their mark and prevent others from performing acts that make it likely that infringement will occur. This second clause could include contributory or vicarious liability. For example, the landlord of a market where infringing goods are sold could be "performing an act" (providing physical space) where infringement (sales of infringing goods by tenants) is likely to occur. Although this is a plausible reading of the statute, and would be the law in many jurisdictions, the author knows of no such case or official interpretation in Cambodia to date.

2.10 Civil Remedies, Customs Suspension, and Criminal Penalties

A trademark owner can pursue infringers in three different ways: i) sue for money damages and/or specific relief in civil court, ii) request the customs authorities to suspend clearance of imported infringing goods, and iii) seek criminal prosecution and/or fines.

Only the mark owner, or a licensee under certain conditions, may seek civil remedies for trademark infringement. A civil court has the power to grant an injunction, award monetary damages, and other relief as provided in the general law. The Trademark Law does not specify any method of calculating damages. The court also has the power to order provisional measures, otherwise known as a preliminary injunction or temporary restraining order, to prevent infringement, imminent infringement, or preserve evidence. In considering such a request, the court should evaluate the likelihood of irreparable harm and the strength of the infringement case. Further, in order to protect the defendant and prevent abuse, the court has discretion to require a security or other assurance from the applicant. However, an applicant could be liable for damages to the defendant if the provisional measure is overturned or loses the case on the merits. Bringing an infringement suit in civil court can be a time-consuming and expensive process given systemic problems in the Cambodian judiciary, but offers the reward of money damages.

Second, a trademark owner can request the customs authorities, or a civil court, to suspend customs clearance and destroy counterfeit goods. As Cambodia's manufacturing base is relatively narrow, most infringing goods are imported from abroad. Only clear-cut cases of infringement are amenable to this procedure, as the standard for "counterfeit goods" is significantly higher than that used for civil cases. The process begins by submitting a statement 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. Within ten (10) working days of this submission, the authorities must notify the applicant whether the application has been granted, rejected, or reserved for further consideration.

If the application is granted, the customs authority will suspend clearance of the goods for a defined period, extendable for not more than ten (10) working days. The applicant then has ten (10)

working days to initiate a civil infringement case, or else the goods will be released from customs. If the authorities deem the applicant's case to be wrongful, they have the power to order payment of compensatory damages to the importer. Finally, the customs authorities, with court approval, can order the destruction of counterfeit goods. While customs clearance does not offer the trademark owner monetary damages, it can be far quicker than instituting a civil infringement case.

Third, a trademark owner can request criminal prosecution of the infringers. The penalty for standard infringement (not counterfeiting) is five (05) to ten (10) million Riels (~US\$1,250 to US\$2,500), or one (01) month to one (01) year imprisonment, or both. The penalty for counterfeiting is one (01) to twenty (20) million Riels (~US\$250 to US\$5,000), or one (01) to five (05) years imprisonment, or both. Repeat offenders are subject to up to double these penalties. Where the defendant is a juristic person (such as a company), the managing director, manager or representative can be criminally prosecuted, unless they can prove they neither knew of, nor consented to the infringement.

2.11 Unfair Competition

The same law that protects trademarks also prohibits acts of unfair competition. The unfair competition provisions are short, broad and vague. The law prohibits any act of competition contrary to "honest practices" in business. The Law then lists three (03) types of behavior specifically, but non-exclusively, forbidden:

- All acts which create confusion with the establishment, the goods, or services of a competitor;
- False allegations which discredit a competitor's goods or services; and
- Indications or allegations that are likely to mislead the public as to the nature, manufacturing process, characteristics, suitability, or quantity of goods.

As with much of Cambodian law, there appears to have been no official interpretation or precedential cases explaining these provisions.

3. Patents

Cambodia's Law on Patents, Utility Models and Industrial Designs provides a set of exclusive rights to an inventor or his assignee for a fixed period in exchange for disclosure of an invention, utility model or industrial design. From 2007 till this early 2015, there are 414 patent application filed but non of the patent application has been granted except one patent application granted based on the Cambodia and Singapore Memorandum of Understanding dated January 20, 2015.

Enacted in 2003 to comply with Cambodia's WTO obligations, A 2006 Prakas detailing procedures supplementing the Law. Although the Law is relatively new and untested, it specifically provides that any international Intellectual Property treaty to which Cambodia is a party upon the provision of the article 129 of the law, will trump the national legislation in case of conflict. While Cambodia is not a party to the Patent Cooperation Treaty, the Law provides a procedure for registering foreign applications in Cambodia.

3.1 Patentable Subject Matter

Patents may be granted only for 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. The law categorically excludes six (06) types of inventions from patent protection:

- 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;
- Certain pharmaceutical products (until 2021);
- Plants and animals other than micro-organisms, and essentially biological processes for the production of plants or animals;

- Plant varieties.

The law specifies that the following types of computer processes and products are patentable:

- Process inventions which, in whole or in part, consist of steps that are performed by computer and are directed by a computer;
- Product inventions consisting of elements of a computer-implemented invention, including in particular:
 1. Machine-readable computer program codes stored on a tangible medium such as a floppy disk, computer hard drive or computer memory; and
 2. A general purpose computer whose novelty over the prior art arises primarily due to its combination with a specific computer program.

Patenting software products and processes automatically waives any copyright protection in the code.

3.2 Novelty, Inventive Step, and Utility

To be patentable, an invention must be new, involve an inventive step, and be industrially applicable.

An invention 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. The only exclusion to this broad definition are disclosures made by the applicant or his predecessor in title, or an abuse by a third party (e.g. divulging the applicant's trade secret), made within twelve months of filing or the priority date.

For an invention to involve an "inventive step", it must not have been obvious to a person having ordinary skill in the art, considering the prior art.

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

- Those which the commercial exploitation in the Kingdom of Cambodia would be contrary to public order or morality,
- Harmful to human, animal, or plant life or health,
- Seriously prejudice the environment, or
- Prohibited by law.

3.3 Inventor's Right to a Patent

The right to a patent belongs to the inventor. Like most countries, Cambodia is a "first-to-file" system. Thus, where two or more persons have independently arrived at the same invention, the patent is awarded to the applicant with the earliest filing or priority date. Where two or more people have jointly made an invention, they jointly have the right to the patent. Unless otherwise agreed by contract, the employer has the right to any invention made in execution of an employment contract. Even though the employer has the right to the patent, the employee has the right to be named as the inventor on the application.

3.4 Application Procedure

Patent applications are filed with the Department of Industrial Property of the Ministry of Industry and Handicraft (MIH). An agent residing and practicing in Cambodia must represent foreign applicants. The applicant must submit the following documents:

- **Application Form:** Must include the name, address, nationality, and residence of each applicant and inventor.
- **Statement of Applicant's Right:** Where the applicant is the inventor, the filing must include a statement to that effect. Where the applicant is not the inventor, the filing must indicate each inventor's name and address, and be accompanied by a statement justifying the applicant's

right to the patent.

- **Power of Attorney:** Certified by a notary public, granting an agent the authority to act on behalf of the applicant in the registration process.
- **Foreign Filing Information:** Information regarding any previous international registration of the patent and evidence setting out such registration (including all registration numbers and priority claim/first use dates).

The official fees for registration are as follows:

Patent Registration-Official Fees (US\$)	
Application (1-10 claims)	\$80
Each claim in excess of 10	\$5/claim
Publication after granting	\$30
Issuance of the patent certificate of registration	\$150
Official Translation – English to Khmer	\$15/page

As provided for in the Paris Convention, the application may claim priority based on an earlier national, regional, or international application. If the applicant claims priority, the Registrar may request the applicant to furnish a certified copy of the earlier application. Further, the Registrar may request the applicant to submit any search or examination reports relating to the foreign application, a copy of the granted foreign patent, or foreign office action.

The application must contain a request, a description of the invention, one or more claims, drawings, and an abstract. The written description must describe the invention in a clear and complete manner and indicate the best mode known to the applicant for constructing the invention. Additionally, a person with ordinary skill in the art must be able to construct the invention by following the written description. Claims must be clear and concise, and fully supported by the description. The applicant must provide drawings if they are necessary to understand the invention. The abstract merely provides technical information; it does not affect the scope of protection.

The applicant can appeal any decision of the Registrar, such as the refusal to grant a patent, to the competent court within three months of the decision.

3.5 Rights Conferred by a Patent

The owner of a product patent 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.

The law provides for four affirmative defenses to an infringement claim:

- The patent owner has consented to the allegedly infringing act;
- The articles were used on aircraft, land vehicles, or vessels of other countries temporarily or accidentally entering Cambodian airspace, territory, or waters;
- The acts were done for experimental purposes; and
- The act were performed by someone who in good faith, before the filing or priority date, was using the invention or was making effective and serious preparations for such use.

3.6 Government Exploitation

The Ministry has the right to allow a government agency or third party to exploit the invention on public interest grounds (national security, nutrition, health, or development). Additionally, a government agency or third party can exploit the invention if a court determined that the patent owner or licensee acted anti-competitively. The Ministry grants such a non-voluntary license only after a hearing and with adequate compensation to the patent owner. The patent owner can request

modification or termination of such a license, and can appeal to the competent court.

3.7 Non-Voluntary Licenses

Patent owners who delay in exploiting their inventions risk having the government grant others licenses without the patent owner's permission. Four years from filing, or three years from issuance, whichever comes later, anyone may request the Ministry to issue a non-voluntary license. The Ministry will grant the request if it is satisfied that the patented invention has been insufficiently exploited in Cambodia, unless the owner can show this was justified.

The Ministry must decide the license's scope and function, the time limit for the licensee to begin exploitation, and the patent owner's compensation. Where the government has issued a non-voluntary license on a patent involving an important technical advancement of considerable economic importance over an earlier patent, the law provides a process for issuing a non-voluntary license on the earlier patent too. Finally, the rules for the modification, termination, and appeal of government exploitation licenses also apply to non-voluntary licenses.

3.8 Invalidation

Any interested party may request a court to invalidate a patent after its issuance. The following are the sole grounds for invalidation:

- The invention does not permit, in practice, the solution to a specific problem in the field of technology;
- The invention is not, or does not relate to, a product or a process;
- Improper subject matter;
- Lack of novelty, inventive step, or industrial application;
- The invention is against public policy;
- Insufficient written description or best mode;
- Unclear, verbose, or unsupported claims;
- Lack of drawings necessary to understand the invention;
- The owner of the patent is not the inventor or his successor in title.

3.9 Assignments & Licenses

All changes in ownership (assignments) must be in writing and recorded by the Registrar. If not recorded, assigned patents are unenforceable against third parties. License contracts, whether oral or written, also need to be registered in order to be enforceable. The Registrar will publish a reference to the recordation, while keeping the license terms confidential.

3.10 Duration & Annual Maintenance Fees

The term of a patent is twenty (20) years from the application filing date. Although the Law states that payment of an annual maintenance fee begins one year from filing, Prakas on the Public Services Fees requires payment beginning in the second year. There is a six-month grace period for the late payment of the annual fee, with an additional surcharge. Failure to pay the annual fee results in the withdrawal of the patent application, or lapse of the granted patent.

The official fees are as follows:

Patent Annual Maintenance Fees (US\$)	
2nd Year	\$20
3rd Year	\$20
4th Year	\$40

5th Year	\$100
6th Year	\$140
7th Year	\$180
8th Year	\$220
9th Year	\$260
10th Year	\$300
11th Year	\$350
12th Year	\$400
13th Year	\$450
14th Year	\$500
15th Year	\$550
16th Year	\$610
17th Year	\$670
18th Year	\$740
19th Year	\$810
20th Year	\$890
Late filing fee of annuity during 6 months	2% with interests per month

3.11 Infringement & Criminal Penalties

A patent owner or a licensee can bring a civil infringement suit against the patent infringer. The court has wide discretion to award monetary damages and order injunctive relief. Further, the Law provides criminal penalties for infringement of five (05) million to twenty (20) million Riels (approximately US\$1,250 to US\$5,000), or one (01) to five (05) years imprisonment, or both. Repeat offenders are subject to up to double the fine and imprisonment term.

4. Utility Models

A utility model certificate, known elsewhere as a petty patent, differs from a patent in its term (7 years instead of a patent's 20) and lacks the inventive-step requirement. Thus, a utility model means any invention that is new and industrially applicable, and is or relates to a product or process. They are less significant technological advances, and therefore are granted a shorter term of exclusivity.

Although the Law concerning utility model certificates promulgated in 2003, few utility model applications have been filed. From 2007 up to now, the Registrar has received 22 utility model registration applications, but the government has yet to grant a utility model certificate.

This guide will provide a straightforward and comprehensive overview of the matter. Almost all provisions are identical to the patent articles. Although the law is relatively new and untested, it specifically provides that any international Intellectual Property treaty to which Cambodia is a party as per the provision of the article 129 of the Law on the Patents, Utility Model Certificates and Industrial Designs, will trump the national legislation in case of conflict. While Cambodia is not a party to the Patent Cooperation Treaty, the Law provides a procedure for registering foreign applications in Cambodia.

4.1 Subject Matter

The government grants Utility model certificates for only 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. The law categorically excludes six (06) types of inventions from protection:

- 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;
- Certain pharmaceutical products (until 2021);
- Plants and animals other than micro-organisms, and essentially biological processes for the production of plants or animals; and
- Plant varieties.

The law specifies that certain types of computer processes and products are registrable:

- Process inventions that, in whole or in part, consist of steps performed and directed by a computer;
- Product inventions consisting of elements of a computer-implemented invention, including in particular:
 1. Machine-readable computer program codes stored on a tangible medium such as a floppy disk, computer hard drive or computer memory; and
 2. A general purpose computer whose novelty over the prior art arises primarily due to its combination with a specific computer program.

Utility model protection of software products and processes automatically waives any copyright protection in the code.

4.2 Novelty and Utility

For the government to grant a utility model certificate, an invention must be new and industrially applicable. There is no requirement of an inventive-step, the major difference from a patent.

An invention 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. The only exclusion to this broad definition of prior art are disclosures made by the applicant or his predecessor in title, or an abuse by a third party (e.g. divulging the applicant's trade secret), made within twelve months of filing or the priority date.

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

- Inventions where commercial exploitation in the Kingdom of Cambodia would be contrary to public order or morality,
- Inventions harmful to human, animal, or plant life or health,
- Inventions that seriously prejudice the environment, or
- Inventions prohibited by law.

4.3 Inventor's Right to a Utility Model Certificate

The right to a utility model certificate belongs to the inventor. Like most countries, Cambodia is a "first-to-file" system. Thus, where two or more persons have independently arrived at the same invention, the government awards the utility model certificate to the applicant with the earliest filing or priority date. Where two or more people have jointly made an invention, they jointly have the right to the utility model certificate. Unless otherwise agreed by contract, the employer has the right to any invention made in execution of an employment contract. Even though the employer has the right to the utility model certificate, the employee has the right to be named as the inventor on the application.

4.4 Application Procedure

Applicants must file utility model applications with the Department of Industrial Property of the Ministry of Industry and Handicraft (MIH). An agent residing and practicing in Cambodia must represent foreign applicants. The applicant must submit:

- **Application Form:** Must include the name, address, nationality, and residence of each applicant.
- **Statement of Applicant's Right:** Where the applicant is the inventor, the filing must include a statement to that effect. Where the applicant is not the inventor, the filing must indicate each inventor's name and address, and be accompanied by a statement justifying the applicant's right to the patent.
- **Power of Attorney:** Certified by a notary public, granting an agent the authority to act on behalf of the applicant in the registration process.
- **Foreign Filing Information:** Information regarding any previous international registration of the utility model and evidence setting out such registration (including all registration numbers and priority claim/first use dates).

The official fees are as follows:

Utility Model Certificates-Official Fees (US\$)	
Application (1-10 Claims)	\$40
Each claim in excess of 10	\$5/claim
Issuance of the certificate of registration	\$40
Publication after granting	\$30

As provided for in the Paris Convention, the applicant may claim priority based on an earlier national, regional, or international application. If an applicant claims priority, the Registrar may request the applicant to furnish a certified copy of the earlier application. Further, the Registrar may request the applicant to submit any search or examination reports relating to the foreign application, a copy of the granted foreign patent, or foreign office action.

The application must contain a request, a description of the invention, one or more claims, drawings, and an abstract. The written description must describe the invention in a clear and complete manner and indicate the best mode known to the applicant for constructing the invention. Additionally, a person with ordinary skill in the art must be able to construct the invention by following the written description. Claims must be clear and concise, and fully supported by the description. The applicant must provide drawings if they are necessary to understand the invention. The abstract merely provides technical information; it does not affect the scope of protection.

At any time before the grant or refusal of a utility model certificate, an applicant may convert his application into a patent application, and vice-versa. The converted application retains the original's filing date. An applicant can convert from one to the other only once.

The applicant can appeal any decision of the Registrar, such as the refusal to grant a utility model certificate, to the competent Court within three months of the decision.

4.5 Rights Conferred by a Utility Model Certificate

The owner of a product utility model certificate 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 utility model certificates, the owner has the right to prevent others from using the process and from doing any of the acts covered by a product certificate where the product is obtained directly by means of the process. The owner may institute court proceedings against anyone who performs such acts, or who makes such acts more likely to occur.

The law provides for four affirmative defenses to an infringement claim:

- The owner has consented to the allegedly infringing act;

- The use of articles on aircraft, land vehicles, or vessels of other countries temporarily or accidentally entering Cambodian airspace, territory, or waters;
- Acts done for experimental purposes; and
- If the acts were performed by someone who in good faith, before the filing or priority date, was using the invention or was making effective and serious preparations for such use.

4.6 Government Exploitation

The Ministry has the right to allow a government agency or third party to exploit the invention on public interest grounds (national security, nutrition, health, or development). Additionally, a government agency or third party can exploit the invention if a court determined that the owner or licensee has acted anti-competitively. The ministry may grant such a non-voluntary license only after a hearing and with adequate compensation to the owner. The owner can request modification or termination of such a license, and can appeal to the competent court.

4.7 Non-Voluntary Licenses

Owners who delay in exploiting their inventions risk having the Minister grant others licenses without the owner's permission. Four years from filing or three years from issuance, whichever comes later, anyone may request the Ministry to issue a non-voluntary license. The Ministry will grant the request if it is satisfied that the invention has been insufficiently exploited in Cambodia, unless the owner can show this was justified.

The Ministry must set the license's scope and function, the time limit for the licensee to begin exploitation, and the owner's compensation. Where the Ministry has issued a non-voluntary license on a utility model certificate involving an important technical advancement of considerable economic importance over an earlier utility model certificate, the Law provides a process for issuing a non-voluntary license on the earlier utility model certificate too. Finally, the rules for the modification, termination, and appeal of government exploitation licenses also apply to non-voluntary licenses.

4.8 Invalidation

Any interested party may request a court to invalidate a utility model certificate after its issuance. The following are the sole grounds for invalidation:

- The invention is not, or does not relate to, a product or a process;
- Lack of novelty or industrial applicability;
- The invention is against public policy;
- Insufficient description or best mode;
- Unclear, verbose, or unsupported claims;
- Lack of drawings necessary to understand the invention;
- The owner of the utility model certificate is not the inventor or his successor in title.

4.9 Duration and Annual Maintenance Fees

The term of a utility model certificate is seven years after the application filing date. The applicant must pay an annual fee in advance to the Registrar, starting one year after the filing date of the application. There is a six-month grace period for the late payment of the annual fee, with an additional surcharge. Failure to pay the annual fee results in the withdrawal of the application, or lapse of the granted utility model certificate.

The annual fees are as follows:

Utility Model Annual Maintenance Fees (US\$)

2nd Year	\$20
3rd Year	\$20
4th Year	\$30
5th Year	\$50
6th Year	\$75
7th Year	\$100
Late filing fee of annuity during 6 months	2% with interest per month

4.10 Assignments and Licenses

All changes in ownership (assignments) must be in writing and recorded by the Registrar. If not recorded, assigned utility model certificate are unenforceable against third parties. License contracts, whether oral or written, also need to be registered in order to be enforceable. The Registrar will publish a reference to the record, while keeping the license terms confidential.

4.11 Infringement and Criminal Penalties

An owner or a licensee can bring a civil infringement suit against the utility model infringer. The court has wide discretion to award monetary damages and order injunctive relief. Further, the Law provides criminal penalties for infringement of five (05) million to twenty (20) million Riels (approximately US\$1,250 to US\$5,000), or one to five (05) years imprisonment, or both. Repeat offenders are subject to up to double the fine and imprisonment term.

5. Industrial Designs

Cambodia's Law on Patents, Utility Models and Industrial Designs provides a set of exclusive rights to a designer or his assignee for a fixed period in exchange for disclosure of their industrial design. Enacted in 2003 to comply with Cambodia's WTO obligations, the Ministry supplemented the law in 2006 by a Prakas detailing procedures. Although the Law is relatively new and untested, it specifically provides that any international Intellectual Property treaty to which Cambodia is a party will trump the national legislation in case of conflict.

5.1 Protectable Subject Matter

An industrial design may be any composition of lines or colors, or any three-dimensional form (3D), or any material, so long as it gives a special appearance to a product of industry or handicraft. This special appearance must appeal and be judged by the eye. The law does not protect non-visual characteristics such as the smell or touch of a material. Industrial designs do not cover the technical features of a product, nor do they extend in a way that leaves no freedom as to arbitrary features of appearance.

5.2 Registering Industrial Designs

An industrial design must be new to be registered. It cannot have been disclosed to the public, anywhere in the world, by publication, use, or other disclosure, prior to the filing or priority date. Disclosures made within twelve months of filing or the priority date, by the applicant, his predecessor in title, or a third party by abuse, do not bar registration. Industrial designs contrary to public order or morality cannot be registered.

5.3 Right to an Industrial Design Registration

The right to an industrial design registration belongs to the creator. Like most countries, Cambodia is a “first-to-file” system. When two or more persons independently arrive at the same design the Ministry awards registration to the applicant with the earliest filing or priority date. Where two or more people have jointly made a design, they jointly have the right to the registration. Unless otherwise agreed by contract, the employer has the right to any design made in execution of an employment contract. Even though the employer has the right to the registration, the employee has the right to be named as the creator on the application.

5.4 Application Procedure

Creators register Industrial designs with the Department of Industrial Property of the Ministry of Industry and Handicraft (MIH). An agent residing and practicing in Cambodia must represent foreign applicants. An applicant must submit the following documents:

- **Application Form:** Must include the name, address, nationality, and residence of each applicant.
- **Statement of Applicant’s Right:** Where the applicant is the inventor, the filing must include a statement to that effect. Where the applicant is not the inventor, the filing must indicate each inventor’s name and address, and be accompanied by a statement justifying the applicant’s right to the registration.
- **Power of Attorney:** Certified by a notary public, granting an agent the authority to act on behalf of the applicant in the registration process.
- **Drawings or photographs** representing the industrial design, no more than 10 cm x 20 cm, on A4 format paper:
 1. 4 examples of the drawing or photograph, if the industrial design is two dimensional; or
 2. 4 examples of the drawing or photographic for each of the six views (top, bottom, left, right, front, back), if the industrial design is three dimensional;
- **A scale model**, if available, representing the figure of the industrial design, having a maximum dimensions of 20 cm x 20 cm x 20 cm.
- **Foreign Filing Information:** Information regarding any previous international registration of the industrial design and evidence setting out such registration (including all registration numbers and priority claim/first use dates).

The official fees are as follows:

Industrial Design-Official Fees (US\$)	
Application	\$20
Registration (1-5 Years)	\$50
Publication of registered design	\$30
First Renewal (6-10 Years)	\$50
Second Renewal (11-15 Years)	\$50
Publication of the renewal	\$20
Late Payment of Renewal Fee	2% interest of amount due

Where the applicant is not the creator, a statement justifying the applicant’s right to the registration must accompany the application. The applicant may choose, at the time of filing, to postpone publication of the application for up to twelve months from the filing or priority date.

5.5 Rights, Duration, and Renewal

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

design.

Registrations are valid for a period of five (05) years from the filing date, renewable for two further consecutive five-year terms, for a total of fifteen (15) years. The renewal filing must be made within six months before the expiration date and accompanied by payment of a renewal fee, which is payable up to six months late with payment of a surcharge.

5.6 Invalidation

Any interested party may request a competent court to invalidate an industrial design registration because:

- The design is not new,
- The Ministry granted the registration on a design of improper subject matter,
- The design is against public order or morality, or
- The registered owner is not the creator or his successor in title.

Any invalidation renders the registration null and void from the date of registration.

5.7 Assignments & Licenses

All changes in ownership (assignments) must be in writing and recorded by the Registrar. If not recorded, assigned registrations are unenforceable against third parties. License contracts, whether oral or written, also need to be registered in order to be enforceable. The Registrar will publish a reference to the recordation, while keeping the license terms confidential.

5.8 Infringement & Criminal Penalties

The industrial design owner or licensee can bring a civil infringement suit following an unsuccessful request to the owner to do so. The court has wide discretion to award monetary damages and order injunctive relief. Further, the Law provides criminal penalties for infringement of five (05) million to twenty (20) million Riels (approx. US\$1,250 to US\$5,000), or one (01) to five (05) years imprisonment, or both. Repeat offenders are subject to up to double the fine and imprisonment term.

6. Copyrights

Cambodia's Law on Copyright and Related Rights provides protection for original works of authorship. Enacted in 2003 to comply with Cambodia's WTO obligations, the government modeled the Law on general copyright principles common to many other jurisdictions. While the Law has been in effect for several years now, it is largely untested and copyright infringement is rife.

6.1 Copyrightable Subject Matter

The Copyright Law protects the following subject matter:

- All kinds of reading books or other literary, scientific, and educational documents,
- Lectures, speeches, sermons, oral or written pleadings and similar works,
- Dramatic works and musical dramas,
- Choreographic works, either modern or adapted from traditional works or folklore,
- Circus performances and pantomimes,
- Musical compositions, with or without 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,
- Products of collage work in handicraft, hand-made textile products or other clothing fashions.

The Law specifically 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 law protects works whether publicly disclosed or not. A work is created by the sole fact of the realization, even if incomplete, of the author's idea.

6.2 Authorship

The author is the person, or persons, who create a work. All economic and moral rights automatically vest in the initial author or authors. The Law presumes that the person or persons in whose name the work is created and disclosed are the authors, unless there is evidence to the contrary. A collaborative work is the product of the joint efforts of two or more natural persons, the co-authors. Co-authors can only exercise their rights with the unanimous and written consent of all other co-authors. In case of disagreement, they must petition a court for resolution.

A work made by an author within the scope of employment, unless contracted otherwise, is considered to have been transferred to the employer. Anonymous and pseudonymous authors have the same rights as named authors. However, unless such an author makes known her identity and demonstrates she is the author, the publisher or original discloser of the work will represent her. The representative can enforce the author's moral and economic rights, but must have in their possession an agreement identifying the author.

For audio-visual works, the law presumes that the co-authors are the director, the author of scenario, author of the adaptation, author of the spoken text, author of the musical composition, and the author of the graphic arts for animations.

6.3 Economic Rights

The author enjoys the exclusive economic rights to their work, subject to certain limitations. The core of the economic right is the exclusive right to exploit the work by authorizing the reproduction, communication to the public, and the creation of derivative works. More specifically, only the author, or another with the author's authorization, can:

- Translate the work into a foreign language;
- Adapt and simplify, or undertake any modifications of the work;
- Rent or publicly lend the original or a copy of an audiovisual work, phonorecord, computer program, database, or musical work;
- Publicly distribute by sale or rental, a copy that has not already been subject to an authorized sale or transfer of ownership;
- Import into the country copies of the work;
- Reproduce the work;
- Publicly perform the work;
- Publicly display the work;
- Broadcast the work; and
- Communicate the work by other means to the public.

6.4 Moral Rights

Authors also enjoy certain moral rights, which are perpetual, inalienable, undistrainable, and imprescriptible. Although the author cannot sell or transfer moral rights during his lifetime, they rights pass to the heirs on the author's death.

There are three specific moral rights. First, the author has the exclusive right to decide the manner and timing of the work's disclosure, as well as the principle to govern this disclosure. Second, the author has the right to be publicly credited with the work and title. Third, the author has the right to oppose all forms of distortion, mutilation or modification of the content of the work that would be prejudicial to their honor or reputation.

6.5 Performance Rights

The Law contains special provisions for a performer's rights. A performer is any artist, dancer, musician, singer, or other person who gives a performance. Each performer has the exclusive right to authorize or undertake the following acts:

- Broadcasting and communicating the performance to the public, with certain exceptions;
- Fixing in phonogram their unfixed performance;
- Reproducing a fixation in phonogram of their performance;
- Distributing to the public by sale or transfer of ownership, an original fixation in phonogram that has not been the subject of an authorized distribution; and
- Renting or public lending of an original fixation in phonogram of the performance, or copies thereof.

6.6 Limitations to Rights

Notwithstanding the authors' exclusive moral and economic rights, the following acts are specifically permitted:

- Importing a copy of a work by a natural person, for their personal use;
- Privately reproducing a work in a single copy, by a natural person for his or her personal purposes, with certain exceptions;
- Freely and privately representing a work to a close circle of people, such as family or friends;
- Arranging to preserve in a library the copy of a work for conservation or research;
- Using a work for educational purposes, but not for financial gain;
- Translating works from Khmer into ethnic minority languages, and vice versa;
- Using analyses and short quotations justified by the critical, polemical, pedagogical, scientific or informative nature of that work, so long as the source and author are properly attributed;
- Broadcasting of press commentary, so long as the source and author are properly attributed;
- Disseminating speeches and addresses to the public, either entirely or in part, through press release or television broadcast;
- Adapting of comic style or caricature based on an original work, so long as the source and author are properly attributed;
- Reproducing graphic or plastic works situated in a public place, when this reproduction does not constitute the principle subject for reproduction, so long as the source and author are properly attributed;
- Citing a legitimate public work in another work, so long as the source and author are properly attributed, and no more than is necessary;
- Temporarily reproducing a work in the course of authorized use of the work.

6.7 Copyright Duration

Copyright protection begins the moment the author creates the work. Moral rights last forever; they extend beyond the life of the author and pass to their heirs. The term of the economic rights depends on the type of authorship:

- Sole author: life of the author plus fifty (50) years after their death;
- Collaborative work (multiple authors): life of the last surviving author plus fifty (50) years after their death;

- Published anonymous, pseudonymous, collective, audiovisual, and posthumous works, published within fifty (50) years of their creation: seventy (75) years from the end of the calendar year of its publication;
- Anonymous, pseudonymous, collective, audiovisual, and posthumous works which have not been published within fifty (50) years of their creation: hundred (100) years from the end of the calendar year of its creation.

6.8 Transfer & Exploitation of Economic Rights

Each of the individual economic rights is freely transferable. The transfer of one of these rights, such as the right to make a translation, does not imply the transfer of any of the other rights, such as the right to adapt a work for a film. The parties to an assignment or license are free to attach conditions of exploitation to the transfer.

All contracts for the exploitation of economic rights must be in writing. They must separately specify each domain of exploitation of those transferred rights, properly limited in place, objective and duration. Where an individual author contributes their separate work to a collective work, they retain the right to exploit their own contribution, unless otherwise agreed, if the author's exploitation does not damage the collective work. A co-author must have the consent of all co-authors to exploit a work; a court must settle disagreements.

6.9 Deposit & Registration

Although every work is automatically protected, authors or their rights-holders may register their works at the Ministry of Culture and Fine Arts. The registration requires a record of the author's real name, date of the first publication of work, date of creation of work, as well as the record of the author's right. The Ministry will issue a Certificate of Registration upon proper registration. Registration is purely voluntary and the Law specifies no particular benefits.

Copyright and Related Right Certificates-Official Fees (US\$)	
Registration of book, article, painting, photographic work, map (one work/one copy)	\$5
Architectural work (one work/one plan)	\$15
Handicraft work (one work/one copy)	\$5
Computer program (one work/ one copy)	\$15
Phonogram and audio-visual work (one album/one disc)	\$7.5
Digital work- website (one program/one disc)	\$15

7. Geographical Indications

To comply with its WTO obligations, Cambodia has recently adopted the Law on Geographical Indications (GIs) which was promulgated on January 20, 2014. Under this Law, a geographical indication is a name or sign used on certain products which corresponds to a specific location, where the quality or reputation of the goods is essentially attributable to its place of origin. There are many examples of well-known geographical indications including Champagne, Florida Oranges, and Prosciutto di Parma. With a registered GIs, regional producers should be better able to distinguish and market their goods from the competition.

Since early 2009, GIs are registrable with the Ministry of Commerce (MOC) under an interim regulation (Prakas on the Procedures for the Registration and Protection of Geographical Indication Marks dated May 18th, 2009). Then, the recent Cambodian Law on Geographical Indication awards the same competence to this authority. The MOC is in charge of managing, possessing and registering all GI applications in Cambodia.

Both domestic and foreign GIs can be registered under Cambodian GIs Law. An applicant for GI must be an Association of GI or a group/unit representative of producers/operators who will receive

benefit from GI registration. Then, Foreign GI application is eligible for registration and protection in Cambodia if it was successfully registered in the country of the applicant (country origin). Cambodia will not accept any registration of foreign GI if it is invalid or it has been ceased using in the country origin. The application for the foreign GI shall be submitted by their legal representative through a legal agent in Cambodia.

As part of the registration procedure, the group of producers or the applicant must submit a Book of Specifications detailing the geographical area, production conditions, and qualification process for the products and other relevant documents as requested by the Prakas of the MOC.

GI cannot be registered if:

- mark which is contrary to the legal provisions, good national social moral or public order of Cambodia;
- mark that might confuse or mislead the public on the characteristics of the goods with type, quality, place of origin of production or its use;
- mark that has been used as plant seed or animal breed;
- mark that is generic.

Unlike the previous Prakas on GI Registration which provides only 10 years from the filing date, the registered GI under the new law will be protected from the filing date until there will be a cancellation or invalidation made.

It is important to note that there are two Cambodian GIs that have been registered with the Ministry of Commerce prior the promulgation of the Law on GIs. The first GI is called Kampot Pepper and the second one is called Kampong Speu Palm Sugar. The two GIs were registered on April 2, 2010.

8. Trade Secrets

The Law typically defines a trade secret as any commercially valuable information that is not known, nor readily ascertainable, and is subject to reasonable efforts to maintain its secrecy.

Cambodia has no law specific to trade secrets, though a draft is under consideration. Nevertheless, provisions in a variety of laws impose duties of confidentiality and penalties for divulgence of commercial secrets.

Non-disclosure agreements are often used to maintain the confidentiality of information that needs to be shared, with an employee or contractor for example. Such agreements are contracts like any other, and would be enforceable under the Contract Law (1988).

The Law on Commercial Enterprises (2005) prohibits the unauthorized publication of a firm's financial statements. It also requires the Ministry of Commerce to maintain the confidentiality of most company documents in its records. The Law on Audit (2000) also imposes a duty of confidentiality on government auditors.

The Law on Banking and Financial Institutions (1999) prohibits certain people from disclosing any confidential information in accounting or administrative documents. The Law provides for criminal penalties of up to five (05) years imprisonment and \$60,000 in fines.

As in virtually every country, the Law on the Bar (1995) requires lawyers to maintain client confidences.

Finally, the promulgated Penal Code (2010) contains several provisions on point. It is important to note that only part of this new code is currently in force, the rest coming into effect in 2011. Under the code, any person who holds, because of their position, profession, function or mission, confidential information, and divulges such information, is subject to criminal prosecution. The Law also criminalizes intercepting mail, tapping into telephone calls, and hacking computer networks.

9. Right of Publicity

The right of publicity allows an individual to prohibit or control the use of his identity for commercial purposes. This would prohibit, for instance, placing on a product's package a photograph of someone without his or her permission. There is no law in Cambodia specifically on point, nor are any drafts currently under consideration.

The Cambodian Labor Law and related regulations apply to all employer-employee relationships where the work is performed within Cambodia. The nationality of the employer or employee is irrelevant. Nor does it matter where the labor contract was signed. So long as the work is performed in Cambodia, the labor law will apply, except for a few narrow exceptions, for instance for foreign diplomats and airline pilots.

As a matter of public policy, none of the rights, or benefits guaranteed under the Labor Law may be abrogated by contract or any other agreement between an organization and the employee. The benefits and protections stated in the Law should be treated as a minimum guarantee. The organization is free to offer more generous terms, though is not required to do so.

This chapter is an abridged edition of our publication “Guide to the Cambodian Labor Law” available on the BNG Legal website. The full edition contains additional information on dispute resolution, workplace accidents, and health and safety precautions.

1. Hiring Employees

1.1 Employment Contracts

A contract is defined as an agreement between an employer (whether an organization or an individual) and an employee to perform work in exchange for wages. A contract may be written or oral, be of a fixed duration, or of an unspecified duration.

To be covered by the Labor Law, a person must 1) perform work, 2) be remunerated, and 3) be under the direction and supervision of another person. In the case of independent contractors, or others under contract to perform a specific task, this third condition might not be satisfied, exempting them from the Labor Law completely. This is discussed in more detail in Chapter 3.

1.2 Non-Discrimination in Employment Practices

The Cambodian Constitution guarantees equal protection for all citizens under the law, though there is no mention of foreigners. As such, when an organization is making a decision regarding any of the following:

- Hiring
- Work assignments
- Vocational training
- Promotions
- Remuneration
- Social benefits
- Termination or discipline of an employee

- The organization may not consider the employee's:
- Race
- Color
- Sex
- Creed
- Religion
- Political association or union membership
- Social origin
- Birth

Decisions based on specific qualifications and skills are not considered discriminatory. Employees engaged in the same work, and possessing the same skill and ability, should be paid the same wage, irrespective of any immutable traits. At the same time as barring discrimination based on birth, the law states that preference must be given to Cambodian citizens in hiring of employees.

Aside from a Prakas issued in 2014 governing foreign manual laborers, there appears to have been no further rules or decisions implementing these non-discrimination requirements.

1.3 Hiring of Foreign Employees

Preference must be given to Cambodian nationals when hiring. A quota system is in place, generally limiting the number of non-Cambodian nationals to 10% of the workforce. The Labor Inspector must approve exceptions to this rule.

Foreigners working in Cambodia must have:

- A work permit issued by the Ministry of Labor, valid for one calendar year, renewable indefinitely. This is comprised of an employment card.
- A valid passport, visa and residence permit (issued by the employee's local Sangkat office).
- A health certificate issued by the Ministry of Labor, Health Department, verifying that the person does not have any contagious diseases and is physically fit for the particular job.

1.4 Medical Checks

All employees, both Cambodians and foreigners, are required to have a medical examination, performed by the Department of Labor's Medical Unit, prior to employment. The cost of the examination is the responsibility of the organization.

2. Classification of Employees

2.1 Fixed & Unspecified Duration Contracts

Under the Cambodian Labor Law, a contract for work to be performed is defined as a fixed duration contract (FDC) if:

- The contract is written,
- The contract contains precise commencement and termination dates, and
- The contract duration, including any renewal period, does not exceed two years.

If any of these conditions is not met, then the contract is defined as a contract of unspecified duration (UDC). Thus, any employee who has been working continuously for a single employer for over two years is automatically on a UDC.

If a contract meets the requirements necessary to be a FDC, but work continues past the contract's expiration date without a renewal, then the contract will automatically become a UDC.

2.2 Casual Employees

Casual employees are defined as workers who undertake a specific task for a short duration of time. They are subject to the same rules and regulations as regular employees, and are entitled to the same benefits and rights. A casual worker automatically becomes a regular worker if they work for the same employer at least 21 days per month, for two consecutive months.

2.3 Part-Time Employees

While the Labor Law is silent on the issue of part-time employees, the Arbitration Council has ruled that employees who work less than full-time are considered part-time. They have the same rights as full-time employees under the Labor Law, with the exception of receiving a lesser wage. Part-time employees are entitled to leave, bonuses, and other benefits in proportion to their work time.

2.4 Probationary Employees

An organization may hire an employee for a probationary period in order to evaluate their skills. The maximum probationary period depends on the type of employee:

- Regular employee: 3 months probation.
- Specialized worker: 2 months probation.
- Non-specialized worker: 1 month probation.

2.5 Volunteers, Interns, & Trainees

Many employers recruit and depend on volunteers, interns, and other short-term staff paid little to no compensation. Though the employer might not treat them the same as regular employees, the Labor Law makes no distinction.

The Law looks to three main factors to determine if such a person is an employee:

- Work is performed,
- Under the direction and supervision of an employer, and
- In exchange for remuneration.

The first two are easily satisfied in most cases. If the volunteer or intern receives even a modest stipend, they most likely would be deemed an employee. This would entitle them to all the same benefits and protections as permanent staff.

2.6 Independent Consultants

Independent consultants are commonly hired by businesses seeking flexibility and outside expertise. However, as with volunteers, employers need to be careful how they contract with and treat these individuals, lest they be determined to be employees.

The law differentiates between employees and “labor contractors”. An employee is paid a wage in exchange for work, and is under the direction and supervision of the employer. Labor contractors, on the other hand, are contracted to provide a specific service in exchange for a fee, and are not under the direction and supervision of the contracting party.

Depending on the contract and practice, independent consultants could be classified either as employees or as labor contractors. Should they be found to be employees, they would be entitled to all the same benefits and protections as permanent staff.

2.7 Apprentices

Apprentices are those who have entered into an apprenticeship contract in order to learn occupational skills in exchange for work. Though in common parlance an apprentice is synonymous to intern or trainee, the Labor Law imposes certain obligations on the employer of apprentices that make the arrangement ill-suited to many organizations. For instance, the instructor bears parental responsibilities towards the apprentice, meaning they must look after them even outside the work

place.

Apprenticeships might be suitable to organizations involved in training young adults in manual or technical trades. In such case, the organization should consult Chapter III of the Labor Law.

3. Wages

3.1 Payment of Wages

Wages must be paid directly to the employee, unless agreed otherwise. Manual laborers must be paid at least twice per month, and their paydays must not be more than 16 days apart. Regular employees must be paid at least once per month. Any employee working on a commission basis must be paid at least every three months.

In the case of termination, any wages or indemnity owed by the organization must be paid within 48 hours of termination. If wages are not paid according to the guidelines set forth, the Labor Inspector may set a deadline by which the wages must be paid. In the event that wages are not paid, the matter can be referred to the Court for resolution.

3.2 Notifying Employees about Wages

Employers have a duty to inform employees about their wage rate before work begins, and before any change in wage. Each payday, the employee should be provided with a pay slip explaining how the pay was calculated, and sign the payroll ledger proving receipt of the payment.

3.3 Minimum Wages

Employers must pay a wage “commensurate with human dignity”. To date, the minimum wage has only been specified by law for certain manufacturing industries, leaving most businesses relatively unrestricted. When setting the wage for its lowest-paid employee, organizations should consider the following;

- Needs of the worker’s families,
- Cost of living, and
- Comparative salary levels by industry.

Although no minimum wage has been set outside of the manufacturing sector, it is possible for employers to conflict with this provision by employing unpaid interns or volunteers. Though the law does not specifically deal with such individuals, and there have been no reported cases, a full-time unpaid volunteer who does the work of a regular employee could plausibly bring a claim against the employer. To mitigate such risk, the organization should treat volunteers sufficiently differently from paid staff, or provide a modest monetary stipend, and/or provide housing or food assistance.

3.4 Deductions & Fines

Deductions from employees’ wages are restricted to:

- The actual cost of tools and equipment that the employee does not return upon departure,
- Items and materials under the control and usage of the worker,
- Amounts advanced to acquire the above items, and
- Amounts owed to the company store.

Fining or deducting wages for the following reasons is strictly prohibited:

- As punishment for misconduct,
- Refusing to work overtime,
- In exchange for job placement,
- Refusing to eat at the company canteen, and
- Performing the mandatory medical check.

3.5 Supervision & Distribution of Tips & Service Charges

Mandatory service charges added automatically to a customer's bill must be distributed in full to the employees in contact with the clientele, according to industry custom. The employer has a duty to collect, distribute, and account for these funds.

Employers are free to distribute tips and gratuities not part of mandatory service charges as they choose. Generally, it is good practice to distribute such funds to the employees who collected them.

3.6 Salary Tax

Taxable salary includes basic remuneration, wages, bonuses, overtime and other allowances. The employer should withhold the tax on salary from the paycheck on the employee's behalf. The tax is due to the General Department of Taxation by the 15th day of the month following the salary payment.

A resident employee is taxed on both Cambodian and foreign sources, on an incremental scale with a maximum marginal rate of 20%. Non-resident employees pay tax solely on Cambodian income, at a flat rate of 20%.

4. Working Hours & Overtime

4.1 Normal Working Hours

Employees can work for a maximum of 8 hours per days, 48 hours per week. Employees must be given one full day off, meaning 24 consecutive hours, per week. Unless the organization's operations require otherwise, this should be taken on Sunday.

4.2 Overtime

Organizations can ask their employees to work overtime for exceptional and urgent jobs. Performance of overtime work is voluntary, so employees cannot be penalized for refusing to work overtime. In addition, the employer is supposed to ask the permission of the Labor Inspector before giving employees overtime work.

Overtime must be compensated at 150% of the employee's wages, if the overtime is completed before 10 pm. If the overtime is scheduled after 10 pm, on Sunday, or a public holiday, then the organization must pay 200% of the employee's wages. In any event, overtime is generally limited to 2 hours per shift.

Employees who work overtime must receive either 1,000 riels or a free meal when they work overtime. This meal can be provided in the middle of the shift or before overtime starts.

4.3 Alternative Work Schedule

Instead of the standard 8-hour day, 6-day workweek, the law allows employers to set an alternative work schedule. Over the course of a 12 week period, work must not exceed 48 hours per week or 10 hours per day. Work above these constraints must be paid at the overtime rates.

4.4 Young Employees

Minors cannot work more than 8 hours per day, meaning they are ineligible for overtime. In addition, they must be given at least 13 consecutive hours off between shifts.

5. Holidays, Leave & Benefits

5.1 Paid Public Holidays

Each year, the Ministry of Labor issues a Prakas determining the number and dates of paid public holidays. In recent years, there have been approximately 26 public holidays. In the event that

such a holiday is on a Sunday, employees must be given the following Monday off. During the holiday period, the organization must pay their employees their normal wages. The law is silent on whether an organization can reschedule the official public holidays to coincide with foreign holidays.

Employers that must remain open during public holidays can request employees to work on such days. If they agree, the employee must be paid 200% of their regular wage for that day's work.

5.2 Paid Annual Leave

Employers are required to give their employees paid annual leave of 1.5 days per month, for a total of 18 days per year. For every 3 years of continuous service, employees are entitled to an additional day of leave per year. For example, after the third year of continuous service, the number of paid annual leave days will be 19 days per year, after 6 years it will be 20 days per year, and so on.

Part-time employees (those working less than 48 hours per week) must be given annual leave proportional to their work hours. So for instance, an employee working 24 hours per week must be given at least 9 days paid leave per year.

According to the law, employees are entitled to use their leave after one year of service. As leave would still accrue during the first year, prohibiting an employee from taking leave until their second year of employment would result in a backlog of leave time. Many organizations therefore allow employees to take leave during their first year. If an employment contract is terminated prior to one year, the employee is entitled to an indemnity based on the 1.5 days per month scale.

Contracts renouncing the right to take annual leave are invalid and unenforceable. Upon termination, the employer must compensate the departing employee for unused annual leave. An employer cannot force workers to use annual leave during periods of no work, unless there is such an agreement freely entered into with those employees.

The organization is required to pay employees in advance when taking paid leave days. The allowance is calculated by the average wages (benefits, bonuses, indemnities) that the employee had earned during the previous 12 months, and cannot under any circumstances be less than what would have been earned had the employee worked.

There are few legal restrictions on scheduling of annual leave. The law states that in principle, leave is normally given during Khmer New Year. However, employer and employee can agree otherwise, so long as the Labor Inspector is informed. The only legal restriction gives the organization the right to defer any leave request beyond 15 days to another time of year. This leaves the employer relatively free to determine its procedures for requesting and scheduling leave.

Employees may choose to defer annual leave, in excess of 12 days per year, until the end of their labor contract. However, annual leave cannot be deferred more than three consecutive years without expiring.

5.3 Special Leave

Employees have the right to request up to seven days of "special leave" for personal and family matters. While there is some uncertainty as to which events qualify, employers should not unreasonably refuse requests for the following events:

- Marriage, either of the employee themselves or a child,
- Birth of an employee's child, and
- Death, or sickness of an employee's spouse, parent or child.

In the event of a special leave request, the employer may deduct the leave taken from the employee's annual leave. If the employee has no annual leave remaining, then the employer cannot deduct it from the next year's annual leave. The employer may require the employee to work overtime in order to make up for the leave taken. However, when working overtime, the employee cannot work more than 10 hours per day or 54 hours per week.

5.4 Sick Leave

The Labor Law is generally silent on the matter of sick leave, other than requiring an employer to suspend a contract for up to six months in case of illness. In other words, the employer is required to hold a sick employee's position, without pay, for at least six months.

However, the Arbitration Council and certain Prakas have found that every organization must set up internal regulations to provide sick leave to employees when they present certification from a doctor confirming their illness. Sick leave should be paid on the following scale:

- During the 1st month of illness: 100% of wages,
- During the 2nd and 3rd months of illness: 60% of wages,
- During the 4th month and longer: no wages paid.

Additionally, the organization must pay the employee any attendance or seniority bonuses that are interrupted due to illness. If an employee is absent for more than six months due to illness, the organization may terminate their contract.

5.5 Maternity & Paternity Leave

Expectant mothers are entitled to 90 days of maternity leave after one year of continuous service. There is no restriction on whether the leave must start before or after the birth.

During the maternity leave period, the organization must pay 50% of the employee's average wage earned during the preceding 12 months. The payment should be made before the employee begins the leave. For a period of two months after returning from leave, the employee is only obligated to perform light work. An employee may not be terminated because they become pregnant, or while they are on maternity leave.

Aside from the events mentioned in "special leave" (discussed above), the law makes no mention of paternity leave.

5.6 Breast Feeding

New mothers are entitled to take one hour per day, for the first year following the child's birth, to breast-feed during work hours. This hour period may be split into two 30 minute sessions, one in the morning, and one in the afternoon. The organization and the employee should come to an agreement on the time the breaks should be taken, otherwise, the breaks should occur midway through each shift. Breastfeeding breaks are in addition to, not in place of, regular breaks.

5.7 Nursing Room & Daycare Center

Any organization that employs more than 100 women must provide a nursing room and a daycare center for all children over 18 months of age. If an organization is unable to establish a daycare center on site, then it must pay for the cost of private daycare.

6. Disciplinary Action & Dismissal

6.1 Disciplinary Action

Employers can discipline employees only if they have evidence of misconduct. All disciplinary action must be proportional to the misconduct. This proportionality is subject to the judgment of the Labor Inspector. Disciplinary actions can take many forms, such as reprimands, demotions, suspensions, and dismissals. Indefinite suspensions and wage deductions are prohibited.

The employer's internal regulations must specify the procedures and severity of disciplinary actions. Any action that contravenes these regulations is invalid.

Once the organization becomes aware of misconduct they have 15 days to impose disciplinary

action, otherwise the right is waived. Serious misconduct must be disciplined within seven days.

6.2 Serious Misconduct

In case of serious misconduct warranting immediate dismissal, the organization has seven days to dismiss the employee after learning of the misconduct. Employers need to be aware of this very important rule. If it is not done within seven days, the right to dismiss is waived. However, the employee could still be disciplined for non-serious misconduct, see Section 7.1.

Given the compressed timeframe, it is highly recommended that organizations develop procedures for investigating and disciplining suspicious behavior before the first case arises. Failure to do so can result in the organization being forced to continue employing a known thief.

The Labor Law provides several examples of serious misconduct including, but not limited to, the following:

- Stealing, misappropriation, embezzlement,
- Fraudulent acts committed at the time of signing or during employment,
- Serious infractions of disciplinary, safety, and health regulations,
- Threats, shouting, abusive language or assault against the employer or other workers,
- Inciting other workers to commit serious offenses,
- Political propaganda, activities or demonstrations in the establishment,
- Violent action during a labor strike, and
- Failure to return to work within 48 hours of a labor strike, if such strike is determined to be illegal.

6.3 Claims against the Organization & its Managers

Employees have the right to lodge complaints against managers within the organization for serious offenses, such as:

- Fraudulent measures to entice an employee to sign a labor contract,
- Refusal to pay wages,
- Frequent late payments, and
- Abusive language, threats, or violence.

However, employees cannot demand the dismissal of a manager or any other employee.

6.4 Suspension of the Employment Contract

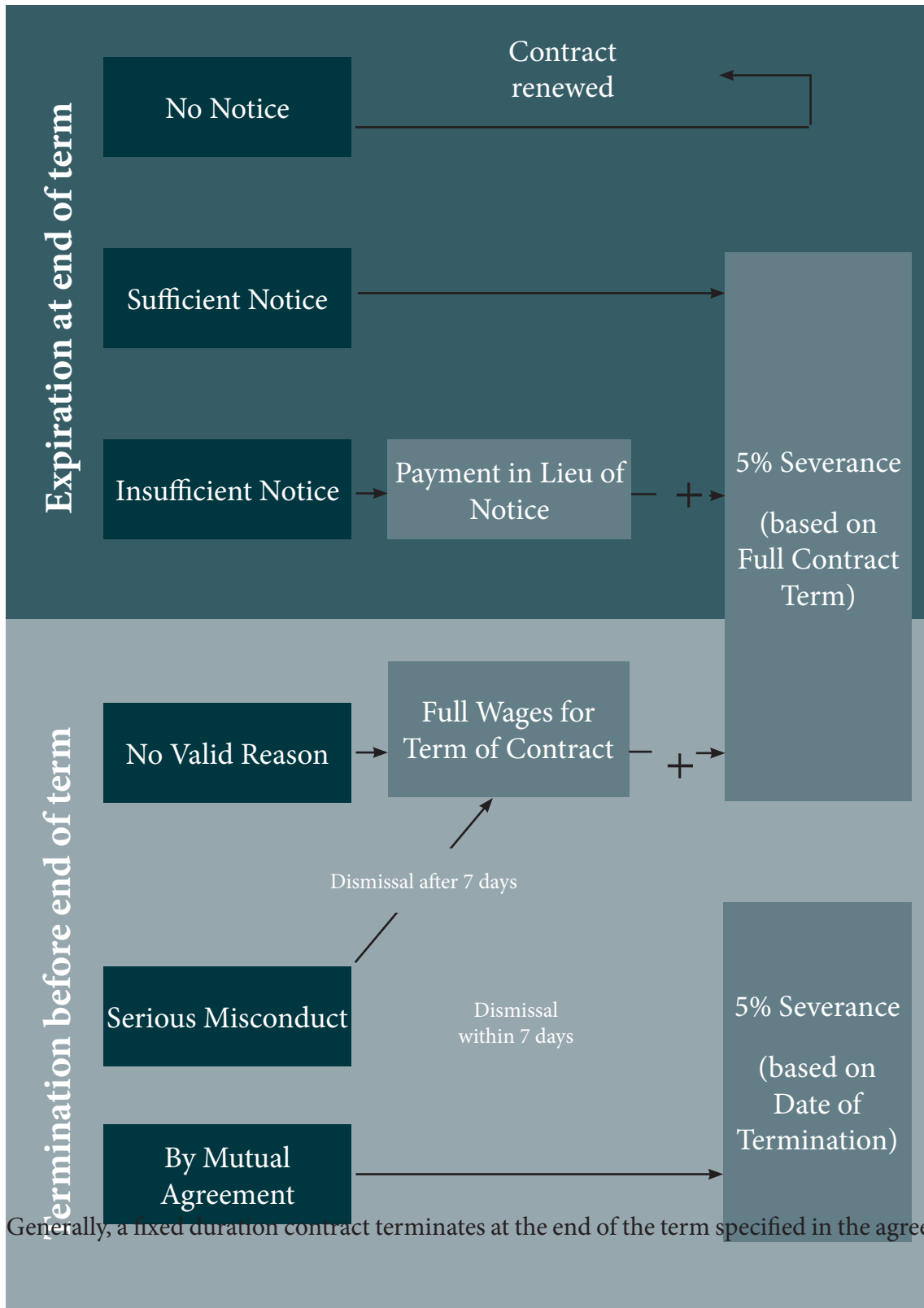
An employment contract may be suspended for a variety of reasons. During the suspension, the employee is not required to work, and the employer is not required to pay wages. The only valid reasons for suspending a contract are:

- Military service by the employee or employer,
- Illness accompanied by a doctor's certification,
- Disability resulting from a work-related accident, or illness,
- Pregnancy, childbirth, or any post-natal illness,
- Absence authorized by the organization based on any laws, or agreements between the organization and employee,
- Temporary layoffs set-forth in the organization's internal regulations,
- Absence during paid leave,
- Incarceration of a worker without a later conviction,
- During investigations of employee misconduct,
- As discipline for misconduct, though the length of suspension must be proportional to the offense,

- An act of God that prevents one, or both parties from performing contractual obligations, for a period of up to 3 months,
- Serious economic difficulties sustained by the organization, or other serious material difficulties that prevents the continued operation of the organization.

Such suspension cannot exceed two months, and must be determined by the Labor Inspector.

6.5 Termination of Fixed Duration Contracts



Generally, a fixed duration contract terminates at the end of the term specified in the agreement.

A FDC can be terminated prematurely only if:

- Both parties are in agreement, made in writing and signed in the presence of the Labor Inspector,
- There has been serious misconduct by either party (see Section 7.2), or
- An Act of God makes performance of the contract impossible.

Any employer-initiated termination in violation of this rule entitles the employee to the remaining pay under the contract.

If the employee quits in violation of this rule, they are required to pay the organization damages resulting from the termination of the contract. The amount of damages can be difficult to determine, and will depend on the circumstances.

6.6 Notice Requirement for Fixed Duration Contracts

For FDCs of six to twelve months, the organization must give notice of its expiration and non-renewal at least 10 day prior to the expiration date.

For FDCs of greater than one year, the organization must give notice of its expiration and non-renewal at least 15 days prior to the expiration date.

Failure to give an employee prior notice will result in the FDC being renewed for a duration equal to the original contract. If the renewal is greater than two years, then the contract will be considered an unspecified-duration contract.

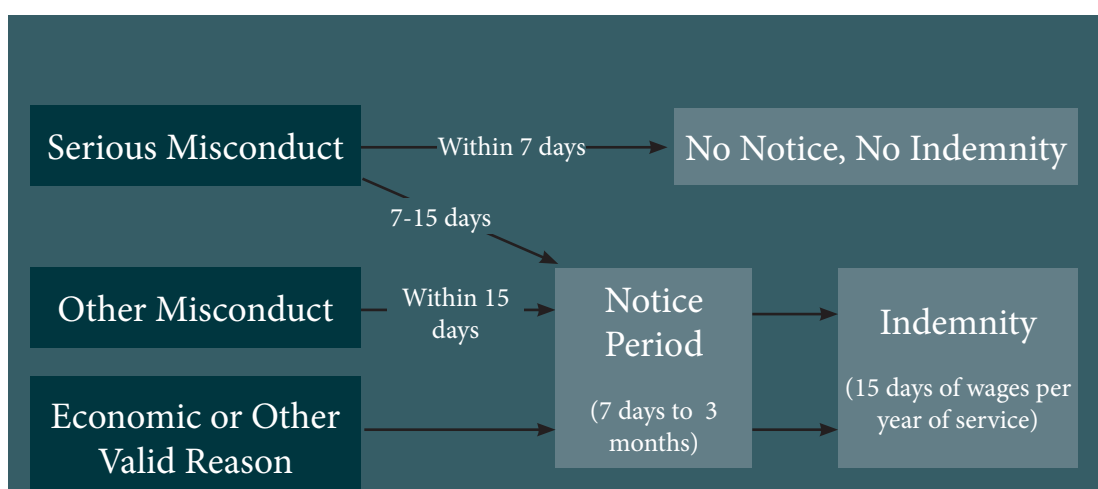
6.7 Severance at Expiration of Fixed Duration Contract

At the expiration of the contract, employees on FDCs are entitled to a severance of at least 5% of the wages paid during the contract period.

6.8 Termination of Unspecified Duration Contracts

An employer can terminate an UDC for any reason relating to the employee's aptitude or behavior, or based on the requirements of the organization. A downturn in the organization's finances constitutes a valid reason for termination.

An employee can terminate an UDC for any reason.



6.9 Notice Requirement for Unspecified Duration Contracts

Both the employer and the employee must give prior written notice when terminating an UDC.

The length of continuous service determines the notice period as follows:

- Less than 6 months of service: 7 days' notice,
- 6 months to 2 years of service: 15 days' notice,
- 2 years to 5 years of service: 1 months' notice,
- 5 years to 10 years of service: 2 months' notice,
- 10 years and greater: 3 months' notice.

Throughout the notice period, each party is obligated to perform their contractual duties.

If the employer terminates the contract without observing the proper notice period, it must pay the employee the wages that would have been earned during the proper notice period. The law is silent on the consequences of the employee failing to give proper notice. Presumably, the employer could bring a suit seeking compensation for any damages sustained.

During the notice period, the employee is allowed two days of paid leave per week to look for new employment.

Neither party is required to observe the notice requirement in the following situations:

- The employee is probationary, or an intern,
- Serious misconduct by either party (see Section 7.2), and
- Acts of God that make it impossible to perform contractual obligations.

6.10 Indemnity for Unspecified Duration Contract Termination

If an employee is dismissed for a reason other than serious misconduct, the organization is required to pay an indemnity on the following scale:

- 6 months to 1 year of service: 7 days wages,
- 1 year or more of service: 15 days wages per year of service.

When calculating length of service greater than one year, any service in excess of six months shall be counted as a full year. The total indemnity cannot be greater than six months of wages. No indemnity is owed if the employee resigned voluntarily, without being pressured by the employer.

6.11 Damages

Termination of a labor contract, by either party, without valid reasons, entitles the other party to seek damages.

If an employer dismisses an employee without valid reason, then the employee is entitled to damages equal to, and in addition to, the amount of the indemnity received for termination (see 7.10).

If an employee breaches an UDC in order to take new employment, and it can be shown that the new employer encouraged the breach, then they are jointly liable for damages.

7. Record Keeping, Documentation & Posting

7.1 Declaration of Opening & Closing an Organization

Upon opening, employers must make a declaration to the Ministry of Labor. If the organization has eight or more employees, the declaration must be made prior to the organization opening. If fewer than eight employees, the declaration must be made within 30 days of opening. The Labor Inspector can perform surprise inspections on any organization, and fine them for failing to make the declaration.

As part of the declaration, the employees must elect a representative, and inform the Labor Inspector of their choice.

A declaration of closing must be made within 30 days of an organization's closing.

7.2 Establishment Register

The business must maintain a register that includes the name of the organization, type of activity engaged in, and contact information. Registers must be kept for three years, and must be presented to the Labor Inspector upon demand.

7.3 Payroll Ledger

The business must maintain a payroll ledger that contains information about each employee, including work performed, wage rate, and leave taken. Before a ledger is used, all pages must be numbered, and initialed by the Labor Inspector in order to be valid.

With approval from the Labor Inspector, an organization may decide to make a payroll ledger by a different method, as long as it contains the same basic information. In the event of a dispute over wage payments, the employer carries the burden of proving payments were made.

7.4 Employment Card & Workbook

Both Cambodians and foreigners are required to have an employment card and an employment workbook in order to secure employment in Cambodia. The cost of the employment card, set by the Ministry of Labor, is the responsibility of the employee.

In each employee's employment workbook, the organization must record the hiring and dismissal dates, as well as salary information. Any entry made in the employment workbook must be presented to the Labor Inspector for approval within 7 days of the entry.

7.5 Declaration of Movement of Personnel

Hiring and dismissal of employees must be declared to the Ministry of Labor within 15 days.

7.6 Internal Regulations

All businesses with eight or more employees must establish internal regulations to implement the Labor Law. All internal regulations must be in accordance with the laws of Cambodia.

Internal regulations must be implemented within 90 days of the organization's establishment, and must be approved by the Labor Inspector. The internal regulations must be posted in an area that is easily accessible to the workers. To amend the regulations, the employer must consult with the workers' representative and then seek the approval of the Labor Inspector.

Internal regulations must include:

- Process of hiring
- Wage and benefit calculation methods
- Any perquisites and benefits available to employees
- Schedule of working hours, including allotted breaks
- Holidays
- Notice periods
- Health and safety measures
- Worker obligations and associated sanctions

7.7 Posting

An easily accessible bulletin board must be installed in the workplace and contain current copies of the following:

- The organization's internal regulations,
- Annual Prakas of paid public holidays,
- Minimum wages (if set by the Labor Law),
- Health and safety rules, and
- Reports on conciliations of disputes.

1. Introduction

The development of mining industry in Cambodia has grown over the years since the law on mining was promulgated in 2001. By the year 2006, the Ministry of Industry, Mines and Energy (“MIME”) has granted exploration licenses to both domestic and foreign investors: 3 licenses to explore iron ore, 2 licenses to explore gold, 1 to explore coal, and nearly a dozen to explore metallic minerals. At least 3 companies have succeeded in obtaining their industrial exploitation licenses in gemstone projects following their successful feasibility study backed by the Ministry of Environment (“MOE”)’s approval of their environmental impact assessment. In support of the growing business attraction in the mining industry, the Royal Government of Cambodia has been active in formulating an investor-friendly legal framework. This chapter provides insights into the applicable laws and regulations in order to guide interested investors on their path to securing the issuance of needed licenses at different stages of their investment. At any rate, mining activities will have impact on the natural environment around us. Thus, we begin with a detailed description of the relevant legal requirements for different licenses, followed by an explanation on the role of Ministry of Environment before concluding with some practical tips for investors.

2. Legal Framework for Mining Licensing

The Law on the Management and Exploitation of Mineral Resources was promulgated in 2001. According to this law, all mineral resources in, on or underneath the land, mountains, plateaus, territorial water and sea islands, and in or on seabed within the territorial integrity of Cambodia are state property. Activities relevant to mineral resources require appropriate license(s). Article 11 of this law defines six types of mining licenses, namely:

1. Artisanal mining license: only available to Khmer citizens at a personal or family scale with a labor force not exceeding 7 persons.
2. Pits and quarries mining license: available to all qualified natural and legal persons
3. Gem mining license: available to all qualified natural and legal persons
4. Mineral/Gemstone cutting license: available to all qualified natural and legal persons
5. Mineral exploration license: available to all qualified natural and legal persons
6. Industrial exploitation license: available to only concession holders who already own a mineral exploration license.

This 2001 law applies to all types of mines except oil and gas, both of which shall be governed by a separate law (Article 1) and are not treated in this chapter. In May 2004, MIME issued a Prakas (ministerial order) on the Registration and Requirements for Granting, Renewal and Transfer of Mining Licenses. Later, in 2005, the Government issued two successive Anukrets (sub-decrees) first on 31 January 2005, then on 29 September 2005 on the Principles for Investment for All Types of Mineral Resources. A significant development brought about by these Anukrets is that they establish the Council for the Development of Cambodia (“CDC”) as the one-stop service office for all proposals for feasibility study as well as those for the application for a mineral exploration license. Once the feasibility and the exploration stages have been successfully completed, the investors must again seek approval in principle from CDC for the actual industrial exploitation of the mines. If CDC approves, MIME must then issue the Industrial Exploitation License. Thus, it is reasonable to state that CDC maintains a good deal of leverage in the decision-making process that would eventually lead to the issuance of licenses.

It must be noted that natural mineral resources cannot be exported outside of Cambodia;

only finished products may be exported (Anukret of 31 January 2005, Article 1). However, “finished product” is not defined by this Anukret. In order to bring more transparency into the whole process of licensing, quite recently in 2009, MIME and the Ministry of Economy and Finance issued a joint Prakas on the official Fees for the Registration, Application, Renewal and Transfer of Mining Licenses as well as Rental Fees for Concession Land for the Exploration and the Exploitation of Mineral Resources and Levies. Investors are, however, advised that in practice these official fees may change without due notice and that different investors may get treated differently when it comes to the actual amount to pay.

Water resource license for certain activities:

The law on water resources management in 2007 requires a water resource license for activities of extracting from the bottom and the beach of the sea, rivers, lakes, waterways and creeks:

- Soil;
- Sand;
- Rock;
- Pebbles;
- Petroleum; and
- Gas.

3. Role of the Ministry of Environment

Although MIME is the institution responsible for issuing all types of licenses, the issuance of a lot of these is made subject to the submission of a satisfactory Environmental Impact Assessment (“EIA”) sanctioned by the Ministry of Environment. This is because mining projects involve activities that directly affect the environment. With the purpose to better protect the environment in a predictable manner, the Government issued in 1999 a sub-decree on the process for conducting the environmental impact assessment. This regulation made it mandatory for all types of mining exploitation activities to conduct EIA. In all cases, the year 2000 Joint Prakas on Service Fees for Examination of Reports on Environmental Impact Assessment and Monitoring of Project Implementation fixed the fee for EIA submission for all types of mining at 3,600,000 Riel. The Ministry of Environment has 30 working days to respond, otherwise its silence means approval (1999 sub-decree, Articles 15, 17, and 18). This silence-means-approval mechanism is a significant step in facilitating the decision-making process for mine licensing. This fee of 3,600,000 Riel was updated to 5,400,000 Riel by another Joint-Prakas in 2012. However, the 30-day period has not changed.

4. Practical Tips

In practice, almost all types of mining licenses, with the exception for the artisanal mining license, would involve to a great extent a huge task of conducting due diligence concerning, first of all, the ownership title of the land, studying the Qualified Investment Project (“QIP”) requirements under the investment law, analyzing the requirements for requesting for a concession, conducting EIA...etc. In most cases, such appealing land plots are State’s public land which has never been inhabited. This is where a concession matter comes into play, which renders the whole thing very complicated.

At the start, a diligent investor in mining should study an extensive body of laws and regulations in force. Since mining investment is generally conducted by a legal entity, the law on commercial enterprise must also be taken into consideration.

A mining investment generally goes through three stages: the feasibility research, the exploration stage, and the exploitation stage. We have noted that only holders of a mineral exploration license can subsequently apply for an industrial exploitation license. Although the exploration stage cannot be bypassed, the law allows for transfer (sale) of the mineral exploration license from one holder to another investor, meaning that the final exploiter need not have conducted the exploration himself. If the mining project is approved by CDC as a Qualified Investment Project (“QIP”), the investor can benefit from a whole range of tax exemptions even for the imported construction equipment and materials needed for the mining site. We have noted above that all proposals for exploration and

exploitation of mineral resources can be lodged at the one stop service at CDC which then will seek approvals from relevant institutions.

Since most (if not all) of mining projects are valued at millions of dollars, investors should try to approach CDC to request for a QIP, thereby, making CDC a very important institution to work with. MIME would not issue a mineral exploration license or an industrial exploitation license unless CDC has first given a green light. Thus, forming and nurturing a good relationship with CDC is crucial. Also, the nationwide map on mine locations is maintained at MIME. Access to this may be almost impossible unless the investors find a proper way to do it. This effort in and of itself requires a very tactful act. Creating a fruitful relationship with the General Department of Mines and Energy at the outset is a must. Last but not least, since the 2001 law makes it compulsory for the investors to prove their strength on both technical and financial sides before a license is issued, investors should be ready to hire a respectable team of engineers to head the project and a reliable auditing firm to produce accurate audit report for submitting to the relevant ministry.

1. Marriage between a Cambodian Citizen and a Foreign National

The marriage between a Cambodian citizen and a foreign national must be processed through three competent authorities as follows:

1.1 Procedure at the Ministry of Foreign Affairs and International Cooperation

An international marriage is processed through the applicant's embassy or consular mission and with the Ministry of Foreign Affairs and International Cooperation ("MFAIC").

To meet the requirements set forth by the MFAIC of the Kingdom of Cambodia, the foreign national should provide following documents :

- The marriage application form from MFAIC;
- A copy of their passport and entry visa into Cambodia;
- A certificate representing that the foreign national is single, a widow, or a widower issued by the competent authority of the foreign national;
- A Certificate of Health issued by the competent authority of Cambodia;
- A Criminal Record issued by the competent authority of the foreign national; and
- A Letter of business occupation of the foreign national ensuring the livelihood issued by his/her own competent authority.

The copies of the passport and certificate of singleness, widow or widower status must be legally certified by the Embassy or Consul of the foreign national residing in the Kingdom of Cambodia.

The MFAIC examines and comments on the foreign national's request to marry a Cambodian citizen. The MFAIC sends its response to the concerned foreign national in at most five working days. The MFAIC must then forward the application form to the Ministry of Interior (MOI) and inform the relevant institutions .

1.2 Procedure at the Ministry of Interior

The MOI established "One Stop Working Group for Administering and Registering Marriages between Cambodian Citizen and Foreign National" . This working group examines the marriage application form of Cambodian Citizen and Foreign National in order to help the Cambodian citizen. Their aim is to prevent any incident, including human trafficking that can occur through marriage.

The Secretariat General of MOI receives the package of documents from the MFAIC. Accordingly, the director of the Joint Working Group will assign his members to work, based on each member's skill, on dossiers of the marriage between the Cambodian citizen and foreign national. Each member will then send the feedback of the case to the director of the Joint Working Group within three working days. After receiving feedback from his members, the director himself examines the dossiers. If he discovers that there is no irregularity, he signs an announcement regarding the marriage registration authorization to the capital, provinces, cities, districts, Khan, Commune, Sangkat and applicants. In case of unsatisfied documents, the director must formally inform the MFAIC and copy to the applicant.

1.3 Procedure at Commune/Sangkat

If the application is approved and registered at the Ministry of Interior, the concerned foreigner must then file a marriage application form before the registrar official at the Commune/Sangkat of the permanent residence of the concerned Khmer citizen.

The Khmer citizen must also file a marriage application form before the registrar official at the Commune/Sangkat of her own permanent residence and attach the following documents:

- Certified copy of birth certificate;
- Certificate of singleness or widow status issued by chief of Commune/Sangkat of the permanent residence of the concerned Khmer citizen; and
- Health certificate issued by a hospital recognized by the Ministry of Health in Cambodia.

The marriage application form and relevant documents of the Khmer citizen and the foreigner must be filed simultaneously before the registrar official at the Commune/Sangkat of the permanent residence of the concerned Khmer citizen by complying with procedures and formalities of registrar task.

After receiving the marriage application and attached documents, the Commune/Sangkat registrar official is obliged to review and decide on the marriage application for no longer than three working days. If the registrar official discovers that the marriage application and attached documents conform to the principle of law, he/she must then prepare the marriage announcement in the presence of the concerned man and woman and before the registrar official of the permanent residence of the concerned Khmer citizen.

This marriage announcement must be published for ten days at the Embassy of the foreign applicant residing in the Kingdom of Cambodia and at the permanent residence and Commune/Sangkat of the concerned Khmer citizen. Within ten days, if there is no complaint or objection against the marriage, the concerned man and woman can marry. The couple must be present with two witnesses before a registrar official at the Commune/Sangkat for marriage registration. There, the registrar official will issue a wedding certificate to them.

2. Matrimonial Property System

Based on the 2007 Civil Code, Cambodia follows a community property system. Under the community property system, there are two kinds of systems – the contractual property system and the statutory property system.

2.1 Contractual Property System

The matrimonial property contract is a new concept providing a married couple or persons who will get married to enter freely and fairly into an agreement governing their property relations prior to or following their marriage in order to clarify their property relations. The procedures and application forms for the matrimonial property contract are defined by the Prakas of the Ministry of Justice (MoJ) dated August 09, 2013.

The matrimonial property contract must be made in writing and registered at the Department of Civil Affairs of the MoJ. The valid registration of the matrimonial property contract can be used against a third party's claim. Further, it should be noted that any person can request, for a service fee, a confirmation of what is registered and not registered in the list of matrimonial property contracts.

2.2 Statutory Property System

If a couple fails to arrange the matrimonial property contract, the Statutory Property System governs their property relations. The statutory property is a system in which the matrimonial property is divided into separate property and common property. The separate property belongs to one of the spouses and is known as below:

1. Property held by a spouse prior to the marriage;
2. Property acquired by a spouse during the marriage by gift; succession, or testamentary gift;

and

3. Property obtained as the consideration for disposing of property described in items (1) or (2) above .

One important part of this mechanism is that any separate property obtained prior or during the marriage will remain separate property even if it is converted to another item. For example, if a spouse uses his/her own money earned prior to the marriage to buy a house during marriage, the house will be considered as a separate property solely belonging to that spouse.

In addition to separate property, a couple disposes of common property which refers to all properties acquired during the marriage by one or both spouses except those mentioned above. This definition reflects the ideals of the Constitution of Cambodia in which men and women are equal in all fields especially with respect to marriage and family matters.

Housework shall have the same value as outside work . Therefore, the profit a husband earned by working outside is treated as common property even though his wife has no income. Each spouse has the right to use, enjoy the benefit from and manage the common property in accordance with their needs. A spouse cannot sell or donate common property without the other spouse's consent. Moreover, both spouses have a joint responsibility towards expenses for the maintenance of the cohabitation, the expenses for childcare such as education and food, and expenses for the management and maintenance of the common property etc.

In conclusion, the community property system is quite flexible for couples to choose to enter a matrimonial property contract or be governed by the statutory property system. The matrimonial property contract allows them to decide their property arrangement themselves while the statutory property system separates their property, by law, into separate or common property.

3. Citizenship

There are multiple ways to acquire Cambodian citizenship. The choices vary to attract and facilitate foreigners to invest or permanently reside in Cambodia. The Cambodian Constitution prohibits foreigners from owning land. Becoming a citizen, however, gives foreigners the right to own land and thus encourages foreigners to become citizens.

3.1 Cambodian Citizenship at Birth

The Cambodian Law on Nationality of 1996 applies both jus sanguinis (right of blood) and jus soli (right of the soil). This means that a child having a Cambodian father or mother shall have Cambodian citizenship wherever he/she is born. Additionally, a child born in Cambodia to foreigners lawfully living in Cambodia shall have Cambodian citizenship. However, by applying jus soli, Cambodian citizenship is granted under one condition: he/she shall have a certificate of permanent residence in Cambodia for 3 years starting from the date of issuance of this certificate.

3.2 Cambodian Citizenship by Marriage

A Foreigner may also claim Cambodian citizenship by marrying a Cambodian national and living together for 3 years following the registration of the marriage certificate.

3.3 Cambodian citizenship by naturalization

Additionally, a foreigner may apply for Cambodian citizenship through naturalization. The foreigner must satisfy the following requirements:

- Applicant shall have a paper from the chief of the commune (Khum) or quarter (Sangkat) of his residence certifying his good behavior and moral conduct;
- Applicant shall have a letter of certification that states he has never been convicted of any criminal offence before;
- Applicant shall have a paper certifying that he has resided in the Kingdom of Cambodia continuously for seven (7) years. If the applicant was born in the Kingdom of Cambodia then

he must have resided continuously for three (3) years from the date of reception of a residence card which was issued under the Law on Immigration;

- Applicant shall reside in the Kingdom of Cambodia at the time of application;
- Applicant shall be able to speak Khmer, know Khmer scripts and have some knowledge of Khmer history. Applicant must prove through clear evidence that he can live in harmony with Khmer society and acclimate to Khmer custom and tradition; and
- Applicant shall have a mental and physical aptitude that will not be a danger or burden to the nation.

An applicant is exempt from Point 3 if he received a letter of authorization for investment from the Cambodian Development Council (CDC) and has implemented the actual project cost by spending an initial capital of 1,250,000,000 riels or more (about US\$312,500). The same applies to an applicant who has no letter of authorization for investment from the Cambodian Development Council (CDC), but who received authorization for investment from the Royal Government with the same amount of initial capital.

An applicant is also exempt from point 3 if the foreigner has shown evidence that he/she offered any special merit or achievement towards the Kingdom of Cambodia's interests.

An applicant is exempt from Point 1, 2, 5 and 6 if they donate 1,000,000,000 riels or more (about USD\$250,000) to further the restoration and rebuilding of the Kingdom of Cambodia's economy.

A whole family, whose children are under 18 years of age, may file for naturalization. A naturalized foreigner can use the Cambodian name submitted with his/her application form. Additionally, the foreigner must make an oath at the Supreme Court of Cambodia.

A person with Cambodian nationality may renounce their Cambodian citizenship if they are at least 18 years of age and have another nationality.

Applicants requesting or renouncing Cambodian citizenship must submit their applications to the Ministry of Interior in order to be approved by Royal Decree.

4. Adoption

Inter-Country adoption terminates the relationship between the adopted child and his/her birth parents and creates legal relationship between the child and his/her adoptive parents. The adopted child has full rights in his/her adoptive parents' succession as if he/she is their birth child.

On December 3 2009, Cambodia passed the Law on Inter-Country Adoption, abrogating Sub-Decree No. 29 on Adoption of Orphans to be Reared Abroad of 2001 and other related provisions before its date of application.

Under the new law, only authorized adoption agencies operating under the auspices of the Central Authority can handle inter-country adoptions. Unauthorized private companies or orphanages can no longer process inter-country adoptions directly. The procedure under this new Law is as follows:

- An adoption application must be submitted to the Ministry of Social Affairs, Veterans and Youth Rehabilitation (MOSVY), which is the Central Authority of Inter-Country Adoption in Cambodia (hereinafter "MOSVY");
- The Ministry of Foreign Affairs and International Cooperation informs the Central Authority of the receiving country after being informed of the application by MOSVY;
- Child matching is then conducted by MOSVY officials;
- The Inter-Country Adoption Administration of MOSVY sends the selected child's information and its report to the Central Authority of the receiving country and the adopters;
- If the adopters and the Central Authority of the receiving country agree, the Inter-Country Adoption Administration of the Central Authority or the competent authorities in charge of Inter-Country Adoption or the Inter-Country Adoption Agency of the receiving country schedules a visit between the adopters and the child in the presence of a MOSVY official;
- Once the child has been selected and the adoption process receives approval from the Minister in charge of social affairs, the Adopters will work with their country's Central Authority or competent Authorities in charge of Inter-Country Adoption or the Inter-Country Adoption

Agency to submit all relevant documents via the Inter-Country Adoption Administration of MOSVY to the Phnom Penh Court, which issues an order in each adoption case;

- After the issuance of the adoption order and if there is no appeal within fifteen days following that judgment, MOSVY will issue an Adoption Certificate as required by Art. 23 of the Hague Convention; MOSVY officials then officiate a child and Adoption Certificate handover ceremony and coordinate with the relevant authorities to process the paperwork for the child's immigration;
- The adopters must report in writing regarding the child's situation and development to the Inter-Country Adoption Administration of MOSVY every 6 months for the first three years and annually afterwards until the child reaches 18 years of age.

On March 15, 2012, MOSVY delayed the date for receiving applications for inter-country adoption until January 1, 2013 in order to train government officials, staff of non-governmental organizations, agencies, and partners regarding the implementation of the procedures of the Law on Inter-Country Adoption. Later MOSVY pushed back the effective date to sometime in 2014. Despite the delay, Cambodia welcomes all applications for bilateral agreements between countries that wish to cooperate in inter-country adoption with Cambodia under MOSVY's Announcement, dated December 09, 2010. However, as of November 2013, only Italy and France have signed Memorandum of Understanding ("MOU") on inter-country adoption with Cambodia and the said MOUs will soon expire though they are up for renewal.

In very rare cases, some potential adoptive parents, who reside in Cambodia, can adopt a Cambodian child through the national adoption process stipulated in the Cambodian Civil Code. After receiving their adoption judgment in Cambodia, these parents must then file a petition requesting their home country to recognize the Cambodian judgment under their home country's adoption law or citizenship/immigration law. Given the risk that most countries will not recognize the adoption judgment of a Cambodian court, potential adoptive parents are strongly advised to make certain that their home country will recognize the Cambodian adoption judgment and permit the child to be legally adopted according to the laws of the home country.

According to the New Civil Code of Cambodia taking effect on 21 December 2011 and applying to adoptions processed after 21 December 2011, it governs two types of national adoptions, which are termed full adoption and simple adoption.

The below table is a comparison of the requirements and procedures for full national adoption versus simple national adoption.

Full National Adoption	Simple National Adoption
<p>Requirements of Adopters and Adoptee(s)</p> <ul style="list-style-type: none"> • The adoptee must be less than 8 years old; • The adopters must not be less than 25 years old; • The adopters must not be less than 20 years older than the adoptee; • The adopter must have a spouse and file for joint adoption with the spouse • The relationship between an adoptee and his/her natural parents and their blood relatives is terminated • A new birth certificate shall be established 	<p>Requirements of Adopter(s) and Adoptee(s)</p> <ul style="list-style-type: none"> • No age limit of the adoptee; • the adopter must not be less than 25 years old • the adopter must be older than the adoptee • the adopter can be a single parent; if there is a spouse, the consent of that spouse is needed; • the relationship between an adoptee and his/her natural parents and their blood relatives is not terminated • No new birth certificate is established
<p>Forms and Procedure:</p> <ul style="list-style-type: none"> • Court's decision 	<p>Forms and Procedure:</p> <ul style="list-style-type: none"> • Court's decision

Between the two options, only the full national adoption terminates the legal relationship between the child and his/her natural parents, which is generally a requirement of a receiving country's adoption law or citizenship/immigration law.

5. Succession

The decedent's property is divided per the asset management plan arranged by the decedent prior to death. Cambodia does not tax succession and gifts. There is, however, a tax on the transfer of immovable property, making it an advantage to make a will or a gift under Cambodian Law. A foreigner cannot own real property in Cambodia per the Cambodian Constitution unless he applies for citizenship.

5.1 Succession

"Succession" is the transfer of rights and obligations from a decedent to one or more successors. There are two types of successions: "statutory succession" which is succession in accordance with the provisions of law and "testamentary succession" which is succession in accordance with the wishes of the decedent.

Succession shall open at the permanent residence of the decedent at the time of death . This means that as long as the decedent is alive, succession shall not be opened, nor recognized. Article 43 of the Civil Code, however, defines absentee as dead, for the purposes of succession if it is unknown whether the absentee is alive or dead. Additionally, the court must make a judicial declaration of disappearance upon the petition of his/her spouse, heir, legatee, a designated insurance beneficiary, a parental power holder, guardian, father, mother, or any other person who has a legal interest in the declaration of disappearance. The Law also assumes a person's death if that person is located in a war zone, aboard a foundered vessel, or encountered any other peril that might have been the cause of death if it has been unknown for one year after the cessation of the war, the foundering of the vessel or the termination of the peril.

One month after the opening of the succession, all co-successors may discuss and agree on the partition of the succession property unless there is a delay determined by the decedent's will not exceeding five years. In case of disagreement, the Court is competent in such partition.

5.2 Statutory Succession

Without a will, the successors inherit in the following order:

- First rank: Children of the deceased, including adopted children;
- Second rank: Lineal ascendants of the deceased – the persons in the nearer degree of relationship shall be preferred;
- Third rank: Siblings of the deceased – in case of sibling with one parent in common, such successor can benefit only half shares of the sibling with both parents in common.

A successor must be alive when succession commences, except for disqualified persons for succession and disinherited successors . A foetus is also a qualified successor if it exists at the time of commencement of succession or at the time of the death of the deceased and will be born later .

However, for succession by representation, if a child of the deceased dies prior the commencement of the succession, becomes disqualified for succession or is disinherited, the children of such person shall become successors by virtue of succession by representation, unless they are not lineal descendants of the deceased. The successor by representation receives an equal succession share to the original share of the preliminary successor.

5.2.1 Succession by Spouse

The living spouse is always a successor. If a person other than the spouse is also a successor, the spouse ranks equally with that person.

Succession shares of living spouse vs. other successors:

- Living spouse & lineal descendants (children): equal shares
- Living spouse and lineal ascendants (parents):

- Living spouse – 1/3 shares & both living parents – 2/3 shares
- Living spouse – 1/2 shares & one living parent - 1/2 shares
- Living spouse and siblings: 1/2 shares for living spouse and 1/2 shares for siblings.

5.2.2 Succession of Foreign National Successors

If the successor or person acquiring property under a will does not hold Cambodian nationality, such person cannot acquire land by succession or testamentary gift. The partition of the succession should therefore be considered based on the fact that there is a foreign successor. If all co-successors with prior ranks in the succession are foreigners, land included in the succession property will constitute as a legal entity. This entity will jointly carry out the management and disposition of the said land. In three months, if those foreign co-successors sell the land, its sale proceeds will become a succession property and the above legal entity must be dissolved. Nevertheless, if the foreign co-successors with prior rank did not jointly sell the land, the ownership of the land will be succeeded to successors with next rank who hold Cambodian nationality. In this regard, the foreign co-successors are considered non-existent.

5.3 Testamentary Succession

With a will, the testator has freedom to:

- Designate the succession shares of his/her successors: he may give the whole or any part of his property to one or more specific successors or people other than ones in ranks of his/her legal successors;
- Designate the manner of partition of succession property: he may determine or commission a third party to be executor of his/her succession, or forbid the partition of his/her succession property for a period not exceeding five years from the time of the commencement of the succession.

However, to protect qualified successors and the family assets, the law restricts the decedent's freedom by way of a "Legally Secured Portion". It means that the decedent can leave his/her assets to people as he wishes, except for the legally secured portion which shall be reserved for his/her legal successors.

The qualified successors entitled to legally secured portion are lineal descendants, parents or grandparents, and the spouse of the decedent. The portion is secured as follow:

- 1/3 of the property if only the parents or the grandparents are the successors;
- 1/2 of the property in other cases

The Civil Code of 2007 recognizes three forms of wills:

5.3.1 Will by Notarial Document (Authentic Will)

- Must be done in the presence of a notary;
- Two or more witnesses are present;
- The testator orally declares the tenor of the will to the notary;
- The notary writes down the contents of the testator's will and reads it aloud to the testator and the witnesses;
- After acknowledging the contents of the writing are correct, the testator and the witnesses each note their name, age, and address and affix their signature on it. 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;
- The notary dates and signs the document.

5.3.2 Will by Privately Produced Document (Private Will)

The testator writes the whole text of the will and the date thereof holographically and affixes his signature. A privately produced will written by another person or using a typewriter or other machine

shall be null and void. Any addition or other alteration of a privately produced will shall be null and void unless the testator indicates the place thereof, makes an additional entry that an alteration has been made, and specifically signs such entry.

5.3.3 Will by Secret Document (Secret Will)

- The testator signs the document;
- The testator closes up the document and signs or initials the place of closing or takes such other measure as enables a judgment to be made as to whether the closure has been opened;
- The testator produces the sealed document before a notary and at least two witnesses and declares that it is his or her testamentary document and, if it was written by a person other than the testator, the name and address of such other person;
- After the notary has written on the cover of the sealed document, the date of the production of the document and the declaration of the testator, the notary, the testator and the witnesses affix their signatures thereon.

5.3.4 Advantages and Disadvantages of Different Forms of Wills

Forms of Will	Advantages	Disadvantages
Authentic Will	<ul style="list-style-type: none"> • Less Issues of validity due to the verification of the notary. • A suitable form for an illiterate because the notary is the writer. • No Court procedure when executing the will because it is the notary who executes it. 	<ul style="list-style-type: none"> • The Notary and witnesses know the content of the will • Notary fee is expensive
Private Will	<ul style="list-style-type: none"> • The testator self-draft the will, so it is secret. • No cost. 	<ul style="list-style-type: none"> • Issues of validity are likely to arise. • An impossible form for an illiterate because the testator needs to write it himself. • Issues of keeping the will safe and issues of a fake will. • Necessity of Court procedure when executing the will
Secret Will	<ul style="list-style-type: none"> • A suitable form for an illiterate because another person can write the will. • It is secret if the testator is the writer. 	<ul style="list-style-type: none"> • Necessity of a notary when sealing the will and court procedure when executing the will

5.4 Succession of a Partner of a Partnership or a Shareholder of a Company

When a partner or a shareholder dies, his/her shares or interests are dissolved depending on the type of his/her company or enterprise.

5.4.1 Partnership under Civil Code

Article 699 of Civil Code 2007 defines “Partnership” as a contract created by two or more partners to establish an organization without juristic person status for the purpose of carrying on a common undertaking with contributions made by each partner.

This article clearly states that Partnership does not have a separate legal entity unlike Partnership provided by Law on Commercial Enterprises (2005). Partnership under the Civil Code is a simple

contract between two or more people wishing to do business together and no registration at the Ministry of Commerce (MOC) is required. Conversely, a Partnership under the Law on Commercial Enterprises must register at the MOC to become a separate legal entity.

According to Article 710 of the Civil Code, upon death, a partner shall involuntarily withdraw from the partnership. The article commentary states that such an involuntary withdrawal does not allow any legal successor of the deceased partner to automatically become a member of the Partnership on behalf of the deceased. This is to protect the Partnership's interests since trust among the partners is considered crucial. However, if there is any prior agreement between the partners allowing such automatic replacement, a legal successor replaces his/her deceased parent in the Partnership.

In case of no special agreement, the involuntary withdrawal results in the return of the deceased partner's share in cash, regardless of his/her original contribution, to his/her legal successors.

5.4.2 Enterprises under Law on Commercial Enterprises

When a partner of a Partnership under the Law on Commercial Enterprises, including a General Partnership and a Limited Partnership or the shareholder of a Single Member Private Limited Company dies, their partnership or company is dissolved. Articles 48 and 49 of the Law on Commercial Enterprises state that unless there is a different provision agreed between the partners, in the Partnership Agreement or unanimously agreed between them, the death of a partner causes the dissolution of the partnership. In case of dissolution, the remaining assets, after paying the salaries of employees, taxes and other priority debts, shall be reimbursed among the partners and legal successors of the deceased partner. If the partnership does not dissolve, the legal successors of the deceased partner shall obtain the value of the decedent's interest, which is determined in the partnership agreement or agreement among the partners.

Regarding Single Member Private Limited Company, since there is only one shareholder, the company shall be dissolved upon the death of the sole shareholder to his/her legal successors.

The Law on Commercial Enterprises does not have specific provisions governing the death of a shareholder concerning either a Private Limited Company or a Public Limited Company. Therefore, the Civil Code applies since it sets forth the general principles governing legal relations in civil matters including property related matters. Please refer to 1.3.1 for details.

Summary Tables:

Types of Enterprises/ Companies	Partnership (General Partnership; Limited Partner Single Member Private Limited Company		Company (Private Limited Company; Public Limited Company); Partnership in Civil Code	
	Principle	Exception	Principle	Exception
When a partner or shareholder dies:	Dissolution of Partnership or Single Member Private Limited Company	Continuity of Partnership among the rest of partners instead of dissolution is different provisions in Partnership Contract	Considered as a withdrawal	Legal successor of the deceased becomes the shareholder if there is any prior agreement in MAA
	Capital Distribution of the deceased is dissolved to his/her legal successors	Value of the deceased's interest is distributed to his/her legal successors	Return of share in cash to the deceased's legal successors	Share transfer

6. Gift Planning

Under Cambodian Law, a decedent can make some gifts to his/her favourite successor(s) or a third party during his/her lifetime (Gifts) or in his will (Testamentary Gifts) without paying any tax.

6.1 Gifts

The testator may choose to plan to leave some gifts during his/her lifetime to his/her favorite successor(s) or a third party without being restricted by the provisions of legally secured portion.

6.1.1 What are “Gifts”?

Article 568 of Civil Code of 2007 defines a “Gift” as a contract manifesting the intention of the testator to give his/her property to another gratuitously, and the other party accepting it. Additionally, Articles 1232 and 1242 add that any gratuitous release of obligation or inadequate consideration in a contract shall be a gift with a condition that the parties to such contract have knowledge of the loss caused to a person with a legally secured portion. In addition, any special benefit received by any co-successors on marriage or other event or as capital for livelihood is also considered a gift.

To balance the protection of legal successors with the testator’s intention, the law states that gifts made more than one year prior to the opening of the succession are not included in the calculation of the legally secured portion.. The special benefits defined in Article 1163, however, are included in the calculation of the legally secure portion even if made more than one year before the succession opens. This exception exists because the knowledge of the loss caused to a legal successor with a legally secured portion seems obvious, the beneficiary co-successor therefore, cannot claim the exclusion of the basis of the calculation. However, the donee or successor of the special benefits, which have been made more than 20 years prior, may reject the claim of abatement for legally secured portion .

6.2 Testamentary Gifts

The testator may plan to give by will the whole or any part of his/her succession property (universal testamentary gift) or a specified property (specific testamentary gift) to either his/her legal successors or a third party. The testamentary donee, however, must be alive at the opening of the will; otherwise, the gift shall not take effect, unless the testator declared a different intention in his will. In addition, the donee has the right to renounce the gift at any time after the death of the testator because testamentary gifts are made by sole intention of the testator unlike the “Gifts” defined in 2.1 above, which is a contract of two parties’ intention.

If the donee does not renounce, he has the same rights and obligations in the succession as if he/she is one of the legal successors of the decedent.

In any testamentary gift, legally secured portions apply. Therefore, legal successors of the decedent may claim their reserved portions if such gifts have spoiled their portions.

6.2.1 Order of abatement for legally secured portion

The properties that are subject to abatement for legally secured portions are testamentary gifts, designations of shares in succession by will, special benefits and gifts of Article 1232.

Without a different intention in the will, the order of abatement is as follows:

- Testamentary gifts to successors and designations of shares in the succession;
- Testamentary gifts to third persons;
- Gifts or special benefits that start with the latest and extend in order to the earliest.

The right to claim abatement is extinguished if one year has lapsed after the successors entitled to a legally secured portion became aware of the opening of succession and that a testamentary gift, a designation of share in succession, gift or any special gift has been granted. In addition, the right is extinguished in any event if 5 years lapsed since the opening of the succession.

1. Overview

Cambodia's 18.1 million hectares of land have always been a fundamental asset for this agricultural society. Farms, fisheries and forests make up over 80% of the country's land expanse, but decades of political strife have led to confusion and conflict about ownership and land tenure. During the civil war era (1975-1979), there was no private ownership of land in Cambodia. Title records and registers were destroyed, and all land belonged to the State. Today, the social and legal legitimacy of landholding varies widely.

This new era of political stability and economic growth has given the Royal Government an opportunity to implement new policies of land administration and management. The 2001 Land Law reflected Cambodia's focus on domestic land issues, addressing the following topics:

- private ownership for both residential and agricultural holdings;
- creation of a land registry and systems for registering titles and encumbrances;
- mechanisms for identifying the boundaries of state land;
- mechanisms for distribution of state land ("social concessions");
- communal tenure for indigenous communities and religious sites; and
- a cap on industrial agricultural concessions (10,000 hectare)

During these last few years, a number of significant changes were introduced by the new Civil Code and new laws, sub-decrees, inter-ministerial Prakas on the implementation of the Civil Code and other types of regulations. It is important for investors to perform due diligence before acquiring any property interests in land.

2. Legal Ownership of Land in Cambodia

Land in Cambodia may be privately owned by individuals with Cambodian citizenship or by legal entities having Cambodian nationality. A legal entity has Cambodian nationality if 51% or more of its voting shares are held by Cambodian citizens or by another legal entity. Land can also be owned by public Cambodian communities or associations.

The state owns a significant portion of the land, and state property is used for public purposes and services. The Land Law (2001) established natural reserve boundaries and immovable royal properties.

Foreigners cannot own land in Cambodia, under Article 44 of the Constitution. Cambodia's Investment Law of 1994, however, permits investors to use and develop land, and to sign long-term lease agreements, which will be referred to as "perpetual leases" in this Guide.

However, a recent sub-decree passed by the Council of Ministers now allows foreigners to purchase individual apartments within a building creating a form of co-ownership. It was followed, in 2011, by a law which confirms a foreigner's ability to purchase a private unit above the ground floor of a co-owned building.

3. Acquisition of Property in Cambodia

While foreigners are not allowed to own real estate outright in Cambodia, there are still several ways to establish a commercial presence in the country. Foreign investors can incorporate a local company (51% Cambodian owned), set up a joint venture with Cambodian partners or sign perpetual leases. It is even possible to buy land by acquiring Cambodian citizenship first, an avenue encouraged by the government yet impractical for many investors.

Foreigners can exercise their right to use the buildings or structures they develop on leased land or on land owned by a locally incorporated company. Foreign investors can also take advantage of the significant incentives and tax breaks that the Cambodian government grants to Qualified Investment Projects (“QIP”), as long as a majority ownership of land is vested in legal entities of Cambodian citizenship.

4. Potential Risks

Land disputes are frequent in Cambodia. The system of title registry is still relatively new, and many land transactions are not properly registered. But investors can take steps to avoid problems.

4.1 Title Search

Before acquiring an interest in real property, an investor must take care to verify the clear, unencumbered ownership of the land. A thorough title search is essential. The search report will show whether the title is encumbered with any liens or easements. A title search will also confirm that the foreign investor is paying the right person for the property.

4.2 Boundary Demarcation

To avoid land disputes, the investor should take care to identify and register the boundaries of the property with cadastral offices. It is a good idea to designate and control borders with a sturdy, permanent fence.

4.3 Documentation

The laws and regulations in force provides for the issuance of indefeasible right-proving documents for agricultural and residential land. At each step of a land transaction, investors should acquire strong documentation of property rights in order to avoid any land-grabbing and fraudulent claims by others in the future. Perpetual leases are only enforceable if written, registered and a certificate issued. Economic Land Concessions also have their particular form of certificate.

5. Enforcement of Property Rights

In the event of a land dispute, parties can seek resolution with the new cadastral commissions. The 2001 Land Law established the commissions at the local and national levels. These commissions settle disputes over unregistered immovable property: they hear complaints; survey lands; issue proposed rulings regarding possession and ownership rights; and demarcate boundaries. The commissions are obliged to publicly display the adjudication record, including an index map and list of owners, so that parties have an opportunity to object. When the adjudication record is final, the commission must register it with the Ministry of Land Management, Urban Planning and Construction (“MLMUPC”), which will then issue certificates of ownership and/or rights of possession.

Disputes about sales contracts or lease agreements can be brought in civil courts. Negotiation, mediation and other techniques of alternative dispute resolution typically provide means of resolving disputes that are less complicated than court decisions but may not be binding.

6. Establishing Control over Land

6.1 Locally Incorporated Land-Holding Company (“LHC”)

For those investors who wish to acquire land and operate a business in Cambodia, this option is the most appealing. Establishing a LHC is widely accepted and suitable for foreign investors who are individuals or legal entities. Additionally, a LHC can hold more than one piece of land at a time. On the other hand, disadvantages do exist. As foreigners cannot own 100% of land, an investor must find and partner with a Cambodian co-owner. This restriction also exposes minority shareholders to risk. Furthermore, there are higher transaction costs and registration fees, high taxes and burdens of administration and reporting.

6.2 Joint-Venture Companies (JVCs)

JVCs are comprised of a LHC and an Operating Company, of which the Operating Company can be 100% foreign-owned. The Operating Company becomes a minority shareholder (49%) in a majority Cambodian-owned LHC.

There are several ways to ensure security within a JVC. Despite owning less than half of the company, foreign investors can hold a higher class of rights than the local counterpart. Cambodian shareholders can also sign a contract granting special rights to the foreigner, such as permanent majority on the board.

Additionally, one has the option of a pledge or a lease agreement. The Operating Company makes a loan to the LHC, and the Operating Company holds a pledge over the property in question. With a pledge, the Operating Company has a registered security interest in the land purchased by LHC. With regards to a lease agreement, the Operating Company signs a lease agreement with the LHC, thereby giving powers and rights to use the land to the Operating Company. Together, the pledge and lease form an interrelated set of documents designed for maximum protection of minority shareholder's interest in the land.

6.3 Nominee Structure

Investors can use a nominee structure - acquiring land in the name of Cambodian partners; however, this method is not recommended as it is illegal as of 25 September 2007 and lacks security as well.

7. Perpetual Leases

7.1 Perpetual Leases, with Financing from Foreign National

This option allows foreign nationals to purchase land or property and register the title in the name of a Cambodian citizen. The foreign national and the Cambodian can then enter into a lease agreement (period of 50 years), whereby the Cambodian citizen leases the land or property back to the foreign national.

In this agreement, the foreign national may sell the land or property and retain 100% of revenue from the sale. To ensure security, after the title is transferred to the Cambodian citizen, the foreign national should retain possession of the original version of the land title because the sale of the land is completed by transferring the original version of the land title to the new purchaser.

The sale agreement must be in writing, certified by local authorities and registered with the Cadastral Registry Unit. Once due diligence has been approved, the buyer and seller can proceed with signing a land sale purchase agreement and the brokerage agreement. The Land Office will not complete the transfer until they see payment of the transfer tax and Land Office Fees.

7.2 Perpetual Leases, without Financing from Foreign National

Another option available to foreign investors is a perpetual lease. The lease gives the lessor all the necessary rights to develop leased land. Leases can also be assigned, sold or transferred through succession. Additionally, there is a 50 year maximum lease term which allows the possibility of an

extension.

Some of the disadvantages to a perpetual lease include: the lessee cannot rely on the Cambodian courts to resolve disputes; uncertainty exists with regards to who owns the buildings after the lease expires; and according to investment law, the lessor can claim ownership to buildings after a lease expires.

Should one choose to obtain a perpetual lease, there are contractual safeguards to consider. A forum selection clause enables the parties to resolve contract disputes outside Cambodia. An investor can include restrictions on sale which require that the landowner must obtain the lessee's permission to sell or bar the land owner from selling unless the new owner recognizes the lease. One can also acquire administrative oversight - agreement to register a "block sale notice" with the Land Office, instructing the office not to sell the land without the lessee's permission.

8. Land Concessions

The Law on Concession was adopted by the National Assembly on 10 September 2007 and unanimously passed by the Senate on 4 October 2007. The purpose of the law is to promote and facilitate the implementation of privately financed infrastructure projects in Cambodia with an aim to benefit the public and the national economy and fulfill social needs.

A land concession is a legal right provided in a juridical act under the discretion of the competent authority (granted by the Cambodian government), given to a natural person, legal entity or group of persons to occupy and exercise the rights on a land in accordance with the Land Law. An Economic Land Concession area must not exceed 10,000 hectares and the maximum duration is limited to 50 years. The period of ELCs exceeding fifty years prior to the date of the application of 2007 civil code shall be deemed to remain at their initial period, but not exceeding 99 years. All public authorities or competent institutions entitled to undertake infrastructure projects (ministries, public institutions, state-owned legal entities, local government) have the power to enter into concession contracts for infrastructure projects falling within their respective sphere of competence and related ancillary agreements.

Economic Land Concessions ("ELC") – which are different from Social Land Concessions – are available for foreign investors. Similar to perpetual leases from the outside, ELC projects do have their particularities from the inside. They are specifically designed for agricultural or agro-industrial projects whilst the scope of perpetual leases is not limited to only agriculture or agro-industrial purpose.

ELC is a mechanism designed to develop the land, to increase employment opportunity, to enhance the profitability to the State, without negatively affecting the social and environmental well-being of the concession land parcel and the neighboring residents. This mechanism was created by the 2001 Land Law, in a view that it gives an economic boost in the area of agricultural and agro-industrial production. On the investor's side, ELC provides the QIP's incentives and provides right of long-term use of a State's land parcel for large-scale projects. The law also allows using it as collateral for security purpose which can come in handy in case of needs for additional investment funds.

A company may only obtain ELC rights for the time fixed by the concession contract and can never obtain ELC rights from a *de facto* occupation of the land. All ELCs must be registered with the MLMUPC. The issuance of ELC titles for several places relating to surface areas that are greater than those authorized in favor of one natural person or several legal entities, but is governed by the same natural person or legal entity, is prohibited. The right provided to the beneficiaries (concession holders) is not as complete as those an owner would enjoy due to the fact that beneficiaries cannot alienate, sell or lease the concession land to a third party. However, a transfer of concession land is legally allowed by means of entering into a new concession contract for the benefit of the new concession holder.

9. Construction

All individuals or legal entities, either public or private, shall have the right to construct buildings on the land they possess. Obtaining a construction permit, however, is an obligatory first step. In addition, the construction permit must be obtained prior to having the title certificate to the land and the master plan approved by the government. An application for a construction permit must be made

and submitted to the provincial office and municipality or to the Royal Government of Cambodia (RGC) depending on the case. The Ministry of Public Works and Transportation will review plan before opening the construction site.

In theory, once all documents have been submitted to the construction office, it takes approximately 45 days for a documents review. This time frame is subject to be changed without notice by the official in charge.

10. Encumbrances on Immovable Property

The 2007 Civil Code was recently made enter into force by the 2011 Law on Implementation of the Civil Code (the “Law on Implementation”). The Civil Code touches the area of immovable property in certain aspects and several old provisions under the 2001 Land Law were explicitly abrogated.

One of the most interesting areas that were touched by the Civil Code is the encumbrances. The entirety of twenty eight articles on encumbrances under the 2001 Land Law was abrogated. This abrogation affects all the 3 types of existing encumbrances which are hypothecs over immovable property, antichrèses (the so-called “pledges”) and gages.

According to the 2011 Law on Implementation, the legal status of the existing hypothecs and pledges are replaced by the new ones under the Civil Code. However, the gages which have been in existence under the 2001 Land Law are to be categorized as hypothecs under the Civil Code. The Law on Implementation also mentions that the existing pledges over immovable property with the existing right exceeding 5 years are now to be considered only 5 years.

11. Recently Issued Regulations, New Procedural Rules

In January 2011, the Ministry of Justice (“MoJ”) and the MLMUPC together issued one new Inter-ministerial Prakas which focuses mainly on the tasks of court clerk in accordance with provisions of the Code of Civil Procedure. As a few examples, it covers court clerks’ tasks in preparation of documents pertaining to transfer, cancellation, provisional disposition etc., which are required by the Code of Civil Procedure. It mentions, in one short Article, about the procedure for immovable property registration based on court orders or on party conciliation.

The second one that probably marks the most significant reform is the 2012 Joint-Prakas on Provision of the Public Services delivered by MLMUPC. MLMUPC must determine a specific location and assign on-duty officers providing one-stop service at the determined location, to offer the service to the customers on timely manner. And the most important part is the list of officially recognized fees and waiting times of those services.

In 2013, MoJ and MLMUPC issued one more Inter-ministerial Prakas on real right registration procedure based on the Civil Code. It specifies the procedure about the registration of hypothecs and pledges as well. Similar to the 2011 Inter-ministerial Prakas which covers registration pertaining to the 2006 Code of Civil Procedure, this 2013 Inter-ministerial Prakas covers registration pertaining to the 2007 Civil Code.

The last one in these last few years that captures our attention is the compendium of forms drafted by MLMUPC regarding the public services which were published in June 2013. These government forms are to familiarize all applicants and governmental officers with the process of registering immovable properties. In other words, the compendium provides for up-to-date templates of documents which are required in various types of transactions – sales, land concessions, name changes, etc. It also includes tables of documents to be submitted to officials competent for review.

New rules, forms and procedures by these regulations are very recent and certain officials are still not yet familiar with their implementation. In this sense, it is our observation that the deadlines of some officially fixed times to wait for the results from the competent authorities have been missed.

Compared to neighboring countries, Cambodia has more lenient tax regimes. The tax requirements, however, are different from most countries and it is important for investors to adhere to the regulations.

All companies are taxable under the Self-Assessment System (Real Regime Tax System), regardless of the type of business activity or the level of annual revenue. Real regime system taxpayers must submit a tax declaration, a balance sheet, results account and tables of complementary information to the tax administration.

1. Tax Registration

Once a business registers with the Ministry of Commerce, it must then register at the local tax branch in Phnom Penh or Province for a tax identification number (TIN) depending on the registered address location.

1.1 Value Added Tax (VAT) Registration

Enterprises providing taxable supplies of goods and services are required to register for VAT if they fit the criteria specified below:

- Companies, importers, exporters and investment companies
- Taxpayers with taxable turnover with respect to goods sold exceeding KHR 125 million for the preceding three consecutive months or in the next three consecutive months
- Taxpayers with taxable turnover with respect to services provided exceeding KHR 60 million for the preceding three consecutive months or in the next three consecutive months
- Taxpayers undertaking government contracts with a total taxable turnover exceeding KHR 30 million

Businesses must register for VAT before the commencement of business operations for investment and import-export businesses, or within 30 days from when the taxpayer becomes a taxable person. Normally, businesses register for VAT at the same time as the business registration. If a company does not have a VAT certificate, it cannot import goods.

1.2 Patent Tax

While registering for the TIN, the company must also apply and pay a Patent Tax. This tax is an annual chargeable tax. The Patent Tax is payable annually thereafter for each business activity and each location of the business. Should the business inform the tax authorities that they have two or more main business activities a Patent Tax is due for each activity. A company must apply and pay to renew its patent tax before 31 March each year.

The Patent Tax is applicable three types of enterprise according to its annual revenues:

Small enterprise:

- It has annual revenues starting from 250 million riel to 700 million riel
- It is required to pay patent tax 400,000 riel
- It is required to adapt with simply accounting standard

Medium enterprise:

- It has annual revenues starting from 700 million riel to 2,000 million riel
- It is required to pay patent Tax 1,200,000 riel
- It is required to adapt with International Financial Reporting Standard for SMEs

Large enterprise:

- It has annual revenues from 2,000 million riel
- It is required to pay patent Tax 3,000,000 riel to 5,000,000 riel
- It is required to adapt Full set of International Financial Reporting Standard

1.3 Stamp Duty and Tax Rate

A newly established company, branch or representative office is required to register with the Tax Department’s local tax branch office and pay the stamp duty (registration tax) within 15 days after obtaining the business certificate at the Ministry of Commerce.

The stamp duty is levied on 3 types of legal documents at a fixed amount of KHR 1,000,000 (approximately \$250): a Newly Established Company, a Merger Company and a Dissolved Company. Additionally, the Stamp Duty is imposed at the rate of 0.1% of share value for the transfer of shares or at 0.1% of contract value for the contract of supply of goods or services which is used to state the budget.

2. Tax on Profit

The Tax on Profit is the debt of a resident taxpayer on income from both Cambodian and foreign sources. For a non-resident taxpayer, the government assesses this tax on income from Cambodian sources only. The tax rates on the annual profit are as follows:

- 20% for the profit gained by a legal person.
- 30% for profit gained under an oil or natural gas production sharing contract or the exploitation of natural resources including timber, ore, gold, and precious stones.
- 9% for the profit of a qualified investment project approved by the CDC to be entitled to the 5 year transitional period commencing from the tax year after the date of the promulgation of the Law on the Amendment of the Law on Investment of the Kingdom of Cambodia.
- 0% for the profit of qualified investment project during the tax exemption period as determined by the CDC.

To reduce the burden of profit tax payment at the year’s end, the law requires resident taxpayers to pay the prepayment of profit tax at a 1% rate. This tax is due monthly by the 15th day of the succeeding month.

The tax rate for profit realized by a physical person, and for any distributive shares going to pass-through members who are not classified as legal persons, follows the progressive tax rate by trench of the table below:

Annual Taxable Profit	Tax Rate
From 0 to 6,000,000 Riels	0%
From 6,000,001 to 15,000,000 Riels	5%
From 15,000,001 to 102,000,000 Riels	10%
From 102,000,001 to 150,000,000 Riels	15%
Greater than 150,000,000 Riels	20%

For an enterprise whose principal activity is life insurance, property insurance, or other risk insurance, the tax on profit is as follows:

- 5% of the gross premiums received in the tax year for the insurance or reinsurance of risk in the Kingdom of Cambodia. It is due on monthly basis.
- For other activities not relating to insurance or reinsurance, the normal tax on profit rates as stated in 2.1 above apply.

3. Minimum Tax

The Minimum Tax is a separate and distinct tax from the tax on profit. It is imposed at the rate of one percent of the annual turnover inclusive of all taxes with the exception of VAT, and is payable at the time of the tax on profit. The minimum tax may be reduced by the annual tax on profit that is due to be paid.

4. Withholding Tax

Any resident taxpayer conducting business who makes any payment in cash or in kind to a resident or non-resident taxpayer shall withhold, and pay the tax no later than the 15th day of the succeeding month, an amount according to the below mentioned rates which are applied to the amount paid before withholding the tax:

4.1 Non-resident

Taxpayer shall withhold tax from a non-resident at the rate of 14% on the following payments:

- Interest,
- Royalty, rental/leasing, and income related to the use of property,
- Management or consultancy services, and
- Dividends.

4.2 Resident

Taxpayer shall withhold tax from a resident at the following rates:

Items	Rate
Interest received by a bank (Non-Fixed Term Deposit)	4%
Interest received by a bank (Fixed Term Deposit)	6%
Rental Income	10%
Other Interest Income	15%
Royalties from mining and intangible property	15%
Income from services (except where subject to VAT)	15%

5. Value Added Tax

The real regime taxpayers shall charge VAT on the supply of goods or services. Taxable supply refers to:

- the supply of goods or services by a taxable person in the Kingdom of Cambodia;
- the appropriation of goods for his own use by the taxable person;
- the making of a gift or supply at below cost of goods or services by the taxable person;
- Goods imported into the customs territory of the Kingdom of Cambodia.

The value added tax declaration for any month shall be submitted to the tax administration on or before the 20th day of the succeeding month.

5.1 Exempt Goods and Services

VAT is not applied on the following supplies:

- Public postal service.
- Hospital, clinic, medical, and dental services and the sale of medical and dental goods incidental to the performance of such services.
- The service of transportation of passengers by a wholly state owned public transportation system.
- Insurance services.
- Primary financial services, which shall be determined by Prakas of the Ministry of Economy and Finance.
- Articles imported for personal use that are exempt from customs duties and that are within the value level, which shall be determined by Prakas of the Ministry of Economy and Finance.
- Non-profit activities in the public interest that have been recognized by the Minister of Economy and Finance.

5.2 Tax Rate

The tax rate shall be as follows:

- 10% on the taxable value of each taxable supply in the Kingdom of Cambodia.
- 0% on the taxable value of each taxable supply of goods exported from the Kingdom of Cambodia and of the taxable supply of a service.

5.3 Input Tax Not Allowed as a Tax Credit

Taxable persons cannot input a tax credit for any tax paid on:

- Entertainment (food, beverages, tobacco, accommodation, or hospitality of any kind.), amusement and recreation expense unless the taxable person carries on a business as a provider of entertainment, amusement or recreation;
- Purchases or imports of automobiles (designed solely for the transport of person not exceeding ten in number), unless the taxable person carries on the business of dealing in, or hiring such automobiles; or
- Purchases or imports of certain petroleum products (regular or super gasoline, and lubrication oil), unless the taxable person carries on the business as a supplier of such petroleum products.

6. Tax on Salary

A Tax on salary is imposed each month on the salary paid to individuals for fulfilling employment activities in Cambodia. Although the employee is responsible for the debt, the obligation to withhold and pay the tax each month rests with the employer. The employer must declare and pay the tax no later than the 15th day of the succeeding month.

There are differences between salary and fringe benefits. Salary refers to remunerations, wages, bonuses and overtime. Fringe benefits refer to benefits besides salary. These include:

- a vehicle of any kind,
- foods,
- a house or housing, utilities, or household personnel,
- low interest loans,
- discounted sales,
- educational assistance for employee's minors,
- certain insurance,

- the portion of an expense allowance that is not reasonable and necessary to the business of the employer,
- contribution to social security funds in excess of the levels provided in the law,
- contribution to a pension plan in excess of 10% of the employee's monthly salary exclusive of fringe benefits, and
- entertainment, amusement or recreation expenses.

6.1 Employment Status

Whether a person is an employee or an individual earning profit depends on “the degree of subordination to the employer” (Prakas 1173 Section 1.2 31 Dec 2003). The Prakas outlines four criteria to assist in determining this. If two of these four criteria are met, an employment relationship exists:

- the person will be paid as long as he appears at a designated place to perform tasks outlined in a general (written or oral) agreement;
- the person does not make their own hours (i.e. his time and place of employment are chosen for them)
- the person is not required to invest in their own equipment;
- the person does not provide services to several people simultaneously.

If a person does not meet at least two of the above four criteria, he or she will be deemed an independent service provider. His/her income will be subject to withholding tax as specified above.

6.2 Determination of Tax on Salary

There are three categories to be determined for the tax on salary: resident employees, non-resident employees and fringe benefit.

6.2.1 Resident Employees

Resident employee refers to those employees:

- domiciled in Cambodia, or
- who have a principal home in the Kingdom of Cambodia, or
- who are present in the Kingdom of Cambodia for longer than 182 days within any period of twelve months ending in the current tax year.

Based on the evidence of a resident employee's family situation, any resident employee with:

- Minor dependent children at the time of tax payment is allowed a reduction in the tax base of seventy-five thousand Riels per each child per month,
- A spouse whose sole occupation is as a housewife is allowed a reduction in the tax base of seventy-five thousand Riels for one person only per month.

For a resident employee, the tax on salary due is determined on the monthly taxable salary and is withheld according to the progressive tax rate as below:

Salary Per Month	Rate
From 0 to 800,000 Riels (0 to US\$200)	0%
From 800,001 to 1,250,000 Riels (US \$200 to US \$312.50)	5%
From 1,250,001 to 8,500,000 Riels (USD\$312.50 to USD\$2,150)	10%

Salary Per Month	Rate
From 8,500,001 to 12,500,000 Riels (USD\$2,150 to USD\$3,120)	15%
Over 12,500,000 (USD\$3,120)	20%

6.2.2 Non-Resident Employee

Employer must withhold the tax on salary at a flat rate of 20% when paying non-resident employees.

6.2.3 Fringe Benefit

Fringe benefits are benefits received besides salary, bonuses and overtime. Every month, the employer shall withhold and pay a tax by the 15th of the following month at the rate of 20 percent of the total value of fringe benefits given to all employees. The value of fringe benefits is the fair market value inclusive of all taxes.

7. Tax Audits and Power of Investigation

The Law provides the Tax Department with the power to carry out an audit of a taxpayer's activities and to reassess the tax where the taxpayer has not complied with the Law on Taxation and the tax regulations. After issuing a letter of mission for an inquiry, the tax administration can enter the following places in order to assess the tax that must be paid or in order to collect taxes during business hours, or any other time per the conditions and reasons stated in the warrant issued by a judge:

- the business establishment,
- the place that is considered to be the business establishment,
- the place that is open to the public,
- or other places

The Department has a three-year period following the submission of the monthly or annual tax returns in which to raise a tax re-assessment. However, this period extends to 10 years where there is evidence that the taxpayer has obstructed the implementation of the tax provisions. The definition of obstruction is very broad and includes the failure to submit tax returns within 30 days of the due date.

8. Tax Return's Amendment

The taxpayer or withholding agent may request to amend a tax declaration within three years of its filing date because of an error or an oversight made by the taxpayer in the original tax declaration. Moreover, the taxpayer or withholding agent can request the tax administration amend a tax re-assessment within 3 years of the date the tax administration made the tax re-assessment based on additional information that was not available to the taxpayer or the tax administration at the time of the tax re-assessment.

9. Additional Tax

Additional tax must be applied when the tax provisions are violated. The additional tax for the underpayment of tax or the late payment must be calculated separately from the additional tax for the obstruction of the implementation of tax provisions.

9.1 Additional Tax for Underpayment of Tax

To a person who is negligent, the additional tax shall be 10 percent of the amount of the underpaid tax plus 2 percent interest on the amount of the underpaid tax for each month or part of a month that the amount of the underpaid tax is not paid.

To a person who is seriously negligent, the additional tax shall be 25 percent of the amount of

the underpaid tax plus 2 percent interest on the amount of the underpaid tax for each month or part of a month that the underpaid tax is not paid.

In the case of a unilateral tax assessment, the additional tax shall be 40 percent of the amount of the underpaid tax plus 2 percent interest on the amount of the underpaid tax for each month or part of a month that the underpaid tax is not paid.

Interest shall not be applied during the period of tax re-assessment under article 118 of this law or within 30 days after delivery of the letter of notification for tax collection.

9.2 Additional Tax for Late Tax Payment

If a person fails to pay the tax by the due date, an additional tax shall be imposed at the rate of 10 percent of the amount of the late tax payment plus 2 percent interest on the amount of the late payment for each month or part of a month that the tax amount is not paid.

An additional tax is imposed when a person fails to pay the tax within 15 days after receiving a reminder letter of notification for tax collection. The rate will be 25 percent of the amount of the late tax payment plus 2 percent interest on the amount of the late tax payment for each month or part of a month that the tax amount is not paid.

In the case of a unilateral tax assessment for the non-submission of a tax declaration, an additional tax shall be 40 percent of the amount of the tax assessed plus 2 percent interest on the amount of the tax assessed for each month or part of a month that the tax amount is not paid.

Late interest shall be calculated from the first day of the month following the month in which the tax must be paid. For the tax on profit, the late interest shall be calculated from the first day of the following month for which the period for the filing of the declaration of the annual result has already expired.

The additional tax for the late payment of tax on means of transport shall be 100 percent of the tax that is due.

9.3 Additional Tax for the Obstruction of the Implementation of Tax Law

For obstructing the implementation of tax provisions, the additional tax shall be as below for each act:

- Two million riels for a person, taxpayer or a withholding agent under the real regime system of taxation or a government official;
- Five-hundred thousand riels for a taxpayer or a withholding agent under the simplified or estimated regime system of taxation.

10. Other Taxes

10.1 Capital Gain on Disposal of Fixed Asset

A capital gain arises when an asset (such as an item of property) increases in value. This is realized either through disposal (sale) of the asset, or through improvements to the asset which increase its value (such as renovating a house). The gain is a form of income and is subject to a tax under the provisions for tax on profit realized by a physical person.

In accounting terms, this is a “realized” gain or a “recorded gain”, based on:

- The sale price being higher than the book value; or
- Improvements to the asset increasing its book value.
- Book value is the cost price, less any depreciation.

10.2 Depreciation

Cambodian law states that book value should be calculated at the cost price, less depreciation (per year or part-year) as per the table below:

Class	Type of Asset or Property	Annual Depreciation	Method
1	Buildings and structures (including fixtures)	5%	Straight Line
2	Computers, electronic information systems and IT software	50%	Declining Balance
3	Vehicles and Furniture	25%	Declining Balance
4	All other tangible property	20%	Declining balance

The Straight Line Method is where the annual percentage deducted is based on the original cost price at the start of the period. Example (at 5%):

	At start (cost price)	After 1 year	After 2 years	After 3 Years
Book Value:	\$100,000	\$95,000	\$90,000	\$85,000

The Declining Balance Method is where the annual percentage deducted is based on the book value of the previous period. Example (at 5%):

	At start (cost price)	After 1 year	After 2 years	After 3 years
Book Value:	\$100,000	\$95,000	\$90,250	\$85,738

11. Company Dissolution

Within 15 days of cessation of business, the company must inform the tax administration by submitting letters requesting to close along with necessary documents including application forms to close, the original copy of the latest Patent Tax Certificate, a copy of the latest monthly tax and final annual tax return, the original VAT Certificate, and the board resolution.

The comprehensive audit will start after receiving the above documents. After auditing, the general tax department will issue a Tax Clearance Certificate for the company to process its dissolution at Ministry of Commerce (MOC) if it has no tax liability. However, if the company has a tax liability, it shall pay based on the tax re-assessment letter issued by the auditor in order to get the Tax Clearance Certificate for further processing at MOC.

12. Obligation of Estimated Regime System Taxpayers

Estimated regime system taxpayers have the following obligations:

- They must submit the tax declaration to the tax administration every year by October 31, in the form provided by the tax administration.
- The amount of estimated profit is determined by the tax administration after verification and consultation with the businessman or his representative. This estimated profit is calculated according to the profit rate with consideration to the type and activities of the business, which shall be determined by a Prakas of the Ministry of Economy and Finance.
- This tax level on estimated profit shall be kept constant for a period of 3 months, 6 months or 1 year.
- The taxpayer subject to the tax on profit shall pay this tax every month at the time fixed by the tax administration.