

Draft Civil Fine Procedural Law of the Kingdom of Cambodia

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Article 1 Purpose

The purpose of this Law is to set forth the procedures regarding civil fine stipulated in the Civil Code, the Non-Suit Civil Case Procedural Law and the Code of Civil Procedure.

<Note>

As provisions regarding civil fine are stipulated not only under the Civil Code, but also under the Non-Suit Civil Case Procedural Law and the Code of Civil Procedure, we propose that there should be an independent procedural law concerning civil fine.

Article 2 Comprehensive *Mutatis Mutandis* Application

Unless otherwise stipulated by this Law, the provisions of the Non-Suit Civil Case Procedural Law shall apply *mutatis mutandis* to the procedures regarding civil fines.

<Note>

The implementation of a given procedure with regard to a given civil fine basically means the enforcement of the applicable provisions of the Civil Code (or/and the enforcement of the provision of the Code of Civil Procedure). Hence, this Draft provides that the general provisions of the Non-Suit Civil Case Procedural Law apply *mutatis mutandis* to procedures related to civil fines, unless the wording and intent of such provisions are inconsistent with those of this Law.

Article 3 Commencement

A civil fine procedure shall commence by the authority of the court.

Article 4 Jurisdiction

Unless otherwise stipulated by other laws, a civil fine case shall be subject to the jurisdiction of the court of first instance with territorial jurisdiction over the place stipulated in Article 8 (Jurisdiction Conferred by Address, etc.) of the Code of Civil Procedure with regard to the party involved in the civil fine.

<Note>

Japan's Non-Suit Civil Case Procedural Law, Article 161

Examples of the application of the phrase “unless otherwise stipulated by other laws”: The witness does not appear at the *Uttor* appellate court (Article 132, paragraph 3 of the Code of Civil Procedure of Cambodia to be applied *mutatis mutandis* under Article 273 of the same Code); the party under oath made a false statement at the *Uttor* appellate (Article 140, paragraph 3 of the Code of Civil Procedure of Cambodia to be applied *mutatis mutandis* under Article 273 of the same Code); the third party does not submit a document as ordered by the *Uttor* appellate court (Article 154, paragraph 1 of the Code of Civil Procedure of Cambodia to be applied *mutatis mutandis* under Article 273 of the same Code). In these provisions, the word “court” means the court in which the case is pending, that is, the *Uttor* appellate court.

Article 5 Ruling Procedure on Civil Fines

1. Any ruling on civil fines shall be made by a decision.
2. Any decision under the paragraph 1 shall be in writing, describe the reason and the

- main sentence, and be signed by the judge.
3. The court shall, when it makes a decision on a civil fine, hear opinions from the public prosecutor and statements from the party concerned, in advance.
 4. The party concerned and the public prosecutor may file a *Chomtoah* appeal against the decision regarding the related civil fine. A decision to impose a civil fine shall not take effect until the decision becomes final.
 5. The judicial costs incurred in the procedures (including the procedures at the *Chomtoah* appellate court) for making a decision regarding a civil fine shall be borne by the party subject to the decision, or in other cases, by the government.
 6. In the event of a *Chomtoah* appeal filed by the party against the decision on the imposition of a civil fine, if the *Chomtoah* appellate court has dismissed the original decision and further made a decision concerning the civil fine, the judicial costs under paragraph 5 shall be borne by the government even if the decision is to impose a civil fine.

<Note>

Japan's Non-Suit Civil Case Procedural Law, Article 162; Japan's Law for the Adjudication of Domestic Relations, Article 29; Cambodia's Non-Suit Civil Case Procedural Law, Article 1, paragraph 2, Articles 33, 35 and 37

Paragraph 1:

In consideration of the subject matter, this provision is intended to confirm the *mutatis mutandis* application of the provision of Article 1, paragraph 2 of Cambodia's Non-Suit Civil Case Procedural Law as provided for in Article 2 of this Law which stipulates that the above mentioned Law comprehensively applies *mutatis mutandis* to the procedures regarding civil fines.

Paragraph 2:

In consideration of the subject matter, this provision is intended to confirm the *mutatis mutandis* application of the provision of Article 33 of Cambodia's Non-Suit Civil Case Procedural Law as provided for in Article 2 of this Law which stipulates that the above mentioned Law comprehensively applies *mutatis mutandis* to the procedures regarding civil fines.

Paragraph 3:

The phrase "hear statements from the party" means that the court has an opportunity to hear statements from the party concerned. Under Japanese law, as an exception to the provision of this paragraph, there is a summary procedure in place to make a decision concerning a civil fine without hearing statements from the party. See the reference provisions at the end of this paper.

Paragraph 4:

In consideration of the subject matter, this provision is intended to confirm the *mutatis mutandis* application of the provisions of Article 35 and 37 of Cambodia's Non-Suit Civil Case Procedural Law as provided for in Article 2 of this Law, which stipulates that the above mentioned Law comprehensively applies *mutatis mutandis* to the procedures regarding civil fines.

Paragraph 5:

The phrase "other cases" refers to cases where a decision not to impose the civil fine is made and cases where the civil fine procedures terminate due to the death of the party. The party mentioned herein means the party involved in the civil fine procedures.

Paragraph 6:

Cases in which “the *Chomtoah* appellate court has dismissed the original decision and further made a decision concerning the civil fine” include cases where the *Chomtoah* appellate court has rendered a decision “not to impose the civil fine” and cases where the *Chomtoah* appellate court has rendered a decision to change the amount of the civil fine. In the event of a decision to change the amount of the civil fine, there may be an option to make the party pay for a certain part of the judicial costs according to the amount of the civil fine imposed on the party concerned. This Law, however, places emphasis on the simplification of the civil fine procedures, providing that the government must pay for all the judicial costs if there are grounds for dismissing the original decision, including where the *Chomtoah* appellate filed is only partially reasonable. Meanwhile, it is interpreted (under the rule of literal construction) that it is paragraph 5, not paragraph 6, that applies to cases where the *Chomtoah* appellate court has remanded the case to the original court. In such cases, the judicial costs, including those related to the proceedings at the *Chomtoah* appellate court, should be borne by the party concerned even in the event that a change is made to the amount of the civil fine, as long as the purpose of the decision by the remanding court is to impose that civil fine. However, this issue is still debatable.

Article 6 Execution of a Decision on the Civil Fine

1. A decision to impose a civil fine shall be executed by an order of the public prosecutor, and such an order shall have the same effect as a title of execution with a performative sentence.
2. Execution of a decision to impose a civil fine shall be carried out in accordance with the provisions stipulated in Book 6 of the Code of Civil Procedure and other provisions provided for in laws and regulations concerning the compulsory execution procedures, provided, however, that it shall not be necessary to serve such a decision before its execution.
3. The public prosecutor may, if it is deemed necessary to do so for the execution of a decision to impose a civil fine, make inquiries to the public agencies and public and private organizations concerned and ask them to report on relevant matters.

<Note>

Japan’s Non-Suit Civil Case Procedural Law, Article 163; Japan’s Law for Adjudication of Domestic Relations, Article 29

Paragraph 1:

Refer to Article 354 of Cambodia’s Code of Civil Procedure.

Paragraph 2:

The procedures for compulsory execution stipulated in the Code of Civil Procedure apply to the execution of civil fines. However, (in a practical sense), the decision as to whether or not all civil fines are executed through the compulsory execution procedures and, if not, to what extent the civil fine is executed needs to be made according to the actual situation of Cambodia. Meanwhile, in Japan, there are not so many civil fine cases resolved through the compulsory execution procedures (which mean that civil fine payments are often fulfilled as required by demand notices). This is considered to be due to the fact that, although there are a large number of civil fine cases in Japan, the amounts of the civil fines actually imposed are small.

Paragraph 3:

This provision is in place for the purpose of identifying the address of the party and his

or her financial situation. The “public agencies” includes tax offices (to which inquiries are made regarding the party’s income and other property) and real estate registry offices (to which inquiries are made regarding real estate owned by the party). Under Japanese laws (cf. Article 163, paragraph 3 of the Non-Suit Civil Case Procedural Law and Article 507 of the Code of Criminal Procedure of Japan), inquiries may also be made to a wide variety of “public and private organizations,” including places defined as “schools, chambers of commerce, trading houses and other organizations” under Article 186 of the Japan’s Code of Civil Procedure, regardless of whether or not they are legally constituted organizations. For example, financial institutions, hospitals and telephone companies are also considered to constitute “public and private organizations” as described here.