

### III BUSINESS OPERATING ENVIRONMENT

#### III-1 Regulatory Framework Relating to the Business Operations

To improve the business and investment climate and to comply with WTO regulations and keep its promises made upon the accession to WTO, the RGC has been putting emphasis on updating laws and regulations and introducing the new laws and regulations in the field of investment, trade and business. The major laws and regulations enacted or issued in such fields since 2007 are shown in Table III-1-1.

Other major business-related laws and regulations are shown in APPENDIX I, “List of Investment and Business Related Laws and Regulations”.

During the period, the most vital issue in terms of regulatory framework relating to business was the enactment of the Law on Implementation of Civil Code on May 31, 2011. By enacting the Law on Implementation of Civil Law, the Civil Code became effective from 20 December 2011.

Table III-1-1 Recently Enacted or Issued Laws and Regulations Relevant to Investment and Business (2007 – 2012)

Area	Names of Laws and Regulations	Enactment Date
a) Basic/Governmental	Decision #21 (RGC) on Declaration of Date of the Election of the National Assembly for the 5th Legislature of the National Assembly	May-12
	Sub-Decree #68 (RGC) on General Process of Delegating Functions and Resources to Sub-National Administration	May-12
	Law on the Implementation of the Civil Code	May-11
	Sub-Decree #71 (RGC) on Addition to General Statutes of Public Enterprises	Apr-11
	Sub-Decree #57 (RGC) on Establishment of Cambodia Post as Public Enterprise	Jun-10
	Anti-Corruption Law	Apr-10
	Criminal Code	Nov-09
	Civil Code	Dec-07
	Law on Criminal Procedure	Aug-07
	Law on Education	Dec-07
b) Business	Notification #437 on Clarification on Responsibility for Tax Liabilities on Sale or Transfer of Businesses in Cambodia	Apr-12
	Inter-ministerial Prakas on Sub-contract Management in Garment, Textile, and Footwear Industry	Jun-11
	Law on the System of Units	Aug-09
	Sub-Decree #124 (RGC) on Organization and Functioning of National Center of Commercial Arbitration	Aug-09
	Law on Tourism	Jun-09
	Notice #0569 (MOC) on Change of Certificate regarding Enrollment in the Commercial Register of New Form and filling in an Annual Declaration of Commercial Companies	Feb-09
	Law on Insolvency	Dec-07
	Law on Standards	Jun-07
	Law on Secured Transactions	Jun-07
c) Trade	Prakas #288 (MEF) on Authorization to Use Schedule for Reducing Import Goods of Cambodia under the ASEAN Trade in Goods Agreement	Mar-11
	Prakas #001 MOC/SM 2011 (MOC) on Modification of Certificate of Origin (CO) Issuance Procedure	Jan-11
	Inter-Ministerial Prakas #515 (MEF & MAFF) on Implementation of Trade Facilitation Through Risk Management	Jul-10
	Prakas #346 (MAFF) on Procedure for Plant Quarantine Inspection	May-10
	Inter-Ministerial Prakas #996 (MEF & MIME) on Implementation of Trade Facilitation through Risk Management	Nov-09
	Inter-Ministerial Prakas #995 (MEF & MOH) on Implementation of Trade Facilitation through Risk Management	Nov-09
	Royal Kram N RKM 1009 021 on Adopting the Agreement on Comprehensive Economic Cooperation among ASEAN and Korea	Oct-09
	Royal Kram NS RKM 1009-018 on Promulgation of Law adopting Framework Agreement on Comprehensive Economic Cooperation between ASEAN and China	Oct-09
	PRAKAS #906 (MEF) on Creation and Implementation of Private Sector Partnership Scheme with the Customs Administration	Oct-09
	Prakas #734 (MEF) on Special Customs Procedures for Implementing in Special Economic Zones	Sep-08
	Prakas #388 MEF.CE on Post Clearance Audit	22-May-08
	Prakas #108 on Refund of Customs Duties and Taxes	Feb-08
	Prakas #116 on Customs Bonded Warehouse	Feb-08
	Law on Customs	Jul-07
d) Investment	Law on Approval of the Agreement on Investment of the Framework Agreement on Comprehensive Economic Cooperation between the ASEAN and China	Aug-10
	Law adopting the Agreement on the ASEAN Comprehensive Investment Agreement	Oct-09
	Law adopting the Agreement on Comprehensive Economic Partnership among ASEAN and Japan	Oct-09
	ASEAN Comprehensive Investment Agreement	Dec-08

Area	Names of Laws and Regulations	Enactment Date
e) Agriculture & Fishery	Order #01 on Measures to Strengthen and Increase Effectiveness of ELC Management_120507	May-12
	Sub-Decree #36 (RGC) on Contractual Agricultural Production	Feb-11
	Sub-Decree #58 (RGC) on Mechanisms and Procedures for Implementing the Law on Bio-safety	Jun-10
	Sub-Decree #18 on Procedures for Fishing Lot Investments, Public Auctions, Leases and Fishing Fees	Jan-10
	Prakas # 002 (MAFF) on List of Maximum Residue Limits of Pesticide in Fruit and Vegetables	Jan-07
f) Transportation	Law on the Adoption of Agreement between Cambodia and Vietnam on Waterway Transportation	Jun-10
	Sub-Decree #164 (RGC) on Termination of the Legal Status of the Royal Railway of Cambodia	Oct-09
	Sub-Decree #163 (RGC) on Creation of Department of Railway under Supervision of the Ministry of Public Works and Transport	Oct-09
	Sub-Decree #106 (RGC) on Establishment of the National Airline Company	Jul-09
	Sub-Decree #124 (RGC) on Granting Concession of Cambodian Royal Railway	Sep-07
g) Land and Infrastructure	Law on Civil Aviation of the Kingdom of Cambodia	Jan-08
	Sub-Decree #112 (RGC) on Establishment of Department of Cadastral Information Technology of the Ministry of Land Management, Urban Planning and Construction	Aug-12
	Sub-Decree #77 (RGC) on Creation of Committee for Land Management and Urban Planning for the Capital, Provinces-Municipalities, Districts-Khans	Aug-12
	Royal Decree # NS/RKT/0212/079 on Establishment of National Committee for Managing and Developing Coastal Areas of Cambodia	Feb-12
	Notification #006 (MEF) on Implementation of Tax Collection on Real Estate	May-11
	Sub-Decree #82 (RGC) on Determination of Proportion and Method for Calculating the Number of Private Units that may be owned by Foreigners	Jul-10
	Prakas #494 on Creation of Real Estate Evaluation Commission for Tax on Real Estate	Jul-10
	Law on Providing Foreigners with Ownership Rights in Private Units of Co-Owned Buildings	May-10
	Law on Expropriation	Feb-10
	Prakas #1222 on Real Estate Development Business Management	Dec-09
	Instructional Circular #14 (MLMUPC) on Implementation of Procedures for Sporadic Land Registration	Sep-09
	Sub-Decree No 126 (RGC) on Management and Use of Co-owned Buildings	Aug-09
	Law on Concession	Oct-07
h) Finance	Sub-Decree #114 (RGC) on the Mortgage and Transfer of the Rights over a Long -Term Lease or an Economic Land Concession	Aug-07
	Law on Water Resource Management	Jun-07
	Prakas #008.11 on Code Conduct of Securities Firms and Securities Representatives	Jun-11
	Prakas #006.11 on Implementation of Operating Rules of Securities Market	May-11
	Prakas #004.11 on the Implementation of Listing Rules	May-11
	Sub-Decree #70 on Tax Incentives in Securities Sector	Apr-11
	Prakas #12-010-206 (NBC) on Anti-Money Laundering related to All Entities Not Regulated by NBC	Dec-10
	Prakas #013.10 on Corporate Governance for Listed Public Enterprise	Dec-10
	Prakas #7-10-172 (NBC) on the Internal Control of Bank and Financial institutions	Sep-10
	Prakas on the Prime Principle of the Operating Rules of a Securities Market	March 2011
	Prakas #002 on Corporate Governance for Listed Companies	Dec-09
	Prakas #001 on Public Issuance of Equity Securities	Dec-09
	Prakas #009 on licensing of securities firms and securities representatives	Nov-09
	Law on Financial Lease	Jun-09
	Law on the Issuance and Trading of Non-government Securities	Oct-07
Law on Combating Money Laundering and Terrorist Financing	Jun-07	
Law on State Securities/Bonds	Jan-07	
i) Labor	Sub-Decree #136 (RGC) on Adjustment to Commission for Solving Issues Related to All Strikes and Demonstrations 120905	Sep-12
	Notification #041/11 (MLVT) on the Decision of Labor Advisory Committee on Seniority Bonus	Mar-11
	Notification #132 (MOLVC) on Employment Risk Contribution Payment of Garment and Footwear for 2011	Dec-10
	Sub-Decree #108 (RGC) on Determination of Rates and Procedures for Selecting Disabled Persons for Employment	Aug-10
	Law on the Protection and the Promotion of the Rights of Persons with Disabilities	Aug-09
	Sub-Decree #67 (RGC) on Creation and Putting into Operation of the National Agency for Occupations and Labor	April 27 2009
	Law on Amendment to Articles 139 and 144 of the Labor Law	Jul-07
Sub-Decree # 16 (RGC ) on Creation of National Social Security Fund	Mar-07	
j) Others	Sub-Decree #57 (RGC) on Establishment of Cambodia Post as Public Enterprise	Jun-10

Source: JICA Study Team on the Institutional Strengthening of Investment Promotion in Cambodia

The Law on Implementation of Civil Code aims to protect the sustainability of legal relations in civil matters and to guarantee proper application of the Civil Code. As a result, a number of provisions in the existing Cambodian laws will be abrogated or amended. The Law stipulates the following three principles for applying the Civil Code.

- 1) The Civil Code shall not apply to matters occurring before the Date of its Application. However, a continuing legal relations occurring before the Date of Application and still existing after the Date of Application shall be enforced pursuant to the Civil Code from the Date of Application. (Non-retroactivity)
- 2) The effect of legal provisions or customs in Cambodia before the Date of Application of the Civil Code shall not be disrupted after the Date of Application. (Continuity)
- 3) Above two principles shall not prevent fair implementation of the Civil Code to matters occurring before the Date of Application in the event that there are no applicable legal provisions or customs or existence of such provisions/customs is obscured. (Legal consistency)

The other issues or areas progressed, promoted and/or improved by new legislation during the period were as follows.

- Governance: Anti-Corruption
- Trade: Multilateral trade agreement scheme, Trade Facilitation through Risk Management
- Real Estate: Foreign ownership of private units of co-owned buildings, Collection of property tax
- Finance: Security market and trade
- Labor and employment: Workers' wage and bonus, Employment of disabled

## III-2 Civil Code and Related Law

### Civil Code

Although "Civil Code of Cambodia" was promulgated on 8 December 2007, its implementation has been suspended by Article 1305 until the separate law would designate the date of application and determine the items necessary for application of the Code including transitional measures regarding application of the Code. As the Law on the Implementation of Civil Code was promulgated on 31 May 2011, the Civil Code itself became applicable from 20 December 2011.

As from the date of application of Civil Code, the old Civil Code which was promulgated on February 25, 1920 and was continually amended until April 17, 1975 has no further effect. "Law on Family and Marriage" also became ineffective, except the provisions of Article 76 and 77 and provisions from Article 79 to 81 of that law, which shall remain effective after the Date of Application until otherwise provided by other laws. "Sub Decree No. 38 on Contract and Other Non-Contractual Liability" became ineffective from the date of application of Civil Code, except provisions from Article 83 to 88 of that Sub Decree, which shall remain effective after the date of application until otherwise provided by other laws.

Among the provisions of Civil Code, the most of business-related provisions are included in BOOK 3 "REAL RIGHTS", BOOK 4 "OBLIGATIONS", BOOK 5 "PARTICULAR TYPES OF CONTRACTS/TORTS" and BOOK 6 "SECURITY". The major provisions of each Book are summarized as follows. For the full text of Civil Code, refer to "Civil Code" in "Law and Regulations" of CDC Website ([www.cambodiainvestment.gov.kh](http://www.cambodiainvestment.gov.kh)).

### Book Three "REAL RIGHTS"

#### General Provisions

Definition of thing: Under this Code, a thing is a corporeal object or substance comprising a gas, liquid or solid<sup>1</sup> (Article 119).

Movables and immovables: Things are divided into movables and immovables. An immovable comprises land or anything immovably fixed to land, such as a building or structure, crops, timber, etc. A movable is anything that is not an immovable (Article 120).

Component of a land (principle rule): Things attached to land or comprising a part thereof, particularly buildings or structures immovably constructed on land, etc. are components of the land unless they are severed from the land, and may not, except as otherwise provided by law, be the subject of rights separate from those applicable to the land (Article 122).

Component of a land (exceptional rule): Where the holder of a right [to occupy or use] a land of another has constructed buildings or structures, etc. on the land in the course of exercising such right, those constructed, etc. shall not become components of the land. The same shall apply to those things that are attached on the land for a purpose of temporary nature (Article 123). These buildings and other structures built on land by a right-holder, etc. shall be deemed components of the right [to occupy or use] the land of another (Article 124).

Definition of real right: A real right is the right to directly control a thing, and may be asserted against all persons (Article 130).

Types of real rights: The following real rights are established by this Code (Article 132).

1. Ownership
2. Possession
3. Usufructuary real rights: (a) Perpetual lease, (b) Usufruct, (c) Right of use/right of residence, (d) Servitude
4. Security rights: (a) Right of retention, (b) Statutory lien, (c) Pledge, (d) Hypothec, (e) Transfer of title for security purpose.

Creation, transfer and alternation of real rights by agreement: The creation, transfer and alternation of a real right shall take effect in accordance with those agreed upon between the parties (Article 133).

Perfection: Except for a right of possession, a right of retention, a right of use, and a right of residence, the creation, assignment and alteration of a real right pertaining to an immovable cannot be asserted against a third party unless the right is registered. The transfer of a real right regarding a movable cannot be asserted against a third party unless the movable has been delivered (Article 134).

Requisite of transfer of title by agreement pertaining to an immovable: Notwithstanding Article 133 and 134, transfer of title by agreement pertaining to an immovable, shall come into effect only when the transfer of right is registered (Article 135).

#### Ownership

Definition of ownership: Ownership refers to the right of an owner to freely use, receive income and benefits from and dispose of the thing owned, subject to applicable laws and regulations (Article 138).

Scope of ownership of land: Ownership of land extends to the areas above and below the surface of the land to the extent that the owner derives benefit there from, subject to applicable laws and regulations (Article 139).

Acquisition of ownership over immovable: Ownership over an immovable may be acquired not only via contract, inheritance or other causes set forth in this Section IV but also based on the provisions set forth in this Code and other laws (Article 160).

\* Refer to the Article 160 – Article 186 for provisions regulating the Acquisition of Ownership of Immovables.

Note 1 : In this translation, while the different terms such as 'good' and 'property' are used in different contexts to maintain consistency with standard English-language legal usage, they have the same meaning, and are substantively identical.

Acquisition of ownership over movable: Ownership over a movable may be acquired not only via contract, inheritance or other causes set forth in this Section IV but also based on the provisions set forth in this Code and other laws (Article 187).

Bona fide acquisition of ownership of movable: A transferee who commences in good faith and without negligence the possession of a movable upon receiving the delivery of the movable under a valid contract transferring the ownership of the movable, the person shall acquire ownership of such movable even where the transferor does not have the ownership thereof. However, this shall not apply where the transferor still maintains the direct possession over the movable (Article 193).

*\* Refer to the Article 187 – Article 201 for provisions regulating the Acquisition of Ownership of Movables.*

#### *Possessory Rights*

Definition of possession: “Possession” refers to the holding of a thing. “Holding” means the state of controlling a thing as a matter of fact, whether directly or indirectly (Article 227).

Direct possession and indirect possession: A thing may be possessed indirectly through another person. A person directly holding a thing is referred to as a direct possessor, and a person holding a thing indirectly through another person is referred to as an indirect possessor (Article 228).

Assignment of possession (Article 229):

- (1) Possession is assigned by delivery of the thing in possession. This form of assignment of possession is referred to as “actual delivery”.
- (2) Possession may be assigned without actual transfer, by agreement of the parties alone. In this case, the assignee of possession acquires the indirect possession through [the direct possession of] the assignor. This form of assignment of possession is referred to as “assignment of possession by agreement” [in Khmer “agreement on possession”].
- (3) If the assignee of possession currently actually holds the thing directly, possession may be assigned by agreement of the parties alone. In this way, the assignor of possession loses the indirect possession that he had through the holder of the thing. This form of assignment of possession is referred to as “summary delivery”.
- (4) A person who possesses a thing indirectly through another person may assign possession to a third party by agreement with such third party and notice to this effect to the person in direct possession. This form of assignment of possession is referred to as “assignment of possession by direction”.

*\* Refer to the Article 227 – Article 243 for provisions regulating the Possessory Rights.*

#### *Perpetual Leases*

Definition of perpetual leases: “Perpetual lease” refers to a long-term lease of immovable for a term of not less than 15 years (Article 244).

Formation of perpetual lease: A perpetual lease shall not be valid unless it is established by writing. A perpetual lease that is not in writing shall be deemed to be a lease without a prescribed period, and may be terminated at any time by either party unilaterally in accordance with Article 615 (Notice of cancellation of lease without fixed term) (Article 245).

Requirements for perfection of perpetual lease: Unless the perpetual lessee registers the perpetual lease, it cannot be held up against third parties. If the ownership of the immovable that is the subject of a perpetual lease is assigned, a registered perpetual lease may be held up against the transferee. The provisions of Article 598 shall apply to the perpetual lease without register up to 15 years (Article 246).

*\* Conditions for perfection of lease of immovable (Article 598)*

- (1) A lease of an immovable may be held up against a subsequent acquirer of any real right over the immovable by virtue of the fact that the lessee has occupied, and continuously used and profited from the leased immovable.
- (2) A lessee actually occupying a leased property may exercise the same rights as the owner to demand return [of a dispossessed thing], for removal of disturbance and/or for prevention of disturbance, against an infringement of the lease rights.

Term of perpetual lease: The term of a perpetual lease may not exceed 50 years. If a perpetual lease is established with a term exceeding 50 years, it shall be shortened to 50 years. A perpetual lease may be renewed; provided that the renewed term may not exceed 50 years counting from the date of renewal (Article 247).

Perpetual lessor’s right of cancellation: If the perpetual lessee fails to pay the stipulated rental for three years, the perpetual lessor may cancel the perpetual lease (Article 250).

Perpetual lessee’s right of cancellation: If no profit can be derived from the immovable for 3 years on account of unforeseeable circumstances or force majeure, or there is no prospect of future profit exceeding the annual rental on account of damage to part of the immovable, the perpetual lessee may cancel the perpetual lease (Article 251).

Assignment, etc. of perpetual leases (Article 252):

- (1) Perpetual leases may be assigned with or without consideration, or otherwise disposed.
- (2) The perpetual lessee may sublease the subject of the perpetual lease.
- (3) A perpetual lease may be inherited.

Termination of perpetual lease (Article 254):

- (1) Upon termination of a perpetual lease, the perpetual lessor cannot demand that the perpetual lessee restore the immovable to its original condition unless the perpetual lessee has destroyed the immovable or fundamentally changed its nature.
- (2) Upon termination of a perpetual lease, the lessor shall acquire the ownership over any improvements and any structures installed on the immovable by the perpetual lessee without having to pay compensation to the perpetual lessee.
- (3) A special agreement may be made at variance with paragraphs (1) and (2); provided that such special agreement cannot be held up against third parties unless it is registered.

*\* Refer to the Article 244 – Article 255 for provisions regulating the Perpetual Lease.*

#### *Usufruct*

Definition of usufruct (Article 256):

- (1) “Usufruct” refers to the rights to use and enjoy the profits of the immovable of another person, for a period that may not exceed the life of the usufructuary.
- (2) The usufructuary has the right to use the immovable that is the subject of the usufruct for its intended purposes, and to enjoy the natural fruits and the legal fruits arising from the immovable.

Formation of usufruct: A usufruct may be created in writing or otherwise (Article 258).

Requirements for perfection of usufruct: Unless a usufruct is registered, it cannot be held up against third parties. Where the ownership of the immovable that is the subject of a usufruct is assigned, the usufruct may be held up against the transferee if it is registered (Article 259).

Term of usufruct: A specified term may be provided for a usufruct, or it

may be provided that it will continue until the occurrence of a certain event. If no term is specified for a usufruct, it shall be deemed to continue until the death of the usufructuary.

Assignment of usufruct, etc.: The usufructuary may assign the usufruct with or without consideration, or otherwise dispose it.

Lease of usufruct immovable: The usufructuary may lease out the immovable that is the subject of the usufruct for a fixed term not exceeding 3 years. The term of the lease may be renewed; provided that this term may not exceed 3 years (Article 264).

*\* Refer to the Article 256 – Article 273 for provisions regulating the Usufruct.*

#### *Right of Use and Right of Residence*

Definition of right of use and right of residence (Article 274):

- (1) “Right of use” refers to the right to collect the fruits of immovable, to the extent of the needs of the right holder and his family.
- (2) Right of residence refers to the right to occupy part of the building(s), to the extent required for residence by the right holder and his family.

Formation of rights of use and rights of residence: Rights of use and rights of residence may be created in writing or otherwise. The owner may at any time give notice of the extinguishment of a right of use or right of residence that is not in writing (Article 276).

Requirements for perfection of rights of use and rights of residence: Unless the holder of a right of use or right of residence actually uses his/her right, it cannot be held up against third parties. Even though the ownership of the immovable that is the subject of a right of use or right of residence is assigned, the right may be held up against the transferee if it is actually used or resided (Article 277).

Assignment of usufruct, etc.: Holders of rights of use or rights of residence are not permitted to assign or otherwise dispose such rights. Holders of rights of use or rights of residence are not permitted to lease out the immovable that is the subject of such rights (Article 280).

*\* Refer to the Article 274 – Article 284 for provisions regulating the Right of Use and Right of Residence.*

#### *Easements*

Definition of easement: An “easement” is the right to use the land of another for the benefit of one’s own land, in accordance with the purpose specified in the contract of creation; provided that an easement may not be created that contravenes public order (Article 285).

Formation of easement: An easement may be created by writing or otherwise (Article 286).

Requirements for perfection of easement: Unless an easement is registered, it cannot be held up against third parties (Article 287).

Scope of persons entitled to enjoy the benefit of an easement: In addition to the owner of the dominant land, a lessee, perpetual lessee, usufructuary or holder of a right of use or right of residence over the dominant land is entitled to enjoy the benefit of an easement, except where otherwise provided in the contract creating the easement (Article 288).

Prescription of the term of easement (Article 296):

- (1) Where a term is prescribed in the contract that creates the easement, the easement shall be extinguished at the expiry of such term.
- (2) Where a term is not prescribed in the contract of creation of easement, the owner of the servient land may apply to the court for

extinguishment of the easement. The court shall decide whether to extinguish the easement or not, by considering the facts such as the circumstances of the creation, the execution in the past, existence or inexistence of the consideration.

*\* Refer to the Article 285 – Article 305 for provisions regulating the Easements.*

#### *Rights created by concession*

The provisions of the Civil Code relating to perpetual leases shall apply mutatis mutandis to land rights created by concession, within the scope of the conditions applying to such concession, except where otherwise provided by special law (Article 307).

### **Book Four “OBLIGATIONS”**

#### *General Provisions*

Definition of obligation: An obligation is a legal relationship that connects a particular person with a specified person by having the particular person to assume a certain duty with respect to the specified person. The person assuming the duty shall be called the “obligor” and the person receiving the benefit of performance of such duty shall be called the “obligee” (Article 308).

Causes of obligation: An obligation may arise from a contract, unilateral legal act management of affairs without mandate, unjust enrichment, tortious act, or provision of law. An obligation arising from a contract or unilateral legal act is an obligation created based on the intention of [one or both] parties. An obligation arising from management of affairs without mandate, unjust enrichment, tortious act or provision of law is an obligation created by law (Article 309).

Definition of declaration of intention: A declaration of intention is an expression of intention made by a party with the intent to create a legal effect. The declaration of intention shall become effective when the notice thereof reaches to the other party (Article 310).

Definition of contract: A contract is the matching of intentions held by two or more parties to create, change or extinguish an obligation (Article 311).

Definition of unilateral legal act: A unilateral legal act is an act that creates, changes or extinguishes an obligation through the unilateral expression of an intention to dispose of property or through the exercise of a right granted by contract or provision of law (Article 313).

Legal interest rate: With respect to an interest-bearing obligation, the interest rate shall be 5 % per annum, unless otherwise agreed to between the parties (Article 318).

Interest on interest: Where the payment of interest is in arrears for one year or more, if the obligor fails to pay such interest after receiving a demand of payment from the obligee, the obligee may include the amount of such interest in the principal (Article 319).

*\* Refer to the Article 313 – Article 324 for provisions regulating the Types and States of Obligations.*

#### *Conditions, Time and Period*

Meaning of conditions: The contracting party may impose conditions with regard to the occurrence or extinguishment of the effect of the contract. With regard to a unilateral legal act, conditions may be imposed only when the conditions are not unduly detrimental to the other party. Conditions are events, which occur in the future and are uncertain (Article 325).

Disposition of right subject to condition: A right that is subject to a condition may be the object of an inheritance, disposition or security interest.

Furthermore, an obligation subject to a condition may be succeeded to in accordance with the provisions regarding inheritance, etc. (Article 326).

Meaning of time: If an effect of a contract is subject to a commencement time, the contract does not come into effect until such time has arrived. If a performance of a contract is subject to a commencement time, the obligee may not require the obligor to perform the obligation before such time has arrived. If an effect of a contract is subject to a termination time, it shall be ceased when such time arrives (Article 329).

Designation of period: A period may be designated in terms of hours, minutes or seconds, or in terms of days, weeks, months or years (Article 332).

Calculation of period established in terms of seconds, minutes or hours: If a period has been fixed in terms of hours, minutes or seconds, it shall be computed from the first moment to the last moment (Article 333).

Calculation of period established in terms of days, weeks, months or years: If a period has been established in terms of days, weeks, months or years, the first day of such period shall not be included in the computation; provided, however, that this shall not apply if the period begins at midnight. In cases mentioned above, the period shall terminate at the end of the last day of the period. If the last day of a period falls on a national holiday, Sunday or any other holiday established by laws or ordinances, the period shall terminate at the end of immediately following business day (Article 334).

*\* Refer to the Article 325 – Article 335 for provisions regulating the Conditions, Time and Period.*

#### *Formation of Contract*

Formation of contract via offer and acceptance: A contract comes into effect when an offer and an acceptance thereof conform to each other. A contract in which one of the parties bears a duty to transfer or to acquire ownership on an immovable, shall come into effect only when such contract is made by notarial document (Article 336).

Definition of offer and acceptance: An offer is an invitation to enter into a contract based on the offerer's intention to be legally bound by the other party's acceptance thereof. An offer shall take effect when it reaches the other party. An acceptance is an expression of intention by the party who receive an offer, to agree it. An acceptance shall take effect when it reaches to the party who made the offer (Article 337).

Formation of contract on receipt of acceptance: A contract shall be formed when the notice of acceptance is received by the offerer (Article 340).

*\* Refer to the Article 336 – Article 355 for provisions regulating the Formation of Contract, Defective Declaration of Intention and Validity of Contract.*

*\* Refer to the Article 356 – Article 363 for provisions regulating the Invalidity and Rescission.*

#### *Agency*

Definition of agency: Agency is defined as a relationship wherein where a representative enters into a contract with another party by stating that he is acting on behalf of a principal within the scope of the agency authorization, the effects of the contract are imputed directly to the principal (Article 364).

Creation of agency authorization: An agency authorization can be created by contract between the principal and the agent or by law (Article 365).

Limitations on agency authorization: An agent is not entitled to conduct acts with respect to which the interests of the principal conflict with the interests of the agent, even where such acts are otherwise within the scope of the agency authorization. However, this shall not apply where

the principal consents thereto (Article 367).

Agency without authorization: Where a person conducts an act as agent for another without having an agency authorization, the effects of that act shall not be attributable to the putative principal. However, this provision shall not apply where the act is ratified by the putative principal (Article 369).

Agency by estoppel: Where an agent executes a contract outside the scope of the agency authorization, and the other party believed without negligence that the agent was authorized to enter into the contract, the principal is responsible for performing the contract (Article 372).

*\*Refer to the Article 364 – Article 378 for provisions regulating the Agency.*

*\*Refer to the Article 379 – Article 383 for provisions regulating the Contract for the Benefit of a Third Party.*

*\*Refer to the Article 384 – Article 388 for provisions regulating the Performance of Contract.*

#### *General Rules Concerning Non-Performance*

Definition and types of non-performance (Article 389): 'Non-performance' is defined as an obligor's failure to perform an obligation arising under a contract. The types of 'non-performance' are as follows:

- a) cases in which performance cannot be carried out by the established time for performance due to a delay in performance;
- b) cases in which performance is impossible;
- c) cases in which full and complete performance in accordance with the intended purpose of the obligation is not carried out; and
- d) other cases in which performance is not carried out in accordance with the intended purpose.

Remedies for non-performance: Where an obligor fails to perform an obligation, the obligee may demand specific performance, damages, or termination of the contract (Article 390).

#### *Specific Performance*

Requirements for damages: Where an obligation is not performed, the obligee may demand damages from the obligor for any resulting harm. However, if the obligor proves that the non-performance was not the fault of the obligor, the obligor is not liable for damages (Article 398).

Concept of damages: The obligee may demand as damages (a) compensation for the benefit of performance that would have been received under the contract, as well as (b) expenditures that were wasted due to the non-performance to the extent that such expenditures do not duplicate amounts received as benefit of performance damages, and (c) additional expenditures or burdens resulting from non-performance (Article 400).

*\*Refer to the Article 398 – Article 406 for provisions regulating the Damages.*

#### *Termination of Contract*

Termination for non-performance: Where one of the parties to a bilateral contract commits a material breach of the contract, the other party may terminate the contract immediately (Article 407).

Material breach of contract: A material breach of contract occurs where, as a result of one party's breach of a contract, the purpose of the contract for the other party cannot be achieved. The non-performing party may not prevent termination of the contract on the ground that the non-performance occurred without fault on his part. Material breach of contract shall be deemed to occur in any of the following situations (Article 408).

- a) where after a failure to perform at the specified time, the other party demands that the non-performing party perform the obligation by establishing a period of performance of reasonable length, and the

- obligation is not performed within such period;
- b) where a party fails to perform at the specified time, and the purpose of the contract cannot be achieved if performance is not made at the specified time;
  - c) where it is impossible to carry out the essential act of performance; and
  - d) where the magnitude of the breach is so substantial that trust between the parties is destroyed and further performance cannot be expected.

*\*Refer to the Article 407 – Article 414 for provisions regulating the Termination of Contract.*

#### *Burden of Risk*

Extinction of obligation in case of impossibility of performance: If performance of an obligation has become impossible without the fault of the obligor, the obligation shall be extinguished and the obligee may not demand performance thereof (Article 415).

Burden of risk in a contract to transfer title to specific property (Article 416):

- (1) Where the subject matter of a bilateral contract is to transfer title to specific property and the property is destroyed, lost or damaged without the faults of either party, the obligor shall bear the risk thereof, and may not demand counter-performance.
- (2) The risk of destruction, loss or damage of the property comprising the subject matter of the contract shall be transferred to the obligee upon any of the following events unless otherwise provided for in the contract:
  - a) when the obligor delivers the property or transfers the registration of the title thereto to the obligee, or substantial control over the property is otherwise judged to be shifted to the obligee;
  - b) when the obligor has made a proper tender of performance; or
  - c) when the obligee has unreasonably refused to accept the performance of the obligor.

*\*Refer to the Article 415 – Article 421 for provisions regulating the Burden of Risk.*

#### *Avoidance of Fraudulent Act*

Requirements for avoidance of fraudulent act: An obligee may petition the court to order that an act conducted by the obligor with the knowledge that the act would infringe on the obligee's claim be rescinded, and that a person who receives a benefit from the act of the obligor return the thing delivered or make restitution for the value thereof (Article 428).

Period for exercise of right of rescission of fraudulent act: (1) The right of rescission established in Article 428(Requirements for avoidance of fraudulent act) shall expire if it is not exercised within one year of the time that the ground for rescission is first discovered by the obligee, or within three years of the occurrence of the act giving rise thereto (Article 432).

*\*Refer to the Article 428 – Article 432 for provisions regulating the Avoidance of Fraudulent Act.*

#### *Extinction of Obligation*

Grounds for extinction of obligation: Obligations shall be extinguished on the following grounds (Article 433):

- a) by performance, set-off, release, novation or merger;
- b) by impossibility of performance without the fault of the obligor;
- c) by the fulfillment of a condition or by termination of the contract;
- d) by extinctive prescription; or
- e) by the exercise of a right of rescission.

*\*Refer to the Article 434 – Article 500 for provisions regulating the*

*Performance, Set-off, Release, Novation or Merge.*

#### *Assignment of Claims*

Assignability of claims, special agreement prohibiting assignment: A claim may be assigned unless the nature of the claim does not permit the assignment. In such a case, the assignee shall become a new obligee. Assignment of a claim can be prohibited by a manifestation of intention by the partie(s), even where the nature of the claim permits the assignment (Article 501).

Establishment of assignment of claim: The assignment of a claim shall take effect only through agreement between the obligee seeking to assign the claim and the assignee. However, in order to assert the assignment of a claim against the obligor or a third party, the conditions established in Article 503(Requirement for Assertion of Assignment of Nominative Claim against Third Parties) must be met (Article 503).

Requirement for Assertion of Assignment of Nominative Claim against Third Parties: The assignment of a nominative claim may not be asserted against the applicable obligor or any other third party unless the assignor has given notice thereof to the obligor or the obligor has consented thereto to the assignor or the assignee. The notice or consent may not be asserted against a third party other than the obligor unless the notice or the consent is made using an instrument bearing a fixed date (Article 503).

*\*Refer to the Article 501 – Article 506 for provisions regulating the Assignment of Claims.*

*\*Refer to the Article 507 – Article 514 for provisions regulating the Assumption of Obligations and Assignment of Contractual Position.*

### **Book Five “PARTICULAR TYPES OF CONTRACTS/TORTS”**

#### *Sale*

Nature of sale: A sale is a contract whereby one party, called the 'seller', is obligated to transfer ownership or other property rights to the other party, called the 'buyer' and the buyer is obligated to pay the purchase price to the seller (Article 515).

Formation of sale contract: A sale contract is formed based only on the agreement of the parties thereto unless otherwise provided by law. However, the parties may require as a condition for the formation of the contract the execution of a notarial document or a written document signed by the parties in their individual capacities (Article 516).

Earnest money: Where the buyer has paid earnest money to the seller, the buyer may rescind the contract by giving up his earnest money, and the seller may rescind the contract by refunding twice the amount thereof. However, neither party may rescind the contract after the other party has commenced performance thereof (Article 518)

Sale price: The parties to a sale shall fix under the contract the amount of the sale price or establish a formula to determine such amount. The amount of the sale price may be determined in accordance with the present or future market price of certain merchandise or based on the appraisal of a third party who is appointed by a method designated by the parties (Article 521).

Persons who may not be buyers (1): An administrator appointed by law, court order or contract may not be a buyer, either directly or through a third party, of goods that the administrator has been entrusted to sell. Paragraph (1) shall apply mutatis mutandis to government officials responsible for the execution or administration of compulsory sale (Article 525).

Persons who may not be buyers (2): A judge, prosecutor, court clerk or other court official may not be a buyer, either directly or through a third party, of goods or rights as to which civil actions are pending before the court at which such person works or practices. Paragraph (1) shall apply

mutatis mutandis to lawyers and notaries public becoming buyers of goods or rights involved in actions in which they are retained (Article 526).

Transfer of title: With respect to the transfer of title to the goods under a contract of sale, the general rules provided for in Articles 133(Creation, transfer and alternation of real rights by agreement), 134 (Perfection), 135 (requisites of transferring real rights of immovables by agreement), 160 (Acquisition of ownership over immovables) and 187 (Acquisition of ownership over movable) of this code shall apply to contracts of sale (Article 528).

Seller's duty to provide explanation: A seller is required to provide the buyer with a clear explanation concerning (i) the contents of the obligations to be assumed by the buyer, and (ii) the legal circumstances surrounding the goods or rights comprising the object of a sale, particularly, in the case of a sale of immovable property, the state of the title, encumbrances, boundaries, etc (Article 529).

General obligations of seller: The seller owes to the buyer, in accordance with the terms of the contract and the provisions of this Code, (i) an obligation to transfer the property right sold [in the goods], (ii) an obligation to deliver the goods, (iii) an obligation to preserve such goods until they are delivered, and (iv) an obligation to deliver all instruments required to evidence proof of title thereto (Article 530).

Obligation to transfer the right and warranty liability of seller: The seller owes an obligation to transfer the property right of the subject matter of the sale to the buyer. In the event that a right belonging to a third party is the object of a sale, the seller is obligated to acquire such right and thereafter transfer it to the buyer (Article 531).

Seller's warranty liability when encumbrance exists: Where goods comprising the object of a sale are subject to a perpetual lease, usufruct, right of use, right of residence, servitude, leasehold, right of retention or pledge, and due to such encumbrance the buyer cannot enjoy the use of all or a part of such goods or receive profits therefrom, the buyer may demand compensation for damages from the seller if the buyer was not aware of the existence of such encumbrance when the contract was executed (Article 534).

Seller's warranty liability when real security exists: Where the immovable property to be sold under the sale contract is subject to a statutory lien, a pledge that bars the obligee from using or receiving benefits from the property, or a hypothec, if the buyer has lost ownership due to the exercise of such security interest, the buyer may terminate the contract. In such case, the buyer may demand compensation for any damages sustained (Article 535).

Conforming Goods Warranty Liability: Where the goods are nonconforming in any respect at the time that the risk passes to the buyer, even if the existence of such nonconformance becomes apparent after the passage of such risk, the buyer may, in accordance with in the terms of the contract and the provisions of this Code, demand that substitute goods be delivered or that such nonconformance be remedied, terminate the contract or reduce the purchase price as against the seller (Article 540).

Buyer's right to terminate: If the goods delivered are nonconforming in any respect and such nonconformance prevents the achievement of the buyer's purpose for entering into the contract, the buyer may terminate the contract (Article 543).

Special provisions regarding excess or deficiency in area of land (Article 546):

- (1) Where the total area of specified land is indicated, and a sale has been executed based on a fixed price per unit area, but the actual area is less than the indicated area, the buyer may demand, in accordance with the provisions set forth in Articles 542(Buyer's right to demand complete performance) through 545(Buyer's right to demand

damages), (i) delivery of the deficient portion, (ii) a reduction in the purchase price reflecting the deficiency or (iii) termination of the contract, and/or (iv) compensation for damages, unless otherwise agreed to between the parties.

- (2) Where the total area of specified land is indicated, and a sale has been executed based on a fixed price per unit area, but the actual area exceeds the indicated area, if the seller was unaware of such excess without negligence on his part, the seller may demand an increase in the purchase price reflecting the excess amount of land, unless otherwise agreed to between the parties.
- (3) Where the total area of specified land is indicated and a sale has been executed based on a single price for the entire parcel, even if the actual area is less than the indicated area, the buyer may not demand (i) delivery of the deficient portion, (ii) a reduction in the purchase price reflecting the deficiency, (iii) termination of the contract or (iv) compensation for damages. However, this shall not apply to cases where (i) the seller knew of the deficiency of the actual area, (ii) the seller guaranteed the accuracy of the indicated size of the area, or (iii) the deficiency exceeds five percent of the indicated area.
- (4) Where the total area of specified land is indicated and a sale has been executed based on a single price for the entire parcel, the seller may not demand an increase in the purchase price even if the actual area exceeds the indicated area. However, this shall not apply where the excess area exceeds five percent of the indicated area, and the seller was ignorant of such fact without negligence on his part.
- (5) In a case in which the seller demands an increase in the purchase price based on the provisions of paragraphs (2) or (4), the buyer may terminate the contract.

*\*Refer to the Article 529 – Article 553 for provisions regulating the Obligations of Seller.*

*\*Refer to the Article 554 – Article 559 for provisions regulating the Obligations of Buyer.*

*\*Refer to the Article 560 – Article 565 for provisions regulating the Termination of Contract by Exercise of Repurchase Right.*

#### *Loans for Consumption*

Definition of loan for consumption: A loan for consumption is a contract whereby one party, called the lender, assumes an obligation to entrust the free use of money, foodstuffs, paddy or other fungible objects for a specified term to another party, called the borrower, who assumes the obligation to return objects of the same type, quality and quantity as those received from the lender upon the expiry of the said term (Article 578).

Formation of contract of loan for consumption: A contract of loan for consumption is formed by agreement of the lender and the borrower alone (Article 579).

Claim for interest: The parties to a contract of loan for consumption may by agreement bring into existence a claim [separate from the loan] having as its subject matter the payment of interest; provided that a claim for interest shall not come into effect unless it is in writing and bears the signature of the borrower (Article 583).

Legal interest rate<sup>9</sup> and agreed-on interest rate: The interest rate shall be that provided by law or by agreement of the parties. If the parties have agreed to the payment of interest but have not specified an interest rate, the interest rate specified in this Code or by special law shall apply. If the interest rate agreed by the parties is not specified in a document that complies with the formalities provided in paragraph (3) of Article 583 (Claim for interest), it shall have no effect (Article 584).

Limitations on interest: The interest rate agreed by the parties may exceed the legal rate provided in paragraph (2) of Article 584(Legal interest rate



and agreed-on interest rate), but may not exceed the maximum interest rate. If the agreement of the parties provides for an interest rate exceeding the maximum interest rate, such agreement shall be invalid in respect of that portion of interest that exceeds the maximum interest rate, and the borrower shall only be obliged to pay interest calculated on the basis of said maximum rate (Article 585). ((Refer to Article 18 of the Law on the Implementation of Civil Code regarding the maximum rate of interest.))

*\*Refer to the Article 578 – Article 595 for provisions regulating the Loan for Consumption.*

#### *Lease*

Definition of lease: A lease is a contract whereby one party allows another party to use and profit from a certain thing for consideration. Things comprising the subject matter of a lease may be movables or immovables (Article 596).

Formation of lease: A lease comes into effect when one party promises to allow the other party to use and take profit from a certain thing, and the other party promises to pay rent in exchange (Article 597).

Conditions for perfection of lease of immovable (Article 598):

- (1) A lease of an immovable may be held up against a subsequent acquirer of any real right over the immovable by virtue of the fact that the lessee has occupied, and continuously used and profited from the leased immovable.
- (2) A lessee actually occupying a leased property may exercise the same rights as the owner to demand return [of a dispossessed thing], for removal of disturbance and/or for prevention of disturbance, against an infringement of the lease rights.

Lease period (Article 599)

- (1) A lease may be entered into with or without stipulating a period.
- (2) A lease of an immovable not in writing shall be deemed to be a lease without stipulation of period.
- (3) A lease of an immovable for a period of 15 years or more shall be complied with the provisions set forth Article 244 (Definition of perpetual leases) et seq of this code.

Duty to repair: The lessor has a duty to carry out repairs required for the use and profit from the leased property (Article 602).

Preservative action by lessor: The lessee shall not obstruct any action by the lessor that is required to preserve the leased property (Article 603).

Lessor's liability for defects in leased property (Article 605):

- (1) If the lessee did not examine the leased property whether it is suit to the condition mentioned in the written contract, when accepting the delivered property, the lessee may not demand that the lessor shall be responsible for the difference between the conditions stated in the written contract and the leased property which could have been easily found.
- (2) If there is a hidden defect in the leased property of which the lessee was unaware, the lessee may demand the repair of such defect or the replacement of such property by a non defective property and the compensation for damage.
- (3) Any demand for repairs, replacement, reduction of rental and termination must be made not later than one year from when the lessee became aware or should have become aware of the fact giving rise to such demand.

Right of claim for reduction of rental or termination for decrease of income (Article 606):

- (1) If a lessee who has leased land with a view to profit therefrom receives less profit than the amount of the rental by reason of force

majeure, he may demand that the rental be reduced to the amount of such profit.

- (2) In cases described in paragraph (1), if a lessee receives profit less than the amount of the rental for two or more years successively by reason of force majeure, the lessee may terminate the lease contract.

Transfer of lease rights and sublease: Except in the case of a perpetual lease, the lessee is not permitted to transfer his lease rights, or to sublease the leased property, without the permission of the lessor (Article 608).

Refusal of renewal of immovable lease: In the case of a lease of an immovable, the parties shall be deemed to have agreed to renewal of the term of such lease unless a party has declared his intention to refuse to renew not later than three months prior to the expiry of the term of the lease, in the case of a building, and not later than one year prior to the expiry of the term of the lease in the case of land; provided that the lease as renewed shall be a lease without fixed term (Article 613).

*\*Refer to the Article 596 – Article 621 for provisions regulating the Lease.*

#### *Loan for Use*

Definition of and conditions for loan for use: A loan for use refers to a contract pursuant to which one party allows another party to use and profit from a certain thing free of charge (Article 625). A loan for use comes into effect by virtue of one party receiving a certain thing from the other party subject to a promise to return it after using and profiting from it free of charge (Article 626).

*\*Refer to the Article 625 – Article 636 for provisions regulating the Loan for Use.*

#### *Mandate*

Definition of mandate and formalities of contract: "Mandate" refers to a contract whereby one party, called the "mandator", grants to another party, called the "mandatory", the power to administer business on behalf of the mandator (Article 637). A mandate may be for value or gratuitous. If no intention is manifested that the mandate be for value, it shall be presumed to be gratuitous (Article 638). A contract of mandate shall be formed by agreement of the parties alone (Article 639).

Mandatory's obligation to deliver: The mandatory must deliver to the mandator monies and other things that he/she has received in the course of administering the mandated business. The mandatory must also deliver the reaped fruits to the mandatory (Article 642).

Mandatory's liability to compensate for money spent: If the mandatory has consumed monies for his/her personal benefit that the mandatory is to deliver to the mandator, or any monies that are to be used for the benefit of the mandator, the mandatory must pay interest for the period from the day of that consumption. In such cases, if any damages still remain, the mandatory shall be liable to compensate for the same (Article 643).

*\*Refer to the Article 637 – Article 651 for provisions regulating the Mandate.*

#### *Contract for Work*

Definition of contract for work: A contract for work is a contract whereby one party [(the "contractor")] assumes the obligation to complete agreed work and the other party [(the "principal")] assumes the obligation to pay remuneration for the results of such work (Article 652). The remuneration shall be paid simultaneously with the delivery of the object of the work; provided that if no delivery of a thing is required, the contractor may demand the remuneration after the completion of the work (Article 653).

Obligation to complete work without defect (Article 654):

- (1) The contractor assumes an obligation vis-à-vis the principal to complete the work without defect.
- (2) Work shall be deemed to be defective if it does not conform to the nature agreed. If the nature of the work has not been agreed, work shall be deemed to be defective if it is not fit for the use assumed in the contract, and if no specified use is assumed in the contract, the work shall be deemed to be defective if it is not fit for normal use.
- (3) Work shall be deemed to be defective if the contractor produces work that is different from that ordered or deficient in quantity.

Demand for subsequent completion (Article 655):

- (1) If the work is defective, the principal may demand that the contractor effect subsequent completion within a reasonable time designated by the principal. In such a case, the contractor at his option may either rectify the defect or redo the work.
- (2) The contractor may refuse to effect subsequent completion if the cost thereof is excessive in comparison with the detriment resulting from the defect.
- (3) The rights provided in Articles 655(Demand for subsequent completion) must be exercised within a period of 1 year (Article 661).

*\*Refer to the Article 652 – Article 663 for provisions regulating the Contract for Work.*

#### *Contract of Employment*

Contract of employment: A contract of employment is formed by the promises of one party to perform services under employment, and another party to pay wages for it. The party who promises to perform services under employment is referred to as the “employee” and the other party as the “employer” (Article 664).

Specification of working conditions: At the time of conclusion of the contract of employment, the employer must specify the wages, working hours and other working conditions for the employee. The employee may terminate the contract of employment immediately if the actual working conditions differ from those specified (Article 665).

Application of Labor Law: Employment contracts shall be governed by the provisions of the Labor Law in addition to those of this Code (Article 668).

*\*Refer to the Article 664 – Article 668 for provisions regulating the Contract of Employment.*

#### *Deposit*

Definition of deposit: Deposit refers to a contract whereby one party, the depositary, accepts a thing for custody for a certain period from another party, the depositor, and promises to return the identical thing to the depositor upon the expiry of the period of custody. Except where there is specific agreement, the depositor assumes no obligation to pay remuneration to the depositary; provided that the depositary may demand reasonable remuneration from the depositor even in the absence of specific agreement if the depositary has concluded the contract of deposit as its own business or where there is a provision of law to this effect (Article 669).

Effectiveness of consensual contract of bailment: If there is a mere agreement between the parties to form a deposit in the future, either party may revoke such agreement at any time until delivery of the object of the deposit; provided that in the case of a promise to form a contract of deposit for value, if in breach of such promise the party who is to become the depositary causes damage to the other party by refusing to receive the delivery of the object of the deposit, he must compensate the other party for such damage unless he has a good reason for such refusal (Article 671).

Depositary’s duties: A depositary shall be obliged to keep custody of the

thing bailed with the care of a prudent manager. The depositary may not use the thing bailed without the consent of the depositor (Article 673).

Liability of depositary: The depositary shall be liable to pay damages if he destroys, loses or damages the object of the deposit; provided that this shall not apply if the depositary proves that such destruction, loss or damage was not the result of negligence on his part. In the case of hotels, lodging houses, restaurants, bathhouses or other facilities where guests congregate, the owner of the facility who accepts deposit of things by guests shall not be exempted from liability for destruction or loss of or damage to the object of the deposit unless he proves force majeure (Article 674).

Mitigation of liability where valuables not declared: The court may reduce the liability of the depositary in damages where the depositor has deposited cash, negotiable instruments or other valuable items without declaring the type and the value thereof to the depositary (Article 676).

Depositary’s notice obligation: If a third party asserting rights with respect to the deposited object has brought a lawsuit against the depositary, or has effected an attachment, the depositary must notify the depositor of that fact without delay (Article 679).

Depositor’s demand to return: Even if the parties specify the time for the return of the deposited object, the depositor may demand the return of the same at any time (Article 680).

Return by depositary: If the parties have not specified the timing of the return of the deposited object, the depositary may return the same at any time. If the timing of the return is specified, the depositary may not return the deposited object prior to the due date unless there are unavoidable grounds (Article 681).

Details of obligation to return: The depositary assumes an obligation to return to the depositor the identical thing received at the time of the deposit. In cases where the depositary is not liable for destruction or loss of or damage to the object of the deposit, the depositary shall be obliged to deliver to the depositor any insurance money or other things received as subrogated object that was destroyed, lost or damaged (Article 682).

*\*Refer to the Article 669 – Article 698 for provisions regulating the Contract of Employment.*

#### *Partnership*

Definition of partnership: A partnership contract refers to a contract for the establishment of an organization without judicial person’s status for the purpose of carrying on a common undertaking with contributions made by each party (Article 699).

Establishment of partnership: A partnership refers to an organization established by agreement of partners to contribute to and carry on a common undertaking. The contributions to be made by each partner may take the form of services instead of property rights (Article 700).

Co-ownership of partnership property: The contributions of the partners and all other partnership property shall be co-owned by all the partners. No partner may seek partition of the partnership property prior to the dissolution of the partnership; provided however that where all the partners agree, a partner may seek partition of the partnership property prior to the dissolution of the partnership (Article 701).

*\*Refer to the Article 699 – Article 718 for provisions regulating the Partnership.*

#### *Compromise*

Definition of compromise: A compromise is a contract involving mutual

promises by the parties to a dispute to resolve such dispute by concessions (Article 724).

Subject matter of compromise: In order to make a compromise, the parties must have the power to dispose of the subject matter involved in the compromise (Article 726).

Penalty clause: A compromise contract may include a provision for a penalty to be imposed on a party breaching the contract (Article 726).

Mistake relating to rights, etc. in dispute: Even where one of the parties has made a compromise based on a mistake as to the ownership of the right or a fact that forms the basis of the calculation of the subject matter in dispute, if the parties have made the compromise by making concessions concerning the ownership of the relevant right or the existence of the fact or the value in question, etc., the compromise cannot be rescinded on the ground of mistake as to the ownership of the right, the existence of the fact or the value in question, etc. (Article 728).

*\*Refer to the Article 724 – Article 728 for provisions regulating the Compromise.*

#### *Unjust Enrichment*

Requirements and effect of unjust enrichment: A person who has benefited from the property or labor of others without legal cause and has thereby caused loss to said others shall assume an obligation to return that benefit to the extent that the benefit exists (Article 736).

Obligation to return benefit received mala fide: Where a person receiving a benefit under Article 736 (Requirements and effect of unjust enrichment) was aware that there was no legal cause or that the contract was void, the said person shall be obliged to return any benefit existing at the time he became aware of the said fact together with interest thereon. The person receiving the benefit under paragraphs (1) or (2) shall be obliged to compensate any damage suffered by the person who incurred the loss [by enriching the first-mentioned person] (Article 737).

Discharge when there is no obligation: A person who tenders anything as performance of an obligation that does not exist may demand return of the thing tendered; provided however that, where such person was aware at the time of performance that the obligation did not exist, he may not demand return of the thing tendered (Article 738).

*\*Refer to the Article 736 – Article 741 for provisions regulating the Unjust Enrichment.*

#### *Torts*

Definitions of intent and negligence: For the purposes of this Chapter, an intentional or negligent act is either of the following types of act (Article 742):

- a) an act that harms another where the actor has foreseen that a particular result would occur but accepted the occurrence of such result; or
- b) an act with respect to which (i) a person having the same profession or experience as the actor could have foreseen that a particular result would normally occur from the act, but the actor failed to foresee the result due to an absence of care, and (ii) the actor owes a duty to avoid the occurrence of such result but neglected to fulfill such duty.

Elements of general tort and burden of proof: A person who intentionally or negligently infringes on the rights or benefits of another in violation of law is liable for the payment of damages for any harm occurring as a result. Except as otherwise provided in this Code or in other laws, the person seeking damages must prove the intent or negligence of the tortious actor, the causal relationship between the actions of the tortious actor and the harm that occurred, and the harm suffered by the injured party (Article 743).

Lack of competence to assume liability: A minor under the age of 14 cannot be held liable in tort. A person who due to mental defect or other reason lacks the capacity to understand the legal ramifications of their actions when committing a tortious act cannot be held liable in tort. However, this shall not apply where the person's condition was invited through intent or negligence (Article 745).

Employer's liability: A person who uses an employee to perform work is liable for damages caused in violation of law to another in the performance of that work by the employee through the employee's intent or negligence. An employer or substitute supervisor may demand compensation from the employee in proportion to their degree of negligence (Article 747).

Product liability (Article 751):

- (1) Where an unreasonably dangerous defect exists in a manufactured movable and harm results to another due to such defect, the manufacturer of the movable is liable for damages. However, this shall not apply where the defect could not have been discovered based on the scientific standards existing at the time of manufacture.
- (2) The manufacturer of a movable that incorporates a defective part or material is also liable for damages as a manufacturer.
- (3) For the purposes of this Article, the importer of an imported movable shall be deemed the manufacturer.
- (4) For the purposes of this Article, a person who affixes his name on a movable as a manufacturer or distributor shall be deemed the manufacturer.

Liability for dangerous item: A person who owns or manages an automobile or other transportation apparatus, an explosive item, a radioactive substance, a toxic chemical, a toxic organism or any other highly dangerous item is liable for damages for any harm caused to another thereby. However, this shall not apply where the harm occurred due to an unavoidable force, or where there was no failure in the person's management of the dangerous item and the harm was caused by the act of the injured party or a third party (Article 752).

Liability for structure affixed to land: Where harm results to another due to a failure in the installation or control of a structure affixed to and appurtenant to land, the person who manages the structure and the owner of the structure are jointly liable for damages. However, the person who manages the structure shall be exempted from liability if he proves that he exercised proper control over the structure (Article 753).

Definitions of justifiable self-defense and emergency escape (Article 755):

- (1) An act of justifiable self-defense is a harmful act that is made against an unlawful harmful conduct but is necessary in order to defend the physical well-being or the property of oneself or another from such conduct, and involves a situation in which the harmful conduct and the act of self-defense are closely related in time and there is no disparity in the means of self-defense employed and the severity of the harmful conduct [to be prevented thereby].
- (2) An act of emergency escape is an act that causes harm to another but was necessary in order to defend the physical well-being or the property of oneself or another from a present or impending danger, and involves a situation in which there is no disparity in the means of emergency escape and the severity of the danger [to be avoided thereby].

Grounds for excuse from illegality or responsibility: A tortfeasor shall be excused from responsibility for harm caused by the tortfeasor where the injured party consented to or assumed the risk of such harm. However, this shall not apply where such consent or assumption of risk contravenes prevalent social standards. A person who causes harm while engaged in justifiable self-defense or emergency escape shall not be held responsible for harm that results therefrom. In this case, the person committing the

unlawful conduct that gave rise to such justifiable self-defense or emergency escape shall be held responsible for the resulting harm (Article 756).

Principle of monetary damages; exceptions: Damages shall be paid in money in principle. Where money would not provide an appropriate remedy, the injured party may demand restitution or injunctive relief. A person who suffers harm to their honor or reputation may demand, in addition to damages, that the tortfeasor take measures to restore the injured party's honor or reputation, such as a published apology (Article 757).

Damages for harm caused by loss or destruction of a thing: Where a thing is destroyed or damaged by a tortious act, the injured party may seek compensation for the price of the damaged or destroyed thing, the cost of repair, etc. (Article 759).

Damages for wrongful death (Article 760):

- (1) Where the injured party dies as the result of a tortious act, such injured party shall acquire a right to demand damages for economic harm and emotional distress suffered prior to death. As used herein, 'economic harm' includes medical expenses which have already been paid or which the injured party is obligated to pay from the date of the tortious act until the date of death, as well as other expenditures, income which the injured party was unable to receive between the date of the tortious act and the date of death, etc.
- (2) Where a person who is obligated by law, custom or contract to provide support to a dependent dies as the result of a tortious act, the dependent may demand damages for economic harm suffered as a result of the injured party's death. As used herein, economic harm includes support that the dependent was unable to receive as a result of the injured party's death, expenditures made in place of the injured party, funeral expenses, etc.
- (3) Where the injured party dies as the result of a tortious act, the injured party's spouse, relatives within the first degree of consanguinity and relatives living in the same household as the injured party may demand damages for emotional distress they have suffered due to the injured party's death.

Damages for bodily harm: Where an injured party suffers bodily harm as the result of a tortious act, the injured party may demand damages for economic harm and emotional distress suffered thereby. As used herein, economic harm includes medical expenses already paid or expected to be paid in the future, loss of income while receiving medical treatment, future income that cannot be received due to the residual effects of the injury, etc. As used herein, emotional distress includes emotional distress suffered while receiving medical treatment, future emotional distress, etc. (Article 761).

Damages for mental or emotional distress caused by injury to honor or reputation: Where one's honor or reputation is damaged by a tortious act, the injured party may seek damages for mental or emotional distress accompanying the drop in one's social standing (Article 762).

*\*Refer to the Article 742 – Article 765 for provisions regulating the Torts.*

## **Book Six “SECURITY”**

### *General Provisions*

Definition of security provider and third party acquirer: A person who creates a real security right over his own property so as to secure the debt of another shall be called a “security provider”. A person who receives the assignment of the object of a real security right created by the debtor to secure his own debt shall be called a “third party acquirer” (Article 766).

Types of real security rights: The types of real security rights are limited to those established in the Civil Code or in special laws, and no other

type of real security may be created. The five types of real security rights established in the Civil Code are (i) rights of retention, (ii) statutory liens, (iii) pledge, (iv) hypothec and (v) security right by way of transfer of title (Article 767).

Object of real security right: A thing or right which cannot be transferred cannot comprise the object of a real security right. However, the lack of transferability of a thing shall not prevent the creation of a right of retention with regard thereto (Article 768).

Subordinate nature of real security right (Article 769):

- (1) A real security right is established in order to secure an existing debt. A real security right may also be established in order to secure a debt to be incurred in the future if it can be specified.
- (2) Where a debt is not formed due to the absence of the necessary elements thereof, real security is not formed as well.
- (3) Where a debt is void or rescinded due to a defective declaration of intention or other reason, the real security right is also void.
- (4) Where a debt is extinguished due to satisfaction, prescription or other reason, the real security right is also extinguished.
- (5) The provisions set forth in paragraphs (1) through (4) shall not apply to a floating hypothec that is created to secure multiple debts to be accrued under a continuing contract.

*\*Refer to the Article 766 – Article 773 for provisions regulating the General Provision of SECURITY.*

### *Right of Retention*

Meaning of right of retention: Where a person possessing a thing belonging to another has a claim arising in regard to such thing, the person may retain the thing until the claim is satisfied. However, if the claim has not yet become due, the right of retention shall not be created (Article 774).

Preferential application of fruits: The holder of a right of retention may collect fruits produced by the thing retained and apply them to satisfy the secured claim in preference to other creditors (Article 775).

*\*Refer to the Article 774 – Article 780 for provisions regulating the Right of Retention.*

### *Statutory Liens*

Definition of statutory liens (Article 781):

- (1) An obligee holding a statutory lien has a right to obtain satisfaction of the claim from the assets subject to statutory liens in priority to other obligors.
- (2) A statutory lien held by an obligee over all of the property of the obligor is called the general statutory liens.
- (3) A statutory lien held by an obligee over a specific property of the obligor is called a special statutory lien. In this case, the statutory lien over a specific movable held by the obligee is called a statutory lien over a movable, whereas the statutory lien over a specific immovable held by the obligee is called a statutory lien over an immovable.

Extension of Security Interest to Proceeds of Collateral: Statutory liens may also be exercised against things including monies that the obligor is to receive as a result of the sale, lease or loss of, or damage to, the subject matter of the statutory lien; provided, however, that this shall not apply after the payment or delivery of the monies or other thing has been made to the obligor (Article 782).

Definition of general statutory lien: A person who has a claim that arose from any of the causes listed below shall have a statutory lien over the entire property of the obligor (Article 783):

- a) Expenses for common benefit

- b) Claims held by employee
- c) Funeral expenses
- d) Supply of daily necessities.

Statutory lien for claims held by employee: Statutory liens for claims held by an employee shall exist with respect to any and all claims which the employee possesses under the labor contract (Article 758).

Definition of statutory lien over movables (Article 788):

A person who has a claim that arose from the causes listed below shall have a statutory lien over certain movables of the obligor:

- a) Lease of immovable property
- b) Transportation of passengers or luggage
- c) Preservation of movables
- d) Sale of movables, and
- e) Supply of seeds, seedlings, or fertilizer and breeding stocks, progeny, or forage of creatures.

Statutory lien for leases of immovable properties: Statutory liens for a lease of immovable property shall exist with respect to the movables of the lessee in connection with obligations of the lessee that arose from the lease relationship including rent for that immovable property (Article 789).

Scope of subject matter of statutory lien for lease of immovable properties - normal case: The statutory lien of a lessor of land shall exist with respect to movables furnished to that land or buildings for the use of that land, movables provided for the use of that land, and fruits of that land in the possession of the lessee. The statutory lien for a lessor of a building shall exist with respect to movables furnished to that building by the lessee (Article 790).

Statutory lien for transportation: Statutory liens for transportation shall exist with respect to luggage in the possession of the transporter, in connection with transportation charges for passengers or luggage and expenses incidental to the same (Article 794).

Statutory lien for immovables (Article 799):

- a) A person who has a claim that arose from the causes listed below shall have a statutory lien over certain immovable property of the obligor: a) The preservation of immovable property;
- b) Construction work for immovable property; or
- c) The sale of immovable property.

Statutory lien for construction work for immovable property: Statutory liens for construction work for immovable property shall exist, with respect to immovable property, in connection with the expenses of construction work performed by artisans, engineers and contractors. The statutory liens under the preceding paragraph exist, in cases where there is a current increase in the value of the immovable property resulting from the construction work, with respect to that increased value (Article 801).

Power to pursue third party acquirer: The holder of a statutory lien may not exercise the statutory lien with respect to the movable after the obligors have delivered such movable the third party acquirer (Article 807).

*\*Refer to the Article 781 – Article 815 for provisions regulating the Statutory Liens.*

### *Pledge*

Meaning of pledge: A pledgee shall have the right to possess the thing received from obligors or third parties as security for their claims and to have their own claims paid prior to other obligees out of that thing (Article 816).

Extension of security interest to the proceeds of the collateral: A pledge may also be exercised against money or other things which the pledgor is

entitled to receive due to a sale or loss of, or damage to the thing pledged. However, it may not be exercised after such money or other things are paid or delivered to the pledgor (Article 817).

Formation of pledge and requirement of delivery: A pledge shall be created when the thing to be pledged is delivered to the pledgee by the obligor or a third party who provides the security (Article 818).

Scope of secured claim: Pledges shall secure the principal, interest, penalties, expenses of executing the pledge, expense of preserving the Thing pledged and the compensation of damage arising from failure to perform obligations or latent defects in the Thing pledged (Article 820).

Requirements for perfection of pledges: The pledgee of a movable cannot assert the pledge against a third party unless he is in continuous possession of the thing pledged (Article 829).

Interest: The pledgee of an immovable cannot demand interest on his/her claim (Article 836).

Duration: The duration of a pledge of an immovable cannot exceed five years. If a pledge of an immovable is created for a longer period, such period shall be reduced to five years. The pledge of an immovable may be renewed (Article 838).

Subject matter of pledge over rights<sup>2</sup>: Pledges may have property rights for their subject matters (Article 840).

Enforcement of pledge through collection of claim: A pledgee may directly collect the claim that is the subject matter of the pledge. If monies are the subject matter of a pledged claim, the pledgee may collect the same to the extent of the portion that corresponds to the amount of the pledgee's own claim. If the subject-matter of the claim is not money, the pledgee has a pledge over the thing to be received as satisfaction thereof (Article 842).

*\*Refer to the Article 816 – Article 842 for provisions regulating the Pledge.*

### *Hypothec*

Nature of hypothec: A hypothec shall have the right to receive the performance of his/her claim prior to other obligee out of the immovable properties that the obligor or a third party provided to secure the obligation without transferring possession. A perpetual lease or usufruct may also be made the object of a hypothec (Article 843).

Asserting hypothec: A hypothec may not assert the hypothec against a third party who is not the hypothecator unless the instrument creating a hypothec is notarized and registered in the land registry (Article 845).

Scope of effect of hypothec: [The effect of] a hypothec shall extend to all things that are attached to and form part of the land comprising the object of the hypothec when the hypothec is created, including buildings residing thereon. It also extends to things that attach to the land after the hypothec is created (Article 846).

Effect of hypothec on land over building owned by third party: Where based on a perpetual lease, usufruct or leasehold a third party owns a building on the land comprising the object of the hypothec [when the hypothec is created], [the effect of] the hypothec does not extend to the building (Article 847).

Order of priority of hypothecs: Where multiple hypothecs have been created on an immovable in order to secure multiple debts, the order of their priority shall be based on the order of their registration (Article 851).

Compulsory sale of hypothecated property: In the event of a failure to perform on a debt, a hypothec may apply to the court for compulsory sale

Note 2 : As used in this translation, the term 'property right' shall include rights over property (rights in rem), rights arising from an obligational relationship (rights in personam), intellectual property rights, shares in a company, etc., and can be contrasted with 'non-property rights' such as personal rights or other rights purely inherent to one's identity or status.

of the hypothecated immovable (Article 853).

Compulsory sale of buildings owned by third party (Article 854):

- (1) Where the hypothecator or a third party erects a building on land after it is hypothecated, and the hypothecator owns that building, the hypothec may demand the compulsory sale of the building together with the hypothecated land. However, if the price of the land together with the building thereon is less than the price of the land as a vacant plot, the hypothec may demand that the hypothecator remove the building prior to the compulsory sale of the land.
- (2) Where a third party owns the building on the hypothecated land based on a perpetual lease, usufruct or leasehold, if the third party cannot assert such perpetual lease, usufruct or leasehold against the hypothec, the hypothec may demand the compulsory sale of the building together with the hypothecated land.

Transfer or waiver of hypothec: A hypothec may transfer or waive his right of hypothec for the benefit of another creditor(s) of the same debtor (Article 860).

Transfer, waiver or change of ranking: A hypothec may transfer or waive his priority ranking for the benefit of another hypothec of the same debtor. Moreover, a hypothec may change the priority of his ranking among multiple hypothecs with the consent of the other hypothecs. However, where such a change would affect the interests of another party, such party's consent must be obtained (Article 861).

Effect of disposal of hypothec: The disposal of a hypothec described in Articles 859(Sub-hypothecation), 860(Transfer or waiver of hypothec) and 861(Transfer, waiver or change of ranking) shall be ineffective unless it is notarized and entered in the registration thereof. The disposal of a hypothec may not be asserted as against the principal debtor, a guarantor, hypothecator or their respective successors unless the principal debtor is notified of such disposal or acknowledges thereto (Article 862).

Definition of revolving hypothec: A hypothec may be created between a creditor and a debtor to secure unspecified claims, up to the limit of a maximum amount that may occur from a certain type of continuous transactions. A hypothec of this nature is referred to as a revolving hypothec. The scope of the unspecified claims that are secured by a revolving hypothec must be set forth in the agreement creating the revolving hypothec (Article 867).

Scope of secured claims: A revolving hypothec may exercise his/her revolving hypothec up to the maximum amount with respect to all fixed payments of principal as well as periodical payments including interest and compensation for damages resulting from failure to perform obligations (Article 868).

Amendment of the scope of secured claims: The parties to a revolving hypothec agreement may through their mutual agreement amend the scope of the claims secured by the revolving hypothec during the period of time until the principal is fixed. Such an amendment must be registered before the principal is fixed (Article 869).

Amendment of maximum amount (Article 870):

- (1) The parties to a revolving hypothec agreement may through their mutual agreement amend the maximum amount of a revolving hypothec.
- (2) The consent of interested parties must be obtained in the event of an amendment as set forth in paragraph (1).
- (3) An amendment set forth in paragraph (1) cannot be asserted against any third party other than the persons who have consented pursuant to paragraph (2) unless the amendment is registered.

Date for fixing principal: With respect to the principal secured by a revolving hypothec, the date when the principal is to be fixed may be prescribed or amended. The date must be within five (5) years of the date on which it

is prescribed or amended. The amendment of the date must be registered prior to the said date (Article 871).

*\*Refer to the Article 843 – Article 887 for provisions regulating the Hypothec.*

*Transfer as Security*

Definition of transfer as security: A transfer as security shall mean the transfer of the ownership of a prescribed movable owned by a debtor or a third party, to the creditor, for the purposes of securing a debt. In this event, the ownership over the property shall be re-transferred to the person who provided the security when the debt is paid in full (Article 888).

Creation of security interest under a transfer as security: A security interest under a transfer as security shall be created through an agreement between the creditor and the debtor or the third party providing the movable(s) for the transfer as security (Article 889).

Perfection of security interest under a transfer as security: A security interest under a transfer as security cannot be asserted against a third party other than the [security creator] unless possession of the object is assigned (Article 890).

Extent of effect of security interest under a transfer as security: [The effect of] a security interest under a transfer as security shall extend to all things that are affixed to and form part of the object of the security interest of the transfer as security at the time of the creation thereof. It shall also extend to all things that are affixed to the object subsequent to the creation of the security interest under the transfer as security (Article 891).

Right of retrieval of a security creator: The security creator may, even after the due date of the debt has passed and until the settlement payment is made, tender the entire amount of the debt and show this fact to the holder of the security interest under the transfer as security, and retrieve the object under the transfer as security; provided, however, that if the price of the object encumbered by the security interest under the transfer as security does not exceed the amount of the debt that is payable, the preceding shall not apply after the holder of the security interest under the transfer as security has notified the security creator to that effect (Article 899).

*\*Refer to the Article 888 – Article 899 for provisions regulating the Transfer as Security.*

*Guaranty*

Formation of contract of guaranty: A guaranty shall be formed when (i) a prospective guarantor undertakes to the obligee that in the event the obligor ['principal obligor'] fails to perform his obligation ['underlying obligation'], the prospective guarantor will perform the whole or part of such obligation together with the obligor ['guarantor's obligation'], and (ii) the obligee accepts such undertaking. Where assumption of the guaranty obligation does not constitute part of the business of the prospective guarantor, the obligee shall provide the prospective guarantor with any and all material information concerning the guaranty obligation to be assumed, thereby giving the prospective guarantor a chance to fully deliberate [whether to enter into the contract of guaranty based on such information] (Article 900).

Formality of contract of guaranty: A guaranty undertaking made without being recorded in an instrument or document may be revoked at any time. However, this shall not apply where the guarantor has voluntarily set to perform the guaranty obligation. The provisions of paragraph (1) shall also apply to a guaranty undertaking made in connection with a monetary obligation where the amount of the guaranty obligation is not set forth in the guarantor's handwriting. The contents of the guaranty obligation shall be specifically described in the guaranty instrument or document (Article 901).

Scope of guaranty: A guaranty obligation shall include interest accruing on the underlying obligation, penalties, damages and all other charges incidental to the underlying obligation (Article 903).

Qualification as guarantor: Where an obligor has a duty to furnish a guarantor to the obligee, the guarantor must be a person of full legal capacity who has sufficient financial ability to effect performance. If the guarantor ceases to fulfill such conditions, the obligee may demand that the obligor replace the guarantor with a person who fulfills such conditions (Article 907).

Meaning of joint guaranty and principle of joint guaranty: [A guarantor who is obligated to perform jointly and severally with the principal obligor] may not (i) demand of the obligee that performance be demanded from the principal obligor prior to the guarantor, or (ii) exempt oneself from enforcement of the guaranty obligation by establishing that the principal obligor has sufficient resources to tender performance and is easily subject to execution (Article 908).

Co-guarantors: Where multiple persons undertake to be guarantors in a contract, each guarantor is obligated with respect to the entire amount of the underlying obligation (Article 910).

Commissioned guarantor's right to indemnification: Where a guarantor commissioned by the principal obligor has effected performance on behalf of the principal obligor or has otherwise extinguished the underlying obligation at his expense, guarantor is entitled to demand indemnification from the principal obligor (Article 911).

Subrogation following performance: A guarantor who has effected performance of the underlying obligation or otherwise procured discharge thereof at his own expense shall acquire the obligee's rights in connection with the underlying obligation, and shall be entitled to exercise in lieu of the obligee the security interests securing such rights (Article 916).

*\*Refer to the Article 900 – Article 920 for provisions regulating the Guaranty.*

#### *Joint Obligation*

Definition of joint obligation: Where multiple persons have assumed a joint obligation, the obligee may demand full or partial performance from any individual obligee or from all of the obligees simultaneously or separately (Article 921).

Principle of relative effect: Except as provided in Articles 924 (Universal effect of demand or other ground for interruption of prescription period) through 930 (Universal effect of prescription), an event occurring with respect to one joint obligor shall have no effect with respect to the other obligors (Article 931).

Performing obligor's right to indemnification: Where a joint obligor has obtained a discharge from the obligation through his own performance or other expenditure, and the other joint obligors have consequently been discharged as well, the joint obligor may demand indemnification from the other obligors with respect to their respective shares of the obligation (Article 932).

*\*Refer to the Article 921 – Article 937 for provisions regulating the Joint Obligation.*

#### **Law on the Implementation of Civil Code**

The Law on the Implementation of Civil Code was promulgated on 31 May 2011. The Law aims to define the implementation date of Civil Code which was promulgated by Royal Kram #NS/RKM/1207/030 on 8 December 2007 (hereinafter referred to as the "Civil Code"), as defined in the first paragraph of Article 1305 (Date of Enforcement) of the Civil

Code, and specify the transitional measures and other necessary points related to the implementation of Civil Code as defined in the second paragraph of same article. The major provisions relating to business and investment are as follows.

#### *Date to Be Applicable (Article 5):*

Law on the Implementation of Civil Code shall become applicable after 6 months of its publication (Article 84). The Civil Code shall be applicable from the date of entry into force of Law on the Implementation of Civil Code (Article 4).

#### *Principle of Application of the Civil Code (Article 5):*

- 1) The Civil Code shall not apply to matters occurring before the Date of Application set forth in Article 4 (hereinafter referred to as "Date of Application") except where otherwise provided. However, a continuing legal relations occurring before the Date of Application and still existing after the Date of Application shall be enforced pursuant to the Civil Code from the Date of Application.
- 2) The effect of legal provisions or customs in Cambodia before the date of the implementation of the Civil Code shall not be disrupted after the Date of Application, except where otherwise provided in Chapter 5 (Transitional Provisions) of this Law.
- 3) Above provisions shall not prevent fair implementation of the Civil Code to matters occurring before the Date of Application in the event that there are no applicable legal provisions or customs or existence of such provisions/customs is obscured.

#### *Submission of Inventory Sheet, etc., to the Court (Article 6):*

The court defined in paragraph 1 of Article 72 (Duty to examine and report the juristic person's asset/assets) of the Civil Code is the Court of First Instance having jurisdiction over the juristic person's principal office. The court which accepts all juristic person's submission of inventory list may investigate such a person, order such person to immediately comply with the procedure stated in Article 78 (Bankruptcy during Liquidation) of the Civil Code, and take other necessary measures for a prompt and correct liquidation.

#### *Notice of Intention to a Person Further Away (Article 7):*

The declaration of intention to a person further away may be confirmed by "an acknowledgement of the receipt" of a registered letter which contains "Acknowledgement of the receipt" and a copy of the letter noted by a court clerk.

#### *Definition of a Date-Certified Instrument (Article 8):*

"Date-certified instrument" refers to the following:

- a. For a notarial document, a date of making such document is the date-certified.
- b. For a privately-produced document noted by notary or court clerk on the date the letter is shown and signed, such a date is the date-certified.
- c. For a privately-produced document by which one among signatories is dead, such a date of the death is the date-certified.
- d. For a privately-produced document which is deemed as the original place of a date-certified instrument, such a date on the instrument is the date-certified of the private letter which is deemed as the original place.

\* Relevant provisions in Civil Code:

- Paragraph 3 of Article 459 (Subrogation by Performance)
- Paragraph 2 of Article 503 (Requirement for assertion of assignment of nominative claim)
- Paragraph 2 of Article 841 (Requirement for perfection of pledge over nominative claim)
- Paragraph 2 of Article 503 (Requirement for assertion of assignment of nominative claim) which has mutatis mutandis application

of paragraph 2 of Article 459 (Subrogation by Performance) and Article 513 (Establishment of assignment of contractual position)

*Definition of Notarial Document (Article 9):*

- a. A document made by a notary or a privately-produced document authenticated by a notary, and dated and signed by the notary after the authentication. However, notarial document stated in Article 336 (Formation of contract via offer and acceptance) and Article 862 (Effect of disposal of hypothec) of the Civil Code, a document made by a competent officer for registration process is also a notarial document.
- b. A notarial document defined in Article 845 (Asserting hypothec) of the Civil Code refers to a document made by a competent authority for registration process.

*Possession (Article 14):*

Land holding a certificate of possession or occupancy which is issued, in addition to compliance with provisions of “Land Law” promulgated by Royal Kram No.NS/RKM/0801/14 of August 30, 2001 and Article 242 (Protection of occupant of immovable holding a certificate of occupancy) of the Civil Code, shall be pursuant to Civil Code by deeming that the land holding certificate of possession or occupancy shall be issued in form of ownership unless such provision is contradictory with the characteristics of the possession. A person holding a certificate of possession or occupancy or transferee of such person holding such a certificate could create usufructuary real rights or real security rights in pursuant to the paragraph 1.

*Maximum Interest Rate, etc. (Article 17):*

- 1) The maximum interest rate defined in paragraph 1 of Article 585 (Limitations on Interest) of the Civil Code shall be determined by a Prakas of the Ministry of Justice between 10 (ten) percent to 30 (thirty) percent per annum.
- 2) With regard to the agreement on prior determination of liquidated damages in the event of non performance of a Loan for Consumption Contract, in which money is the subject, if result of liquidated damages divided by principal amount exceeds the interest determined by Prakas of the Minister of Justice, the exceeding amount shall be null and void.
- 3) The above Prakas may determine the interest rate defined in paragraph 2 between 1.2 to 2 times of the maximum interest rate stated in paragraph 1 of this Article.
- 4) In the event that there is no special agreement on damage compensation for the delayed performance of the loan contract for consumption of which money is the subject attached with the interest, provisions of this Article and Article 585 (Limitations on Interest) of the Civil Code shall apply to compensation for damages for the delayed performance by deeming that such compensation is the interest within the scope of application of this Article and Article 585 (Limitations on Interest) of the Civil Code.

*Jurisdiction over Registration of Juristic Person (Article 18):*

Tasks concerning registration of a juristic person shall be under jurisdiction of Ministry of Justice.

- \* Jurisdiction person herein referred means nonprofit organization  
Tasks concerning registration of profit organizations shall be under jurisdiction of Ministry of Commerce.

*Effect of Real Rights Existing Prior to the Date of Application (Article 38):*

- 1) Real right defined in Book Three “Real Right” of the Civil Code, though it existed prior to the Date of Application, such a real right is still in effect as determined in the Civil Code from the Date of Application.

- 2) A long-term lease, usufruct, right of use, right of residence, or easement arisen from an agreement based on Land Law 2001 before its amendment according to Article 80 (Amendments on certain provisions of Land Law 2001) of this law shall be deemed as perpetual lease, usufruct, right of use, right of residence, or easement based on the Civil Code from the Date of Application. In this case, duration of existence of these rights shall be calculated from the date that such rights were created based on the Land Law 2001.

*Possession of Movable Prior to Date of Application (Article 39):*

If any person, who possesses a movable property prior to the Date of Application, fulfils the requirements defined in Article 193 (Bona fide acquisition of ownership of movable) of the Civil Code, such a person shall be entitled to the rights which may be enforceable on such movable on the Date of Application. In this case, the provision of the Civil Code shall only apply to the effect of contract transferring the ownership in the scope of application of Article 193 (Bona fide acquisition of ownership of movable) of Civil Code.

*Period of Long-Term Lease Existing Prior to the Date of Application (Article 41):*

With regard to long-term lease created prior to the Date of Application relied upon the Land Law 2001, and the remaining period of such a lease exceeds 50 (fifty) years on the Date of Application; and although there is a provision of Article 247 (Term of perpetual lease) of the Civil Code, such right shall remain in existence during the stipulated period of the agreement. Nevertheless, a long-term lease with a remaining period of more than 99 (ninety nine) years, existence of such a right shall be deemed to remain at 99 (ninety nine) years from the Date of Application.

*Transitional Provision on Registered Right of Use and Right of Residence (Article 43):*

If the right of use or right of residence, which is created based on Land Law 2001, is registered according to provision of paragraph 3 of Article 120 of Land Law 2001 such provision shall govern the registration with the reference to provision of Article 139 of the same law even though there is provision of Article 277 (Requirements for perfection of rights of use and rights of residence) of the Civil Code and even the holder of a right of use or right of residence does not use or profit as the matter of fact, this right can be asserted against third parties.

*Transitional Provision for the Compound Interest (Article 44):*

- 1) Provision of Article 319 (Compound interest) of the Civil Code shall not apply to the interest created prior to the Date of Application.
- 2) Application of paragraph 2 of Article 586 (Time of payment of interest and statutory compound interest) of the Civil Code shall be in accordance with the abovementioned paragraph 1.

*Transitional Provision for Non-Performance (Article 45):*

- 1) Where a person who assumes the obligation prior to the Date of Application has not performed his/her obligation after the Date of Application, such a person shall be liable for non-performance according to the provision of the Civil Code.
- 2) Aforementioned paragraph 1 shall apply mutatis mutandis to a case where a creditor refuses to receive performance or may not be able to accept the performance.
- 3) In case that contractual obligation established prior to the Date of Application is performed after the Date of Application, provision on warranty liability in the Civil Code shall apply to performance of such obligation.

*Transitional Provision for Special Rules for Monetary obligations (Article 46):*



In case a person who assumes the obligation having subject matter of monetary payment has not performed such obligation before the Date of Application, provision of Article 399 (Special rules for monetary obligations) of the Civil Code shall apply to the amount of money which is the damages occurred after the Date of Application.

*Transitional Provision for Set-Off (Article 47):*

Although an obligation is arisen prior to the Date of Application, it can be exempted through a set-off in accordance with the provision of the Civil Code. In case of both reciprocal obligations have met with the requirements of set-off before the Date of Application, the effect of extinction of obligation by set-off shall have retroactive effect on the Date of Application.

*Transitional Provision for Extinctive Prescription regarding Claim (Article 48):*

- 1) Provisions for extinctive prescription regarding claim set forth in the Civil Code shall apply to claim which is not yet extinguished by extinctive prescription before the Date of Application.
- 2) Notwithstanding the paragraph 1 above, if extinctive prescription of claim, which is calculated prior to the Date of Application, is longer than the extinctive prescription of claim stipulated in the Civil Code, such claim will not be extinguished by extinctive prescription of claim, until it reaches due date of extinctive prescription of claim set by previous law or other legal provisions. However, in case that remaining extinctive prescription exceeds extinctive prescription of claim on obligation stipulated in the Civil Code, which is calculated from the Date of Application, then provisions of the Civil Code shall apply for the calculation from the Date of Application.
- 3) In case of an indefinite duration of extinctive prescription of claim, the provision of extinctive prescriptive of claim on obligation in the Civil Code shall apply by calculating from the Date of Application.

*Transitional Provision for Loan for Consumption with Interest (Article 51):*

In the case the borrower of a contract of loan for consumption with interest established prior to the Date of Application is dead after the Date of Application, provision of later part<sup>3</sup> of Article 61 of Sub Decree No. 38 dated 28 October 1988 on Contract and Non Contractual Liabilities (hereinafter referred to as Sub Decree No. 38) shall not apply.

*Transitional Provision In Case where Leased Property Is Defective (Article 52):*

- 1) In case a lease established prior to the Date of Application is still existence after the Date of Application, provision of Article 605 (Lessor's liability for defects in leased property) of the Civil Code shall apply to this lease. In this regard, if the duration defined in paragraph 6 of Article 605 (Lessor's liability for defects in leased property) of the Civil Code commences prior to the Date of Application, such duration is 1 (one) year computing from the Date of Application.
- 2) Provision of paragraph 1 shall not apply in the event that 1 (one) year duration defined in paragraph 6 of Article 605 (Lessor's liability for defects in leased property) overdue 1 (one) year prior to the Date of Application.

*Security Prior to the Date of Application (Article 54):*

- 1) Even though real security right defined in the Civil Code was established prior to the Date of Application, such real security right shall still have effect as defined in the Civil Code after the Date of Application.
- 2) Pledge or hypothec, based on Land Law 2001, shall be deemed as the right of pledge or hypothec in compliance with the Civil Code after the Date of Application.
- 3) Pledge established prior or to the Date of Application which can be

asserted against the third party debtors or other third parties prior to the Date of Application, such a pledge is still effective after the Date of Application.

- 4) Pledge over "movable based on Sub Decree No. 38 (secured personal property)" shall be deemed as pledge in accordance the Civil Code after the Date of Application.

*Management of Gage (Article 55):*

- 1) Gage based on Land Law 2001 shall be deemed as hypothec in accordance with the Civil Code after the Date of Application.
- 2) Registration of gage shall be deemed as a registration of hypothec according to the provision of paragraph 1 above.
- 3) Gage right holder shall return certificate of title to the hypothecator immediately after the Date of Application.

*Management of Contract Establishing Real Security Right that Has Not Been Registered (Article 56):*

- 1) In case of forming written contract of pledge by authenticated documents stipulated in Article 207 of Land Law 2001, and the subject matter of pledge is already delivered but not yet registered prior or the Date of Application, the pledge shall have effect from the Date of Application.
- 2) In case of forming contract of hypothec by authenticated documents stipulated in Article 201 of Land Law 2001, but it was unregistered prior to the Date of Application, such hypothec shall have effect from the Date of Application.
- 3) In case of forming contract of gage by authenticated documents stipulated in Article 220 of Land Law 2001, but it was unregistered prior to the Date of Application, it shall be deemed as a contract of hypothec on the Date of Application.
- 4) Where hypothec defined in paragraph 3 is registered, hypothecator shall return the title of ownership to the hypothecator.

*Existent Duration of Pledge over immovable (Article 57):*

With regard to pledge over immovable established prior to the Date of Application and the remaining duration which such right exists exceed 5 (five) years on the Date of Application, the existent duration of pledge shall be 5 (five) years from the Date of Application.

*Determination of Universal Floating Guaranty (Article 58):*

A floating guaranty contract that does not determine accruing from a certain continuing legal relationship forming the basis of the underlying obligations prior to the Date of Application, the principal of the debt that is guaranteed by a floating guaranty contract shall be determined definitively on the Date of Application.

*Effect of Secured Transaction Executed Prior to the Date of Application (Article 73):*

Transaction which is executed prior to the Date of Application in accordance with the provisions of "Law on Secured Transaction" shall continue its effect after the Date of Application.

*Replacement Application based on Civil Code (Article 74):*

The transaction stated in Article 73 above (Effect of secured transaction executed prior to the Date of Application) fulfils the conditions stated in the Civil Code if the parties show their intention to change the transaction to the one that based on provisions of the Civil Code; then it is deemed that the parties executed the transaction on the Date of Application based on provision of the Civil Code. However, this change does not impact the interest of the third parties. In this case, parties of transaction which has been changed may not claim the effect transaction according to the Law on Secured Transaction.

Note 3 : Provision of later part of Article 61 of Sub Decree No. 38: In the event of a borrower's death, repayment of the entire debt can be demanded immediately by the lender and the obligation for repayment shall pass to the heirs of the deceased who shall be bound to pay the outstanding debt out of the deceased's estate and before the estate is distributed.

*Priority between the Transaction Based on the Law on Secured Transaction and Transaction Based on the Civil Code (Article 76):*

If any transaction executed based on the provision in Law on Secured Transaction relating to a subject matter and any transaction executed based on the provisions in the Civil Code relating to same subject matter are incompatible with the priority between those transactions, priority between those transactions is decided based on time that such transactions are enforced against the third parties.

*Protection of Bona Fide Person (Article 77):*

Provision of Article 76 above (Priority between the Transactions Based on the Law on Secured Transaction and Transaction Based on the Civil Code) shall not prevent application of Article 193 (Bona fide acquisition of ownership of movable) and Article 194 (Transfer of stolen or lost property) of the Civil Code.

*Abrogation of Some Provisions of Sub Decree No. 38 on Contract and Other Non-Contractual Liability (Article 79):*

Sub Decree No. 38 shall become ineffective from the Date of Application, except provisions from Article 83 to 88 of that Sub Decree, which shall remain effective after the Date of Application until otherwise provided by other laws.

*Amendment of Some Provisions of Land Law 2001 (Article 80):*

30 omission/modifications have been made to the provisions of Land Law 2001 by this Law. For details, refer to the full text of “Law on the Implementation of Civil Code\_110531” under “Civil Code” and “Land Law\_010430” under “Land” in “Laws and Regulations” of the CDC Website ([www.cambodiainvestment.gov.kh](http://www.cambodiainvestment.gov.kh)). Among them, major modifications/deletions are as follows.

- Change the phrase “by document of sale, gift, exchange, or succession which is made by a any person authorized by Article 65 of this law” to “written documents according to the form of notarial documents certified by competent authority” in paragraph 2 of Article 244.
- Change Article 245 to “Contract transferring ownership over immovable shall be in writing in accordance with notarial documents certified by competent authority in order to register this contract in the registry list of cadastral administration”.

*Amendment of Some Provisions of the Civil Code (Article 81):*

38 omission/modifications have been made to the provisions of Civil Code by this Law. For details, refer to the full text of “Law on the Implementation of Civil Code\_110531” and “Civil Code” under “Civil Code” in “Laws and Regulations” of the CDC Website ([www.cambodiainvestment.gov.kh](http://www.cambodiainvestment.gov.kh)). Among them, major modifications/deletions are as follows.

- Add “or a certificate of land use-occupancy” after the words “a certificate of occupancy” of paragraph 1 and 3 in Article 242 (Protection of occupant of immovable holding a certificate of occupancy)
- Change “in Article 133 (Creation, transfer and alternation of real rights by agreement), Article 134 (Requirements of assertion for creation, transfer and alternation of real rights), Article 135 (requisite of transfer of title by agreement pertaining to an immovable), Article 160 (Acquisition of ownership over immovable), and Article 187 (Acquisition of ownership over movable)” to “Article 133 (perfection) till Article 135 (requisite of transfer of title by agreement pertaining to an immovable)” in paragraph 1 in Article 528 (Transfer of title)
- Change word “the buyer” to “the seller” in point C of paragraph 2 in Article 539 (Obligation to deliver conforming goods)
- Change phrase “a demand described in paragraph 1” to “a demand described in paragraph 2” of paragraph 4 in Article 605 (Lessor’s liability for defects in leased property)
- Change phrase “to any money that the assignee or sub-lessee is to receive” to “to any money that the assignor or sub-lessor” in the

later part of Article 791 (Scope of subject matter of statutory lien for lease of immovable property-assignment or sublease)

- Change phrase “for the benefit of another creditors” to “for the benefit of another hypothee” in 1st sentence of paragraph 1 in Article 861 (Transfer, waiver or change of ranking of hypothee)
- Omit phrase “without the consent of other obligors” of paragraph 3 in Article 922 (Creation of joint obligation)

### III-3 Principles of Economic Management

Article 56 of the Cambodian Constitution declares that Cambodia shall adopt a market economy system. The Constitution further says in Article 61 that the State shall promote economic development in all sectors and remote areas, especially in agriculture, handicrafts, and industry, with attention to policies concerning water, electricity, roads and means of transport, modern technology and a system of credit.

In 1994, the Minister of Commerce issued to all provincial governors and mayors Circular No.63, which instructed that market standards and guidelines should be observed as follows:

- All the prices of goods shall be determined by mutual agreement between buyers and sellers.
- The State shall allow free competition between traders.
- The State shall guarantee traders freedom to move goods.

New Article 10 of the Law on the Amendment to the Law on Investment (The Amended Law on Investment) also guarantees that the Cambodian Government shall not fix the price or fee of products or services of an approved Qualified Investment Project (QIP), which is also entitled for investment incentives (see “Chapter IV INVESTMENT”). Thus, Cambodia provides economic and business activities with the most open and freest environment.

### III-4 Company

#### Regulatory framework for the commercial enterprise

The “Law Bearing upon Commercial Regulations and the Commercial Register” was first enacted in May 1995 and modified in November 1999. This law defines the meaning of “Merchant”, “Trade”, “Trading Activities”, etc. and stipulates the obligation of the companies, including the foreign business, to register and the procedures of commercial registration.

The “Law on Commercial Enterprise” was adopted by the National Assembly on April 26, 2005, and promulgated on May 19, 2005, as the first comprehensive company law in Cambodia. This Law applies to the “Partnership,” which falls into the category of a General Partnership or a Limited Partnership; “Limited Company,” which is either a Private Limited Company or a Public Limited Company; and “Foreign Business” as well.

A partnership or company shall continuously maintain a registered office and a registered agent, who is a legally competent natural person in Cambodia; register with the Registrar the specific location of the office and the name of the agent (Article3); and display its name in the Khmer language, which shall be placed above and shall be larger than the name in another language (Article 5).

#### Limited company

The “Law on Commercial Enterprise” authorizes the formation of a “limited company,” either in a form of “private limited companies” or “public limited companies,” to carry on business in Cambodia (Article 85).

#### TYPE OF LIMITED COMPANY:

- Private Limited Company:

A private limited company is a form of limited company with characteristics as follows (Article 86):

- The company may have from 2 to 30 shareholders.
- When a private limited company is established by one person, it shall be called a “Single Member Limited Company.”
- The company may not offer its shares to the public.
- The company has one or more restrictions on the transfer of each class of its shares.
- The company shall be considered as a private limited company once registered in compliance with prescribed forms determined by a Prakas of the Ministry of Commerce.
- Public Limited Company:  
A public limited company is a form of a limited company that is authorized by this law (Law on Commercial Enterprise) to issue securities to the public (Article 87).

#### *CREATION OF A LIMITED COMPANY:*

One or more competent natural persons or legal persons may create a limited company by filing an Article of Incorporation with officials at the Ministry of Commerce (Article 91), and a “Certificate of Incorporation” shall be issued by the Ministry of Commerce after filing (Article 97). A company comes into existence and acquires a legal personality on the date when the company is registered (Article 98).

#### *SHARES:*

The company shall issue a minimum of 1,000 shares with a par value of not less than 4,000 Riels (approximately 1 US dollar) per share and has only one class of shares and the right of the holders of these shares is equal, unless otherwise provided in the Articles (Article 144). The shareholder’s liability to the company is limited to the price of the shareholder’s subscription (Article 147). When there is unanimous shareholder agreement, the existence of such agreement has to be written on the share certificate (Article 223).

#### *KHMER NATIONALITY:*

A company shall be deemed to be of Khmer nationality if the company has a place of business and a registered office in Cambodia and more than 51% of the voting shares of the company are held by a natural or legal person of Khmer nationality (Article 101).

#### *REQUIREMENT FOR RECORDS:*

A company shall prepare and maintain, at its registered office, records containing (Article 109):

- The articles and by-laws and all amendments thereto
- Minutes of meeting and resolutions of shareholders
- Copies of all notices required to be sent or filed in accordance with the law
- Securities register

In addition to the above records, a company shall prepare and maintain adequate accounting records for a period of ten years after the end of the fiscal year to which the records relate (Article 113).

#### *DIRECTORS:*

A private limited company shall have one or more directors, while a public limited company shall have at least three directors. Shareholders shall elect directors by ordinary resolution (Article 118) and the board of directors shall elect a chairman from among its members by a majority vote of the directors (Article 127). Each director shall be elected for a term of two years and may be re-elected (Article 121.) Any legally competent natural person over 18 years old may serve as a director (Article 120).

#### *BOARD OF DIRECTORS:*

The Board of Directors shall manage the business and affairs of a company. Subject to the articles, the directors may exercise the following powers (Article 119).

- Appoint and remove all officers, determine the specific powers and set the salaries and other compensation for such officers
- Issue notes, bonds and other evidence of debt of the company
- Propose to shareholders amendment to, or removal of the articles of incorporation, or an agreement of merger or consolidation between the company and any other person
- Propose to shareholders a dissolution or liquidation of the company, etc.

#### *MERGER:*

Two or more companies may merge into one company or may consolidate to form a new company. The legal personality of a constituent company (a dissolving company) ceases from the date the Ministry of Commerce issues a Certificate of Merger to the surviving company (a company that continues the business) (Article 241). The board of directors of each company that proposes to merge shall adopt a resolution approving an agreement for merger. Such resolution shall be approved by a majority of all directors (Article 242). Detailed procedures for effecting the merger are stipulated in Articles 243 to 250.

#### *DISSOLUTION AND LIQUIDATION:*

A company that has not issued any shares may be dissolved at any time by resolution of all the directors. A company that has no property and no liabilities may be dissolved by special resolution of the shareholders. The company shall send the articles of dissolution to the office in charge of company administration of the Ministry of Commerce and, upon receipt of such articles of dissolution, the Ministry of Commerce shall issue a certificate of dissolution (Article 251).

A director or a shareholder who is entitled to vote at an annual meeting of shareholders may propose the voluntary liquidation and dissolution of a company (Article 252). The procedures for the voluntary liquidation and dissolution are defined in the articles from 252 to 257. The dissolution and liquidation provisions shall not be applied to any company that has applied for bankruptcy to the court (Article 258).

#### **Partnership**

A partnership is a contract between two or more persons (Article 8) and the contract of partnership may be verbal or in writing (Article 9).

#### *GENERAL PARTNERSHIP:*

A general partnership shall acquire a legal personality when it registers and have the following rights (Article 12):

- to own movable and immovable property in its own name
- to carry on business in its own name
- to contract in its own name
- to sue and be sued in its own name

Each partner shares in the profits and losses of the partnership (Article 23) and all partners are jointly and severally liable for obligations. A third party shall seek enforcement of obligations against the partnership and partnership assets prior to seeking enforcement against the partners (Article 42).

#### *LIMITED PARTNERSHIP:*

A limited partnership is a contract of partnership between one or more general partners who are the sole persons authorized to administer and bind the partnership, and one or more limited partners, who are bound to contribute to the capital of the partnership (Article 64).

Each limited partner is entitled to receive his share of the profits and liable

only to the extent of the sum of money or value of the property he agrees to contribute (Article 71 and 72). The general partners are jointly and severally liable for the debts of the partnership to third parties (Article 75).

### **Foreign business**

#### *DEFINITION OF FOREIGN BUSINESS:*

A foreign business is a legal person formed under the laws of a foreign country where it has a place of business and doing business in Cambodia (Article 270). It may conduct business in Cambodia in the following forms (Article 271):

- Commercial representative office, commercial relations office or agency (“representative office”)
- Branch
- Subsidiary

A representative office and a branch are agents of their principals and do not have a legal personality separate from their principals.

A foreign business shall be considered to be “doing business” if the foreign business performs any of the following (Article 272):

- Rents office or any other space for manufacturing, processing or performing services for more than one month
- Employs any person for more than one month
- Performs any other act permitted for a foreign physical and legal person by Cambodian law

#### *REPRESENTATIVE OFFICE:*

A commercial representative office or commercial relations office may perform the following acts in Cambodia (Article 274):

- Contact customers for the purpose of introducing customers to its principal
- Research commercial information and provide the information to its principal
- Conduct market research
- Market goods at trade fairs and exhibit samples and goods in its office or at trade fairs
- Buy and keep a quantity of goods for the purpose of trade fairs
- Rent an office and employ local staff
- Enter into contracts with local customers on behalf of the principal

However, a representative office may not regularly buy and sell goods, perform services or engage in manufacturing, processing or construction in Cambodia. A commercial representative office may be closed by a decision of its principal (Article 277).

#### *BRANCH:*

A branch may perform the same acts as a representative office and, in addition, may regularly buy and sell goods and services and engage in manufacturing, processing and construction as a local enterprise as long as it does not perform acts prohibited by law to a foreign physical or legal person (Article 278). The assets of the branch shall be the assets of the principal. The principal shall be liable for any obligation of the branch (Article 279), and a branch may be closed by a decision of its principal (Article 282).

#### *SUBSIDIARY:*

A subsidiary is a company that is incorporated by a foreign company in Cambodia with at least 51% of its capital held by the foreign company (Article 283) and has a legal personality separate from the principal (Article 284).

A subsidiary may be incorporated in the form of a partnership or limited company (Article 285) and may carry on business the same as a local

company except for any act that is prohibited for foreign natural or legal person by laws of Cambodian law (Article 286).

## **III-5 Trade and Customs**

### **Regulatory framework for the trading activities**

In January 2000, “Prakas (Ministerial Order) on Trading Activities of Commercial Companies” was issued by the Ministry of Commerce, and both Cambodian and foreign companies, which are registered with the Ministry of Commerce, became to be allowed to have the right to freely engage in trading activities.

Under the Sub-Decree No.111 on the Implementation of the Law on the Amendment to the Law on Investment, however, investment activities in all kinds of commercial activity, import, export, wholesale, retails and duty free shops, are stipulated not to be eligible for investment incentives. (Section 2, Annex I)

### **Regulatory framework for the Customs**

“Law on Customs” was promulgated on 25 July 2007 for the following purposes (Article 1).

- To provide the right for the administration, control and collection of duties, taxes and fees on imported and exported goods,
- To provide for the control and regulation of the movement, storage and transit of such goods,
- To promote the prevention and suppression of fraud and smuggling,
- To participate in implementing the international trade policy of the Royal Government of Cambodia,
- To promote the application of international standards and best practices regarding customs control and trade facilitation.

#### *GENERAL PROVISION*

The Customs and Excise Department is responsible for the administration and enforcement of the provisions of this Law. The Department operates under the direct supervision of the Ministry of Economy and Finance (Article 1).

The Customs Territory includes the land territory, territorial waters and airspace as well as offshore islands of the KINGDOM OF CAMBODIA. The Royal Government of Cambodia may establish Free Zones that are excluded from all or part of the customs procedures (Article 2).

This Law must be applied:

- equally throughout the customs territory;
- equally to all persons; and
- without any immunity or dispensation to goods imported or exported by the state or on its behalf (Article 3)

All imported and exported goods are subject to the provisions of this law. Goods entering or leaving the customs territory are subject, as applicable, to import duties and taxes or export duties and taxes as specified in the Customs Tariff. The establishment and application of the Customs Tariff shall be prescribed by Sub-Decree (Article 5).

The Royal Government may by Sub-Decree take measures to protect Cambodian producers by raising tariffs when domestic producers are injured by an increase in imports, by subsidies provided by other governments to their countries’ exports to Cambodia, or by goods that are dumped on Cambodia’s markets (Article 7).

The Royal Government may by Sub-Decree prohibit or restrict, subject to conditions, the import or export of certain goods for any of the following purposes (Article 8):

- National security;
- Public order and standards of decency and morality;

- The protection of health and life of persons, animals or plants;
- The protection of national treasures of artistic, historic or archaeological value;
- The conservation of natural resources;
- The compliance with the provisions of any legislation of The Kingdom of Cambodia currently in force;
- The fulfillment of obligations under the Charter of the United Nations.

To combat smuggling and fraud, the Minister of Economy and Finance may by Prakas identify certain sensitive or highly taxed goods as specially designated goods for the purposes of this Law, and may impose additional controls and restrictions on their transport, circulation, storage and possession.

#### *IMPORT*

All imported goods must be reported at a customs office or other location as determined by the Director of Customs. The Minister of Economy and Finance may by Prakas determine the time, manner, documentation requirements, circumstances and exceptions with respect to the reporting of imported goods (Article 10).

All imported goods shall be reported at the nearest customs office through the legal route:

- a. in the case of goods in the actual possession of a person arriving in Cambodia, or that form part of personal baggage, by that person;
- b. in the case of goods imported by courier or as mail, by the person who exported the goods to Cambodia;
- c. in the case of goods, other than goods referred to in sub-paragraphs (a) and (b) of this paragraph, on board a conveyance arriving in Cambodia, by the person in charge of the conveyance, including military conveyances;
- d. in any other case, by the person on behalf of whom the goods are imported.

Every person reporting goods under this Article shall:

- a. answer truthfully any question asked by a customs officer with respect to the goods;
- b. where a Customs officer so requests, make the goods available for inspection by Customs in the manner determined by the Director of Customs (Article 11).

No person shall unload goods from a conveyance arriving in Cambodia until the goods have been reported to Customs in accordance with this Law (Article 12).

Customs may authorize the removal of the goods referred to in Article 10 from the customs clearance area prior to the payment of duties and taxes and fees, under customs control and after the fulfillment of customs formalities, for the purposes of:

- placing in customs temporary storage;
- placing in customs bonded warehouse;
- further transportation within or through the Customs Territory to a destination (Article 13)

Imported goods may be released by Customs for temporary admission if at the time of importation it can be demonstrated that these goods will be re-exported. Temporarily imported goods shall be under customs control until such time as the conditions of their temporary admission have been fulfilled (Article 15).

#### *EXPORT*

All goods to be exported must be reported at a customs office or other location as determined by the Director of Customs. The Minister of Economy and Finance may by Prakas determine the time, manner, documentation requirements, circumstances and exceptions with respect to the reporting, movement, storage and transportation of goods to be exported (Article 16).

#### *TARIFF CLASSIFICATION, ORIGIN AND CUSTOMS VALUE*

Tariff classification, origin and customs value of imported goods specified on Customs declarations, shall be declared in accordance with the following rules (Article 18).

##### **(a) Tariff Classification and Origin**

- Any person, importer or his agent, who completes a customs declaration of imported goods, shall declare the tariff classification, origin of those goods and customs value for the calculation and assessment of duty and tax. Customs shall verify the tariff classification and origin of the imported goods.
- Any person, importer or his agent is responsible for declaration of the accurate customs value for the payment of duties and taxes and must disclose all information, invoices and other documentation to enable Customs to verify and accurately determine the customs value of the imported goods.
- Customs may require from any person, importer or his agent, proof, by declaration or the production of necessary documents required by Law and existing regulations, of the correctness of the declaration, and may refuse to release the goods until such evidence is provided.
- Customs may, within 3 years of the date of registration of any customs declaration, following an audit, investigation, inspection or examination of the imported goods, re-determine the declared tariff classification or origin by issuing a Notice. This notice shall also state the reason for the re-determination of the tariff classification or origin.
- When an audit, investigation, inspection or examination undertaken under this Article finds any fraudulent activity, a Notice may be issued for the goods under investigation within a period no longer than 10 years from the original date of registration of the customs declaration.
- All additional duties and taxes and any other fees and penalties owed as a consequence of the Notice, shall be paid to Customs.
- Any refund of duty, taxes, fees and penalties overpaid by any person, importer or his agent as a consequence of the Notice shall be refunded by Customs.

##### **(b) Customs Value**

- Any person, importer or his agent, who completes a customs declaration shall declare the customs value of the imported goods as specified in the provisions of Article 21 of this Law, for the assessment of duty and tax. Customs shall verify the declared customs value of the imported goods.
- Any person, importer or his agent, who makes a registered declaration of imported goods, must comply with the provisions of Article 51 and Article 52 of this Law.
- Any person, importer or his agent is responsible for declaration of the accurate customs value for the payment of duties and taxes and must disclose all information, invoices and other documentation to enable Customs to verify and accurately determine the customs value of the imported goods.
- Customs may require from any person, importer or his agent, proof, by declaration or the production of required documents required by Law and existing regulation, of the correctness of the declaration, and may refuse to release the goods until such evidence is provided.
- Customs may, within 3 years of the date of registration of any customs declaration, following an audit, investigation, inspection or examination of the imported goods, re-determine the declared customs value by issuing a Notice. This Notice shall also state the reason for the re-determination of the customs value.
- Customs may amend the declared customs value if the declared customs value is not consistent with the provision of Article 21 of this Law or the declared customs value is not correct for any other reason.
- When an audit, investigation, inspection or examination undertaken under this Article finds any fraudulent activity, the Notice may be issued for the goods under investigation, within a period no longer than 10 years from the original date of registration of the customs

declaration.

**(c) Voluntary declaration of additional duties and taxes or other fees payable**

- A person, importer or his agent may make a voluntary declaration to Customs of additional duties, taxes or fees owing in respect of imported goods, without penalties or fines if such a declaration is made to Customs within one year of the date of registration of the original customs declaration.

**(d) Exporters and exported goods**

- The provisions of Paragraph (a) and Paragraph (c) of this Article apply also to exported goods.

For the purposes of import and export, goods are classified and, unless otherwise exempted by this Law or any other Law of the Kingdom of Cambodia, duty and tax are calculated in accordance with the Customs Tariff (Article 19).

For imports, applicable duties and taxes are collected according to the origin of the goods. The origin of natural products is the country where they were extracted from the soil or harvested. Goods manufactured in a single country, with no contribution from materials from another country, originate in the country where they are manufactured. The country of provenance is the country from which the goods were sent directly to the customs territory (Article 20).

The customs value of imported goods shall be determined in accordance with the following rules (Article 21):

- a. The customs value of imported goods shall be the transaction value, which is the price actually paid or payable for goods when sold for export to Cambodia.
- b. If the customs value of the imported goods cannot be determined under the provision of sub-paragraph (a) of this Article, the customs value shall be the transaction value of identical goods.
- c. If the customs value of imported goods cannot be determined under the provisions of sub-paragraph (a) and sub-paragraph (b) of this Article, the customs value shall be the transaction value of similar goods.
- d. If the customs value of imported goods cannot be determined under the provisions of sub-paragraph (a), sub-paragraph (b), and sub-paragraph (c) of this Article, the customs value of the imported goods shall be based on a deductive method.
- e. If the customs value of imported goods cannot be determined under the provisions of sub-paragraph (a), sub-paragraph (b), sub-paragraph (c), and sub-paragraph (d) of this Article, the customs value of imported goods shall be based on a computed method.
- f. The order of application of sub-paragraph (d) and sub-paragraph (e) of this Article may be reversed at the request of the importer.
- g. If the customs value of the imported goods cannot be based on the provisions of sub-paragraph (a) sub-paragraph (b) sub-paragraph (c) sub-paragraph (d) and sub-paragraph (e) of this Article, the customs value shall be determined by using reasonable means consistent with the principles and the provisions as referred to in subparagraphs (a) (b) (c) (d) and (e) of this Article on the basis of available data in the Customs Territory subject to certain limitations.
- h. The Minister of Economy and Finance shall issue a Prakas to determine all matters related to the determination of customs value.

The customs value of exported goods shall be the value of the goods at the point of exit, which is determined by adding to the price of the goods, expenses for transport as well as all expenses needed to carry out the export operation up to the frontier, excluding export taxes payable upon exit, domestic taxes and similar levies, for which the exporter has been given a receipt (Article 22).

*EXEMPTIONS, PARTIAL EXEMPTIONS, AND REFUND OF DUTIES AND TAXES*

The customs value of imported and exported goods shall be declared in riel currency. When an amount is expressed in a currency other than Cambodian currency, the exchange rate to be applied is the rate determined by the National Bank of Cambodia. When the exchange rate is not on the list of exchange rates of the National Bank of Cambodia, Customs may determine the rate. The exchange rate to be applied is the exchange rate in use on the date the Customs declaration is registered. Exchange rates are publicly displayed by Customs (Article 23).

Any person, importer or his agent, who is dissatisfied with the reasons for or the correctness of the re-determination of the tariff classification, origin or customs value as provided in the Notice issued under the provisions of sub-paragraph (a) or sub-paragraph (b) of Article 18 of this Law may object to the decision by writing to the Director of Customs within 30 days of the date the importer or his agent receives the Notices of the re-determination of the tariff classification, origin or the customs value.

In circumstances where the customs value is subject to appeal, the goods shall be released without the payment of duties and taxes when the importer provides sufficient security to cover the duties and taxes. The Director of Customs shall make the decision on the objection referred to in the first paragraph of this Article within sixty (60) days after the objection is received; otherwise, the objection shall be deemed as accepted and the security returned as appropriate. Any person who objects to any decisions made by the Director of Customs under the first paragraph of this Article may file a written appeal to the Customs Tariff Committee. The organization and functioning of the Customs Tariff Committee shall be determined by Anukret. An importer or exporter has the right to appeal to the competent court against any decision of the Customs Tariff Committee within a period of thirty (30) days from the date of receiving notification of that decision (Article 24).

Import duties and taxes shall not be imposed on goods brought into the Customs Territory for transit or transshipment (Article 25).

Exemption of Import Duties and Taxes shall be granted with respect to the import of goods exempted under the provisions of any other Law of Cambodia, goods for foreign diplomatic or consular missions, international organizations and agencies of technical co-operation of other governments, etc. (Article 26).

Partial exemption of import duties and taxes may be granted with respect to the import of Seeds and breeding animals for agriculture, goods for temporary admission, Goods and materials so specified under any other Law of Cambodia, etc. (Article 27).

*CUSTOMS DECLARATION AND LIABILITY FOR DUTIES AND TAXES*

All imported or exported goods, whether or not exempt from duties and taxes, must be the subject of a Customs declaration (Article 29).

Imported or exported goods must be declared by their owners or by persons authorized to act on the owners' behalf (Article 31).

Any person may, without exercising the profession of customs broker, make customs declarations for their own business (Article 33).

The importer or owner of the goods shall be liable for import duties and taxes. In cases where the importer or owner cannot be located, the customs broker shall be liable for the import duties and taxes. In the case of customs temporary storage or customs bonded warehouse storage, the operators are liable for import duties and taxes and other fees, without prejudice to penalties incurred, until such time as the goods have been cleared for re-export, temporary import, import for home use, moved to another authorized storage facility, or destroyed with the authorization of Customs (Article 35).

*CUSTOMS TEMPORARY STORAGE AND CUSTOMS BODED WAREHOUSES*

Customs temporary storage refers to the storage of goods under Customs control in approved premises pending the completion of Customs formalities. Licenses for the operation of a customs temporary storage facility are approved by the Minister of Economy and Finance (Article 43).

Customs bonded warehouses are facilities where goods may be placed for a specified period of time under customs control. Placing goods in customs bonded warehouses suspends the application of the duties, taxes and restrictions for which they are liable. There are three categories of customs bonded warehouses:

- a. Public warehouses, which are licensed by the Minister of Economy and Finance, may be operated by any agency of the Royal Government, or by any person. Public warehouses are open to any person who has the right to store the goods in the warehouse.
- b. Private warehouses, which are licensed by the Director of Customs, are to be used solely by specified persons to store goods for their own specific uses, including operators of duty free shops.
- c. Special warehouses, which are licensed by the Director of Customs, are a type of warehouse for goods which may present a hazard, or could affect the quality of other goods, or could require special storage facilities;

Licenses for customs bonded warehouses will determine conditions for owners and operators including location, construction and layout of premises, and procedures for the control and handling of goods (Article 44).

Goods may remain in customs bonded warehouses for up to two (2) years from the date of registration (Article 46).

In certain circumstances, the MEF may authorize the establishment of customs manufacturing bonded warehouses, for the purpose of processing or manufacturing of goods. Goods accepted in customs manufacturing bonded warehouses are exempt from import duties and taxes (Article 49).

Operations that carry out the processing or refining of crude petroleum or bituminous minerals to obtain petroleum products must be placed under the customs manufacturing bonded warehouse regime (Article 50).

**Export and import procedures**

*SAD & ASYCUDA*

In order to simplify and improve the trade-related procedures, the Trade Facilitation Program has been implemented. The core of the Program is the implementation of the Single Administrative Document (SAD), a new Customs Declaration, based on "ASYCUDA," a comprehensive electronic customs clearance system, and the Risk Management System for trade-related applications, customs clearance and audits. For this purpose, a "Sub-Decree #21 on the Facilitation of Trade through Risk Management" and "Ministerial Order # 607 (MEF) on Establishment and Putting into Operation the Office of Risk Management and Audit of Customs and Excise" were issued in 2006.

The SAD has been implemented manually since January 2008 and the pilot implementation of "ASYCUDA World" has begun at Sihanoukville Port from May 2008. SAD is now fully implemented to all the customs clearance operations and

ASYCUDA became operational at approximately 20 customs offices such as Sihanoukville Port, Phnom Penh International Airport, Phnom Penh International Port. At the checkpoints served by ASYCUDA, more than 90% of import and export goods are cleared from customs within 24 hours after the presentation of customs declaration.

The GDCE has started implementing the Post Clearance Audit (PCA) since

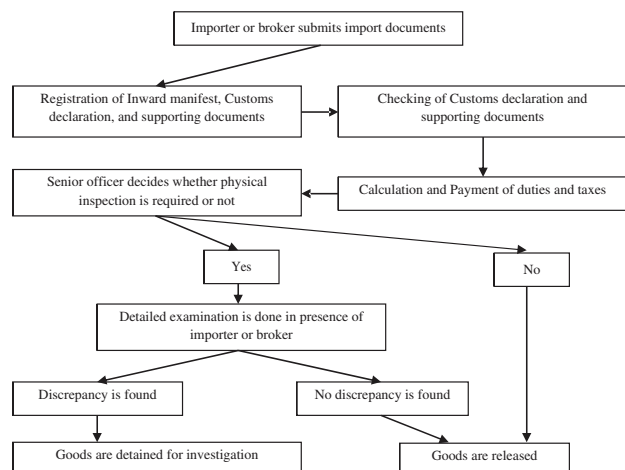
October 2012. The PCA is the audit to be carried out at the importer's place of business after goods have already been cleared by Customs, aiming to verify the importers' compliance of customs duty payment by checking the shipping documents such as invoices, import contracts and/or account settlement documents.

PCA itself is a common practice in most of the countries in the world and it is expected that the GDCE will expand the implementation of PCA.

*IMPORT PROCEDURES*

According to the website of the General Department of Customs and Excise, the import procedures at the Sihanoukville Port are as follows.

- 1) Upon arrival of the vessel at the port, KAMSAB (the government-owned shipping agent for marine cargo) informs Customs, CAMCONTROL, and Immigration Police.
- 2) The Customs Chief assigns 2 officers to the boarding committee or Formality Team, which includes KAMSAB, CAMCONTRPL, Port Authority, Immigration Police, and Quarantine. The Team breaks up to carry out their respective functions in formal clearance of the vessel and crew.
- 3) After vessel formalities, the Customs authorizes unloading of cargo. The Active Team that includes KAMSAB and Port Authority monitors unloading, checks cargo against the manifest, and verifies the condition of seals.
- 4) Cargo is stored in the warehouse and received by the operator. While awaiting their importer they are under the responsibility of the warehouse operator and Warehouse Team. A computer register of all cargo is maintained by both the operator and the Customs. Goods are allowed 45 days storage, beyond which a daily penalty of 1% of the value is exacted. Goods stored beyond 3 months are transferred to the Customs warehouse.
- 5) Importers lodge three copies of the declaration with supporting documents such as commercial invoice, packing list, bill of lading, Import license (if required), Report of Finding (ROF) if an import FOB value greater than USD 4,000.00 and other documents if any.
- 6) At the clearance point, the declaration is registered with a sequential number that is unique to an individual entry processing unit. 3 copies of the entry are submitted to the clearance point with invoice, bill of lading, packing list. Declaration information is validated and scrutinized. The CAMCONTROL form is also attached to the declaration.
- 7) After assessment, importers pay duties in cash or bank guarantee either at the accounts section, or treasury in Phnom Penh which issues a receipt. Storage fees are also paid for.



Source: <http://www.customs.gov.kh/ProImports.html>

Figure III-5-1 Import Procedures

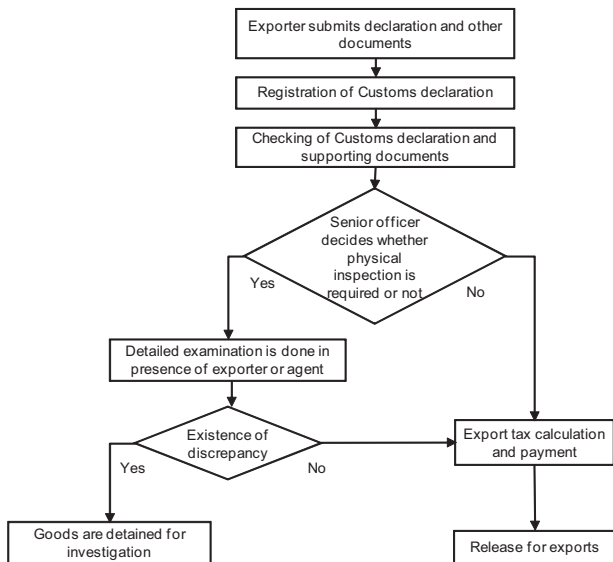
- 8) The Customs Examination Team inspects the goods simultaneously with CAMCONTROL. In June 2002, a TC-Scan machine was installed to reduce physical inspection.
- 9) When goods are released, containers are loaded on trucks for transport to outside of the Port. Customs Entrance/Exit Team checks documents and receipts to verify payment, and matches container numbers against ship manifests.

For import procedures of GDCE at other ports of entry, refer to GDCE Website at <http://www.customs.gov.kh/ProImports.html>.

### EXPORT PROCEDURES

The majority of goods exported through Sihanoukville Port are garment exports. Most of these exported goods are examined by the Export Office in Phnom Penh, and the containers are sealed there. Customs at Sihanoukville Port do not reopen the containers. They generally check the related documents and verify the seals on the containers. If everything is in order, containers are loaded on the vessels for export. There are some goods cleared for export at Sihanoukville such as wood products and garments from factories located in Preah Sihanouk area. The chief of customs of Sihanoukville Port sends staff to carry out the customs formality and examination at the investors' premises.

All exports goods must be examined by the General Department of Customs and Excise (GDCE) as a spot check, primary or in detail. Goods are released when documents are approved, the export tax if any is paid for, and examination is completed. An Export Office at GDCE headquarters takes charge of garments exports, which examines and seals cargo with a container bolt seal (at factory premises) that conforms to international standards. Once they reach Sihanoukville Port, their documents and container seal are checked by GDCE and they are loaded on vessels. Other goods cleared at Sihanoukville Port such as wood products undergo Customs formality and examination on company premises in the Sihanoukville area by GDCE staff.



Source: <http://www.customs.gov.kh/ProExports.htm>

Figure III-5-2 Export Procedures

### MFN and GSP

Cambodia has been granted Most Favored Nation (MFN) status by the US, the EU and other developed countries. In addition, Cambodia has been approved tariff and quota free access to the EU market under the

Everything-But-Arms Initiative (EBA), which is part of the EU's Generalized System of Preferences (GSP) program for LDCs. EBA was put in effect and applied to Cambodia in February 2001. Cambodia is also entitled to privileges under the US and Japan GSP programs.

Exporters in Cambodia should observe the rules of origin (ROO) requirements for the exports under the GSP scheme, including the EBA. Practically all products (arms and ammunition are exceptions) covered by the EBA are granted duty free access (zero duty rate) to the EU market if they fulfill the ROO requirements.

Under the GSP, exported products have to originate in the beneficiary country. To be considered as originating in the country of export, products have to meet certain requirements, which are laid down in the ROO. While products wholly obtained in the exporting country are naturally considered as originating there, the products manufactured with materials from other countries are considered so only if they have undergone sufficient working or processing and the consequently the tariff heading of the final product is changed from the imported materials (CTH: Change of Tariff Heading).

The requirements may also refer to other technical criteria, the added value or other economic criteria such as "De Minimis" regulation, under which the non-originating materials contained in the final product shall be taken into account for the purpose of judging the product origin if such non-originating goods do not exceed certain value or weight of the final product. In case of Japan, when the weight of non-originating textile materials or accessories do not exceed 10% of the total weight of final product of garment, such non-originating materials shall not taken into account in determining the origin of the final product. In addition, the origin of non-textile materials and/or accessories shall not be taken into account in determining the origin of the good as well. For electric appliance and parts, if the FOB values of non-originating materials do not exceed 5% of the total value of final product, such non-originating materials shall not taken into account in determining the origin of the final product.

The ROO lay down that products have to be accompanied by a certificate of origin Form A (issued by competent authorities in the country of export that are recognized by the countries of import, namely, the Ministry of Commerce in case of Cambodia) or an invoice declaration in order to prove the origin of the imported materials in the beneficiary country and they have to be shipped direct to the countries of import.

In case that the garment produced in Cambodia uses the fabric made in and imported from Japan and is exported to Japan, so-called "Annex" (Certificate of Materials Imported from Japan) must be issued by Cambodian government and attached to the Form A in order to prove the fabric was imported from Japan.

Under the EBA, the ROO requires that at least 40% of the contents of exported products have to originate in the country, but, under the special waivers, certain textile products from Cambodia are allowed to have cumulative origin with ASEAN countries or the EU. In order to prove that the fabric originates from other ASEAN member states, garment exporters in Cambodia are required to show the ASEAN fabric suppliers' GSP certificates. Since Cambodian garment makers use more fabric and accessories from countries other than ASEAN members, the utilization rate of the GSP scheme for the EU market remains low. If the fabric is imported from non-ASEAN or non-EU suppliers, the garment producer must observe the 'full makeup' rule. For this, the Cambodian government requires exporters to show evidence that local content is greater than the cost of imported fabric or yarn.

For exports from Cambodia to the USA under the GPS, the ROO requirement is a minimum 35% and the qualifying member countries of ASEAN, namely, Cambodia, Thailand, Indonesia and the Philippines, are treated as one country for GSP ROO requirements.



**Local contents for exports**

Currently, there is no local contents requirement in Cambodia. In other words, there is no restriction on the use of imported materials, parts and components for producing the export goods unless they are harmful to the health, environment or society.

**Incentives, limitations and taxation on exports**

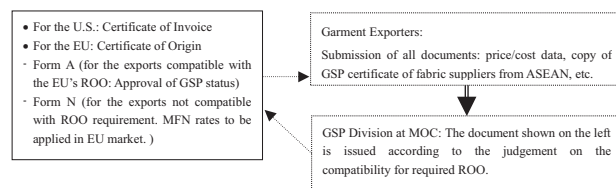
Under the Amended Law on Investment, “Export QIPs” (see “Chapter IV INVESTMENT”) are allowed to import production equipments, construction materials, raw materials and intermediate goods and accessories free from customs duty, unless Export QIPs operate under the customs bonded warehouse mechanism. For the QIPs of garment and footwear industries, VAT is also exempt on the imported production equipments, construction materials, raw materials and intermediate goods and accessories. By being approved as Export QIPs, they are also granted a tax holiday or special depreciation scheme. For exports, VAT is also refunded or credited as to the materials for exported products.

Several items are prohibited from export or strictly restricted, such as antiques, narcotic and toxic materials, logs, precious metals and stones and weapons. “ANNEX 1 to Sub-Decree #209 ANK.BK” of 31 December 2007 (“List of Prohibited and Restricted goods in Importation and Exportation”) shall be referred to find the details for such regulations.

Export tax is levied on such products as shown below.

- Natural rubber (2%, 5% and 10% depends on level and type of processing)
- Uncut (unprocessed) precious stones (10%)
- Processed wood (5% and 10%)
- Fish and crustaceans, mollusks and other aquatic products (10%)

An Export Management Fee (EMF) is being imposed on some export products by the Ministry of Commerce. EMF was first introduced by “Prakas No. 285 MOC/GSP on the Determination of Export Management Fee” on 18 Oct. 2005. Then it was reduced by 10% for some garments exporting to all the destinations by “Inter-Ministerial Prakas No.044 MOC/SM 2007 on the Revision of Export Management Fee and Related Costs” of February 09, 2007. At the same time, Prakas No.044 introduced EMF to the footwear and bicycle and stipulated the administration fee for obtaining Certificate of Origin (Namely, USD50 for Form A and USD30 for Form N). “Inter-Ministerial Prakas No.097 MOC/SM 2007 on the Revision and New Determination of Export Management Fee” of 11 June 2007 reduced EMF on bicycle for all the destinations to KHR 350 per piece and introduced EMF (KHR 2,000 per ton) for screw/nut product. EMF has been reduced by 10% again for textile, garment and footwear export by “Inter-Ministerial Prakas No.274 MOC/SM2008 on Revision of Export



Source: JICA Project Team

Figure III-5-3 Procedures for Certificate of Origin for Garment Exports

Management Fee” on December 9, 2008.

All exporters of goods under the MFN and GSP systems shall be required to complete the Certificate of Origin (C/O) Form. and be obliged to pay Export Management Fee (EMF) within a period of 30 days after goods have already been exported (Prakas #176/MOC on a Certain Necessary Measures for Export Management under Trade Preferences System of September 04, 2006). The procedure to obtain the C/O for garment exports is shown in Figure III-5-3.

**Duty-exempted imports (A Master List)**

Under the Amended Law on Investment, the QIPs are granted the privilege to import production equipment, construction materials, raw materials, intermediate goods and/or accessories exempt of duty, according to the QIP category of the project. In order to obtain such duty-free import approval, the importing companies have to submit annually to the Cambodian Investment Board (the CIB) or the Cambodian Special Economic Zone Board (the CSEZB) a master list, which contains the volume, kinds and value of the planned imported goods. The processing time for an import application or the amendment of an import plan is said to be around 3 working days.

In addition to the duty exemption, VAT on the production facilities, factory construction materials and production input, which the Qualified Investment Projects (QIP) located in the SEZs may import, became exempted since March 2010. The scope of VAT exemption varies according to the type of QIP. (Refer to the Box “Additional Incentives to the Zone Investors in SEZ” in “VI-6 Incentives”)

Import duty reduction or exemption and the government-borne VAT scheme (VAT exemption) have been introduced on various agricultural materials. For details, refer to “V-11 Incentives entitled to Specific Fields”.

**General tariff rates**

Import duties are levied on all imported goods at the point of entry in Cambodia, unless the imported goods are subject to duties exemption treatment under the Amended Law on Investment, international agreement

Table III-5-1 Applicable Rate of Import Duties in Cambodia (Major Commodities)

Applicable Rate	Major Commodities
0%	Pharmaceutical products (HS Code 30), Ores, slag and ash (HS Code26), Petroleum gases and other gaseous hydrocarbons (HS Code 2711), Printed books (HS Code 4901)
7%	Edible fruit and nuts (HS Code 8), Animal or vegetable fats and oil and their cleavage products (HS code 15), Sugar and sugar confectionery (HS Code 17), Raw hides and skins (other than fur skins) and leather (HS Code 41), Articles of jewelry and parts thereof, of precious metal or of metal clad with precious metal (HS Code 7113), Bicycles and other cycles (including delivery tricycles), not motorized (HS Code 8712), Musical instruments (HS Code 92)
15%	Alcohol (other than water and beer) (HS Code 22), Motorcycle (HS Code 78711), Clocks and watches and parts of thereof (HS Code 91)
35%	Manufactures if straw, of esparto or of other planting materials (HS Code 46), Electro-mechanical domestic appliances (HS Code 8509), Motor cars and other motor vehicles principally designed for the transport of persons (HS Code 8703)

Note: HS codes shown in brackets are based on the Cambodian customs tariff table 2011. It is advisable to inquire the customs authority about the exact tariff rate applicable to the import. Source: General Department of Customs and Excise of Cambodia

or other special regulations. Tariffs on imports to Cambodia are generally applied ad valorem duties which principally consist of the following four rates: 0%, 7%, 15% and 35%, while a selection method choosing either ad valorem duty or specific duty is applied for some imported goods. The commodities applicable each rate is as shown in Table III-5-1. The 10% VAT is levied on all imported goods with some exceptions as mentioned above Clause.

### Preferential tariff rates under the AFTA

In addition, under the Common Effective Preferential Tariff (CEPT) scheme for the ASEAN Free Trade Agreement (AFTA), lower tariff rates can be applied to imported products from other ASEAN member countries, provided that conditions in the ROO are fulfilled. Cambodia's 2007 CEPT package is shown in Table III-5-2. The comprehensive tariff reduction schedules of all ASEAN countries and the tariff reduction schedules of Cambodia under the CEPT scheme are presented in Figure III-5-4.

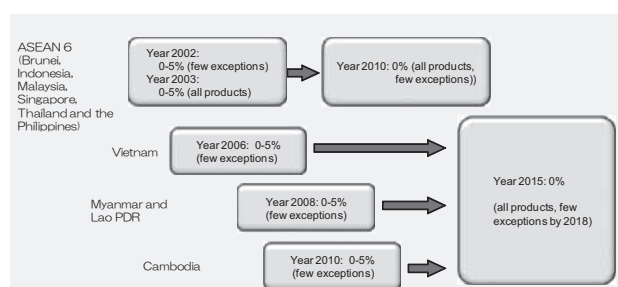


Figure III-5-4 Comprehensive Tariff Reduction Schedules of All ASEAN Member Countries under CEPT Scheme

### Free trade agreements of ASEAN

As a member of ASEAN, Cambodia is and will be subject to tariff reductions set in free trade agreements (FTAs) between ASEAN and other countries.

As of November 2011, five FTAs have become effective. A summary of ASEAN's FTAs is shown in Table III-5-3.

### AJCEP (ASEAN-Japan Comprehensive Economic Partnership)

AJCEP is the Economic Partnership Agreement (EPA) between Japan and ASEAN countries. It came into effect on 1 December 2008 in Japan and on 1 December 2009 in Cambodia. As of November 2011, AJCEP came into effect in all ASEAN countries except Indonesia. Upon the effectuation of AJCEP, Japan abolished the import duties on approximately 90 % of all goods and Cambodia did the same for the goods in Category A. Currently AJCEP is the only one

According to the Rules of Origin (ROO) for AJCEP, the export products which are manufactured by using non-originating materials must fulfill the CTC rule (Change of Tariff Heading Rule) or the Value Added Rule in order to enjoy the duty privileges in importing country. Applicable ROO varies as it is stipulated separately for each product (Product Specific Rule: PSR).

The CTC rule is for determining the export products which are manufactured by using non-originating materials as originating goods by "change of figures in HS code", which will be applied only to non-originating materials. There are three kinds of CTH, namely "Change in Chapter" (CC: change of double figures), change in tariff heading (CTH: change of four figures) and "Change in Sub-Heading" (CTSH: change of six figures). The CTC rule is applicable to textile or leather products.

Value Added Rule is for determining the export products which are manufactured by using non-originating materials as originating goods when the contents of calculated value added amount in final product (Regional Value Content: RVC) exceeds the certain level which is provided in the agreement. In AJCEP, this rule is not provided for the agricultural products, textile products, leather product and footwear. RVC has to exceed 40%. RVC (%) is calculated as  $\frac{FOB - VNM}{FOB} \times 100$ , where "FOB" is the price of the final product on free on board basis and VNM (Value of Non-originating Materials) is the total amount of non-originating materials.

Table III-5-2 Cambodia's 2007 CEPT Package for Some Commodities

HS Number	Descriptions	MFN tariff rates	CEPT	
			2009	2010
2203.00.10	Beer (stout and porter)	35%	GE	GE
2709.00.10	Crude petroleum oil	7%	5%	5%
2710.11.11	Motor spirit, premium leaded	35%+0.02 Riel/liter	GE	GE
3816.00.00	Refractory cements, mortars and concretes	7%	7%	5%
5208.11.00	Woven fabrics of cotton (plain weave, weighing not more than 100g/ sq. m)	7%	5%	5%
5407.10.11	Woven fabrics obtained from high tenacity yarn of nylon or other polyamides or of polyesters (tire woven fabrics and conveyor duck)	7%	5%	5%
5501.10.00	Synthetic filament tow (of nylon or other polyamides)	7%	5%	5%
6001.21.10	Looped pile fabrics of cotton (unbleached, not mercerized)	7%	5%	5%
6001.22.10	Looped pile fabrics of man-made fibers (unbleached)	7%	5%	5%
7208.10.10	Flat-rolled products of iron or non-alloy steel (Of a thickness of 10 mm or more but not exceeding 125 mm; of a thickness of less than 3 mm and containing by weight less than 0.6% of carbon)	7%	5%	5%
7308.30.00	Doors, windows and their frames and thresholds for doors	7%	7%	5%
8701.90.91	Agricultural tractors (Of a cylinder capacity not exceeding 1,100cc)	15%	5%	5%
8703.23.15	Motor cars (Completely Knocked Down of a cylinder capacity less than 2,000cc)	35%	10%	5%
8703.23.22	Motor cars (Completely Built Up of a cylinder capacity 1,800cc about above but less than 2,000cc)	35%	20%	5%
8711.20.31	Motorcycles (Completely Knocked Down of a cylinder capacity not exceeding 125cc)	15%	5%	5%

Note: GE is General Exception List of the CEPT scheme.  
Source: ASEAN Secretariat's website at <http://www.asean.org/>

Table III-5-3 Summary of ASEAN's FTAs

<b>Concluded</b>	
With China	Year 2002: The Framework Agreement was signed. Year 2010: Tariff rates of China and ASEAN 6 will be reduced to 0%. Year 2015: Tariff rates of newer ASEAN member countries including Cambodia will be reduced to 0%.
With India	Year 2003: The Comprehensive Economic Cooperation Agreement was signed. Year 2013: Tariff rates of India and the following five ASEAN countries will be reduced to 0%: Singapore, Thailand, Indonesia, Malaysia, Brunei Year 2016: Tariff rates of Cambodia, Lao PDR, Myanmar, Vietnam and the Philippines will be reduced to 0%.
With South Korea	Year 2006: The Free Trade Agreement was signed. (with the exception of Thailand) Year 2010: Tariff rates of South Korea and the ASEAN 6 will be reduced to 0%. Year 2016: Tariff rates of Vietnam will be reduced to 0%. Year 2018: Tariff rates of Cambodia, Lao PDR and Myanmar will be reduced to 0%.
With Japan	Year 2008: The ASEAN-Japan Comprehensive Economic Partnership Agreement was signed. Year 2018: Tariff rates of Japan and the ASEAN 6 will be reduced to 0% regarding 90% of commodities. . Year 2023: Tariff rates of Vietnam will be reduced to 0% regarding 90% of commodities. Year 2026: Cambodia, Lao PDR and Myanmar will be reduced to 0% regarding 85% of commodities.
With Australia and New Zealand	Year 2009: The ASEAN-Australia-New Zealand Free Trade Area Agreement was signed. Year 2009: Tariff rates of Singapore will be reduced to 0%. Year 2020: Tariff rates of Australia and New Zealand will be reduced to 0%. Tariff rates of Brunei, Malaysia, Thailand, Philippines will be reduced to 0% regarding more than 90% of commodities. Tariff rates of Vietnam will be reduced to 0% regarding nearly 90% of commodities. Year 2023: Tariff rates of Lao PDR will be reduced to 0% regarding 88% of commodities. Year 2024: Tariff rates of Cambodia and Myanmar will be reduced to 0% regarding more than 85% of commodities. Year 2025: Tariff rates of Indonesia will be reduced to 0% regarding 93.2% of commodities.

Source: MOFA (Japan), JETRO and Department of Foreign Affairs and Trade (Australia), ASEAN Secretariat

AJCEP also provides the following “De Minimis” rules.

- 1) A product that does not undergo a change in tariff classification shall be considered as originating if the total value of all non-originating materials used in its production does not exceed 10 percent of the FOB value of the final product in case the product is under the HS code category of;
  - 16: “Prepared meat, fish, crustaceans, etc.”
  - 1803.10:and 1803.20: “Cocoa paste”, ”Cocoa powder”
  - 19: “Cereals, Flour, Starch or Milk”
  - 20: “Vegetables, Fruits, Nuts, etc.”
  - 22: “Beverages, Spirits & Vinegar”
  - 23: “Residues from Food Industries and Animal Feed”
  - 28-49: “Chemicals and Allied Industries”, “Raw Hides, Skins, Leather & Furs”, “Wood & Wood Product”
  - 64-97: “Footwear/Headgear”, “Stone/Glass, Metals”, “Machinery/ Electrical”, “Transportation” and “Miscellaneous”
- 2) A product that does not undergo a change in tariff classification shall be considered as originating if the total value of all non-originating materials used in its production does not exceed 7 percent of the FOB value of the product under the HS Code of;
  - 2103.90: “Other Sauces, Mixed Condiments, Mixed Seasoning”
- 3) A product that does not undergo a change in tariff classification shall be considered as originating if the total weight of all non-originating materials used in its production does not exceed 10 percent of the total weight of final product under the HS Code of;
  - 50-63: “Textile”

AJCEP also stipulates “Direct Consignment” rule. Under this rule, the consignment has to be delivered directly from exporting country to importing country or, if it goes through the third country, it has to be done under the certain conditions.

To use AJCEP scheme, the exporter in Cambodia has to obtain “FormAJ” as Certificate of origin from Ministry of Commerce.

### III-6 Taxation and Accounting

#### Taxation system

The current taxation scheme of Cambodia is regulated by the Law on the Amendment to the Law on Taxation of 2003 (2003 Law on Taxation). The assessment of the Tax on Profit shall be made according to the taxation system of the real regime, simplified regime or estimated regime. The tax payers’ regime shall be determined according to the form of the company, type of business activities and the level of turnover (Article 4, Law on Taxation).

#### Forms of tax and current tax rate

Table III-6-1 shows the current taxes levied in Cambodia, a brief explanation of them and their rates. For details of each tax, please refer to the Articles and/or Chapters of “2003 Amended Law on Taxation”, which is specified next to the name of tax in the table.

#### Tax treaty

There are no tax treaties between Cambodia and foreign countries to avoid the double taxation.

#### Accounting principles

Cambodia joined in the ASEAN Federation of Accountants (AFA) at the 76th AFA Council meeting in Yangon, Myanmar on the 11th January 2003. Although it has not widely known, the majority of ASEAN members have observed and complied with the International Accounting Standards Committee’s standards. The Cambodian government also inaugurated in early 2003 the process for full implementation of a single set of high-quality accounting standards for both domestic and cross-border financial reporting.

The “Law on Corporate Accounting, Audit and Accounting Profession” was enacted in July 2002, followed by the “Sub-Decree on the Kampuchea Institute of Certified Public Accountants and Auditors (KICPAA)” and

Table III-6-1 Tax Scheme of Cambodia

Tax	Rates
<b>Profit Tax (Article 1 - 23, Chapter 1)</b>	
<ul style="list-style-type: none"> <li>For legal person</li> </ul>	20% (unless investment incentive rate of 9% or 0% are applied)
<ul style="list-style-type: none"> <li>Oil and natural gas production sharing contract and the exploitation of natural resource including timber, ore, gold, and precious stones.</li> </ul>	30%
<ul style="list-style-type: none"> <li>Advance Tax on Dividend Distributions (Additional Profit Tax shall be paid upon the distribution of retained earnings or annual profit after tax if a firm distributes retained earnings or profit the in the amount of:</li> </ul>	20/100: QIP of 0% Tax Rate 11/91: QIP of 9% Tax Rate 0: Firms of 20% Tax Rate
<b>Minimum Tax (Article 24, Chapter 1)</b>	
<ul style="list-style-type: none"> <li>To be applied only for the real regime, except QIP</li> <li>If the profit tax amount exceeds 1% of annual turnover, the taxpayer pays only the tax on profit.</li> </ul>	1% of annual turnover
<b>Withholding Tax (Article 25 - 28, Chapter 1)</b>	
<ul style="list-style-type: none"> <li>Income received by individuals for services such as management, consulting, etc.</li> <li>Payment of royalties for intangibles and interests in mineral resources</li> <li>Payment of interest by a resident taxpayer carrying on business, other than domestic banks or financial institutions</li> </ul>	15%
<ul style="list-style-type: none"> <li>Income from the rental of movable or immovable property</li> </ul>	10%
<ul style="list-style-type: none"> <li>Interest payment by domestic banks to residents with fixed term deposit account</li> </ul>	6%
<ul style="list-style-type: none"> <li>Interest payment by domestic banks to residents with non-fixed term deposit account</li> </ul>	4%
<ul style="list-style-type: none"> <li>Payment to non-residents : Interest, royalties, rent and other income connected with the use of property, dividends, payment for management or technical services</li> </ul>	14%
<b>Tax on Salary (Article 40 - 54, Chapter 2)</b>	
<ul style="list-style-type: none"> <li>To be withheld monthly by employers</li> <li>0 Riels - 500,000 Riels (Approx. USD 125 or less)</li> <li>500,001 Riels - 1,250,000 Riels (Over 125 - 312.5)</li> <li>1,250,001 Riels - 8,500,000 Riels (Over 312.5 - 2,215)</li> <li>8,500,001 Riels - 12,500,000 Riels (2,215 - 3,125)</li> <li>Over 12,500,000 Riels (Over 3,125)</li> <li>For fringe benefits</li> <li>Non-residents</li> </ul>	0% 5% 10% 15% 20% 20% on market value Flat rate of 20%
<b>Value Added Tax (Article 55 - 84, Chapter 3)</b>	
<ul style="list-style-type: none"> <li>Taxable person: Any person subject to the real regime system</li> <li>Registration: All companies must complete registration for VAT before commencing business. Others must register within 30 days after their taxable turnover for the preceding consecutive three months exceeds; <ul style="list-style-type: none"> <li>- 125 million Riel for goods</li> <li>- 60 million Riel for services</li> </ul> </li> <li>Taxable supply: <ul style="list-style-type: none"> <li>- Supply of goods or services by a taxable person in Cambodia</li> <li>- Appropriation of goods for his own use by a taxable person</li> <li>- Making of a gift or supply at below cost of goods or services</li> <li>- Import of goods into Cambodia</li> </ul> </li> <li>Standard tax rate</li> <li>Tax rate for the goods exported from Cambodia and services executed outside of Cambodia</li> <li>Input tax credit is deductible against the output tax amount.</li> <li>Monthly filing: The VAT declaration must be submitted on or before the 20th day of the following month.</li> </ul>	10% 0%
<b>Other taxes (Article 85, Chapter 4)</b>	
<ul style="list-style-type: none"> <li>Specific Tax on Certain Merchandise and Services</li> <li>Tickets for local and international air transportation</li> <li>Local and international telecommunication</li> <li>Beverage</li> <li>Tobacco, entertainment, large automobile, motorcycles from 125 cc upwards</li> <li>Petroleum products, automobile more than 2,000 cc</li> </ul>	10% 3% 20% 10% 30%
<ul style="list-style-type: none"> <li>Property Transfer Tax</li> <li>For the transference of ownership of real property and certain types of vehicles as a result of direct transfer or a contribution of share capital to an enterprise</li> <li>Prohibited to issue certificates of ownership of property until the Property Transfer Tax has been paid.</li> </ul>	4% on transfer value

Tax	Rates
Tax on Unused Land • Committee for Evaluation of Undeveloped Land, in cooperation with municipal and provincial authorities, decides whether a plot is “unused” or not and the amount of tax liability.	2% on the assessed value of unused land
Patent Tax • For annual business registration • If the type of business is different or located in different provinces/ municipalities shall be required to pay in accordance with respective type of business and provinces/ municipalities separately (Notice # 002.MEF on Obligation of Patent Tax Payment, January 19, 2007).	Approx. USD300-
Property Tax (Exempt for agricultural land, To be levied on property with value exceeding 100 million Riels)	0.1% of the evaluated value
Import Duty	Varies (4 bands - 0, 7, 15 and 35%)
Export Duty	Varies (Mostly 10%)

Table III-6-2 Cambodian Accounting and Auditing Standards

15 Cambodian Accounting Standards (CAS)	10 Cambodian Standards of Auditing (CSA)
<ol style="list-style-type: none"> <li>1. Presentation of Financial Statements</li> <li>2. Inventories</li> <li>3. Cash Flow Statements</li> <li>4. Accounting Policies, Changes in Accounting Estimates and Errors</li> <li>5. Events After the Balance Sheet Date</li> <li>6. Construction Contracts</li> <li>7. Income Taxes</li> <li>8. Property, Plant and Equipment</li> <li>9. Leases</li> <li>10. Revenue</li> <li>11. The Effects of Changes in Foreign Currency Rates</li> <li>12. Borrowing Costs</li> <li>13. Related Party Disclosures</li> <li>14. Consolidated and Separate Financial Statements</li> <li>15. Provisions, Contingent Liabilities and Contingent Asset</li> <li>16. Intangible Assets</li> <li>17. Investment Property</li> <li>18. Agriculture</li> </ol>	<ol style="list-style-type: none"> <li>1. Objective and General Principles Governing and Audit of Financial Statements</li> <li>2. Term of Audit Engagements</li> <li>3. Documentation</li> <li>4. Fraud and Error</li> <li>5. Planning</li> <li>6. Audit Materiality</li> <li>7. Audit Evidence</li> <li>8. Subsequent Events</li> <li>9. Going Concern</li> <li>10. The Auditor's Report on Financial Statements</li> </ol>
	<b>2 Financial Reporting Standards (CFRS)</b>
	<ol style="list-style-type: none"> <li>1. Insurance Contracts</li> <li>2. Financial Instruments: Disclosures</li> </ol>

the “Sub-Decree on the functioning of the National Accounting Council (NAC)” was issued in 2003. NAC is a regulatory body of the Ministry of Economy and Finance essentially dealing with the examination and revision of Cambodian Accounting Standards (CASs) and accounting regulations. KICPAA is a professional accounting body overseeing the organization and quality assurance of the private accounting profession.

The Law aims to determine the organization, management and function of accounting system based on international accounting standards for enterprises as follows.

All enterprises, whether natural or legal entities, are required to keep books and accounts and have them audited in accordance with the terms and conditions provided for under this Law (Article 3).

The financial statements shall include the balance sheet, the income statement, the cash flow statement and explanatory notes. They shall be considered as an integral part of the financial statements (Article 8).

The accounting records shall be prepared in the Khmer language and expressed in Riels. Enterprises carrying out business with foreign countries or which are subsidiaries of foreign companies may be authorized to prepare accounting records in English and/or in a currency other than Riels along with the accounting records in the Khmer language and Khmer Riels (Article 9).

The duration of the accounting period shall be twelve months. The accounting

period shall begin on the first day of January and end on the 31st day of December of the same year. As for the newly established enterprises, the annual financial reporting for the first fiscal year could start from the date of its formation and end on the date of the 31st day of December of the next year (Article 10).

The financial statements shall be prepared within three months following the closure of the financial year (Article 11).

The financial statements and the corresponding ledgers and documentary evidence shall be kept for at least ten years (Article 12).

All enterprises, whether natural or legal entities, shall submit their accounts to be audited by an independent auditor in the event that their turnover, and/or balance sheet total, and/or number of employees are above the limits set by by Prakas #643 of MEF of July 26, 2007 (Article 16).

15 Cambodian Accounting Standards (CASs), based on International Accounting Standards, and 10 Cambodian Standards on Auditing (CSAs) were first approved by the NAC on the 11th April 2003. On March 24, 2008, the “Prakas #221 on the Implementation of Cambodian Accounting Standards - (CASs) and Cambodian Financial Reporting Standards – (CFRSs)” was issued to update such old CASs and currently 18 CASs and 2 CFRSs are being in use as shown in Table III-6-2. Furthermore, the International Financial Reporting Standards (IFRS) for SMEs is now being planned to be implemented in 2010.

### Audit of corporate account

All enterprises in Cambodia, whether natural or legal entities, Cambodian or foreign, which fall in any two of the 3 categories below, shall have an obligation to submit their financial statements of respective financial year to independent auditors, who have been registered with KICPAA, for audit. All QIPs shall have the same obligation as well.

- To have an annual turnover of 3,000,000,000 Riel upward;
- To have total assets of 2,000,000,000 Riel upward pursuant to average price of assets available in the required year for audit;
- To have employees from 100 people upward pursuant to a number of average employees available in the required year for audit

(Prakas #643.MEF on Obligation to Submit Financial Statements to be Audited Corporate Account)

## III-7 Bank, Lease, Securities, Insurance and Currency

### Banks

The “Law on Banking and Financial Institutions” was enacted in 1999, aiming to serve to improve financial facilities, strengthen the base of financial institutions and make it easier for the investors to get business financing in Cambodia. Article 16.3 of the Law sets minimum capital of banks at about 12.5 million US dollars (50 billion Riel), 5% of which amount has to be maintained with the National Bank of Cambodia as guarantee deposit. Nevertheless, “Prakas #7.08-193 (NBC) on New Capital Requirement and Criteria for Licensing Approval of Banks” of September 19, 2008 modified such minimum capital requirements of banks as follows (Article 7 & 8).

- 1) Commercial banks locally incorporated as companies which have at least one influential shareholder as a bank or financial institution with the rating “investment grade,” extended by a reputable rating agency, must have minimum capital equal to at least KHR 50,000,000,000 (fifty billion Khmer Riels)
- 2) Commercial banks having shareholders as individuals or companies must have a minimum capital of at least KHR 150,000,000,000 (one hundred fifty billion)
- 3) Specialized banks locally incorporated as companies which have at least one influential shareholder as a bank or financial institution with the rating “investment grade”, extended by a reputable rating agency must have minimum capital equal to at least KHR 10,000,000,000 (ten billion Riels)
- 4) Specialized banks having shareholders as individuals or companies must have a minimum capital of at least KHR 30,000,000,000 (thirty billion Riels)

The Prakas required that the banks which obtained a license or principal letter before the Prakas was issued should increase their capital equal to the minimum capital as defined above no later than the end of 2010.

Banking and financial institutions shall maintain at all times a ratio of the outstanding or authorized loan or commitment with single beneficiary among their assets not exceeding 20 percent (Prakas # 7.06-226.NBC on Controlling Risk of Banking and Financial Institutions’ Large Exposures).

There are 30 commercial banks including branch offices, 7 Specialized Banks, 29 Micro-Finance Institutions in 2011 in Cambodia. Besides, there are 2 representative offices of foreign bank. Although overseas capital transfer, issuance of letter of credit and foreign exchange services are available, capital borrowing is generally difficult without offering an immovable asset collateral, the term of lending is shorter and the lending rates are higher than those outside of Cambodia. The names of commercial bank are as follows.

- 1) Aceda Bank Plc. (E-mail: acledabank@acledabank.com.kh)
- 2) Advanced Bank of Asia Limited (Email: info@ababank.com.kh)
- 3) ANZ Royal Bank Cambodia Ltd. (E-mail: ccc@anzroyal.com)

- 4) Bank for Investment & Development of Cambodia Plc (E-mail: info@pibank.com.kh)
- 5) Bank OF China Limited Phnom Penh Branch (Tel: +855-23- 988 880)
- 6) Bank of India Phnom Penh Branch (Tel: +855-23- 219 364)
- 7) Booyoung Khmer Bank (Email: info@bkb.com.kh)
- 8) Cambodia Asia Bank Ltd. (Email: cab@cab.com.kh)
- 9) Cambodia Mekong Bank Public Limited (E-mail: info@mekongbank.com)
- 10) Cambodian Commercial Bank Ltd. (E-mail: ccbpp@online.com.kh)
- 11) Canadia Pubic Bank Plc. (E-mail: canadia@canadiabank.com.kh)
- 12) CIMB Bank Plc. (Tel: +855-23- 988 088)
- 13) First Commercial Bank Phnom Penh Branch (E-mail: fcbpp@online.com.tw)
- 14) Foreign Trade Bank of Cambodia (E-mail: ftb@camnet.com.kh)
- 15) Hwang DBS Commercial Bank (E-mail: info@hwangdbs.com.kh)
- 16) ICBC Bank Limited Phnom Penh Branch (Tel: +855-23-965 291)
- 17) Kookmin Bank Cambodia (Tel: +855-23- 999 304)
- 18) Krung Thai Bank Public Co., Ltd Phnom Penh Branch (E-mail: ktbpmpp@online.com.kh)
- 19) Maruhan Japan Bank Plc. (E-mail: info@maruhanjapanbank.com)
- 20) Maybank Phnom Penh Branch (E-mail: mbb@maybank.com.kh)
- 21) MB Bank Plc. Phnom Penh Branch Cambodia (Tel: +855-16-880 295)
- 22) Mega International Commercial Bank Co.Ltd. Phnom Penh Branch (Tel:+855-23-988 102)
- 23) O.S.K Indochina Bank (Tel: +855-23- 992 833)
- 24) Phnom Penh Commercial Bank (Tel: +855-23- 999 500)
- 25) Sacom Bank Phnom Penh Branch (Tel: +855-23- 223 422)
- 26) Shinhan Khmer Bank Limited. (Tel: +855-23- 727 380)
- 27) Singapore Banking Corporation Ltd. (E-mail: info@sbc-bank.com)
- 28) Union Commercial Bank Plc. (E-mail: info@ucb.co.kh)
- 29) Vattanak Bank (E-mail: service@vattanacbank.com)
- 30) Vietnam Bank for Agriculture and Rural Development Cambodia Branch (E-mail: phongvbard@yahoo.com)

### Financial lease

#### REGULATORY FRAMEWORK FOR THE FINANCIAL LEASE

“Law on Financial Lease” was promulgated on June 20, 2009. The purpose of the Law is to determine the rights and duties of all parties involved in financial lease operations and issue measures to protect their rights (Article 1). The scope of this law only covers the financial lease of movable properties within Cambodia (Article 3).

#### FINANCIAL LEASE AGREEMENT

The Financial Lease Agreement must be in writing, signed by Lessor and Lessee and shall determine a notice period and conditions for all concerned parties relating to the leased movable property. Financial Lease Agreement is not required to be notarized except it is required by law (Article 5).

An agreement shall be sufficient if it provides the followings (Article 6).

- (a) Description of the leased movable property
- (b) Amount, periodicity and duration of the Lease Payments
- (c) Starting date of the Financial Lease
- (d) Signature of the Lessor and the Lessee

A Financial Lease Agreement may provide for Security Deposit, Advance Lease Payments, or both. In case no provision provided for the handling of Security Deposit, it shall not earn interest and shall be returned to Lessee after the Lessee has fully completed the obligations under the Financial Lease Agreement within the defined period. Advance rental shall not earn interest. Security Deposits and advance rentals may be for any amount as agreed upon by the parties (Article 7).

If the Financial Lease Agreement states that the movable properties must

carry labels declaring that they belong to the Lessor, such labels shall not be concealed or not be made invisible by any person besides the Lessor or the Lessor's representative (Article 8).

Under the Financial Lease Agreement, the Lessee shall accept the use of the movable properties for a period of at least 1 year. At the end of the Agreement, Lessee may or may not purchase the movable property. The Lessor provides finance with a means to use the movable property, but not with a means to become the owner of such mobile property (Article 9).

#### *RIGHTS AND OBLIGATIONS OF THE LESSOR*

During and after the duration of the Financial Lease, the Lessor remains the owner of the lease movable property unless that ownership has been transferred to Lessee or other parties (Article 10).

The Lessor is responsible for payment of import duty and other tax obligations in accordance with the law, and the registration cost of the leased movable property except as provided otherwise by the Financial Lease Agreement (Article 11).

The Lessor must guarantee that the leased movable property is usable by Lessee without any interference throughout the period of the Financial Lease Agreement as long as Lessee performs the Lessee's obligations under the Agreement (Article 13).

The Lessor shall not be responsible to pay for damages made by a third party on the movable property (Article 14). The Lessor has the right to request the Lessee to compensate for the damages or the loss of the movable property during its use by the Lessee (Article 18).

The movable property is not the property of the Lessee. If the Lessee becomes insolvent and enters insolvency proceedings, the Lessor has the right to confiscate the lease movable property and seek payment in the liquidation process by the court (Article 20).

#### *RIGHTS AND OBLIGATIONS OF THE LESSEE*

A Lessee has the obligation to accept the leased movable property if it is delivered in a timely manner and conforms to the supply agreement. If the leased movable property is not delivered, is delivered late or does not conform to the supply agreement without prior approval of the Lessee, then at or before the time for acceptance (but not after) the Lessee has the right to reject the movable property, demand from the supplier the immediate remedy of its defect or defects, or to cancel the Lease Agreement. However, the Lessee shall have no right to terminate, rescind or modify the Supply Agreement without the consent of the Lessor. The Lessor has the right but not the obligation to remedy the failure to supply the movable property in conformity with the supply agreement (Article 23).

The Lessee has an obligation to make payment in accordance with the Financial Lease Agreement upon receiving the leased movable property (Article 25).

The Lessee has the obligation to use the movable property in compliance with rules, measures and regulations in effect at that time. The Lessee is also obligated to care for and maintain the movable property in a good manner so that it remains in a usable condition (Article 26).

In case the Lessee does not purchase the movable property nor extend the Financial Lease Agreement at the end of the contract period, the Lessee shall return the movable property in its original condition except for normal wear and tear (Article 27).

The Lessee shall not mortgage, pledge, lien or otherwise create a charge over the leased movable property. The Lessee shall not re-lease, alter or transfer the use rights over the movable property or any other rights under Financial Lease Agreement without prior written approval of the Lessor

and shall not allow the acquisition of such rights by a third party without the written approval of the Lessor. Any action in breach of this obligation is invalid (Article 31).

The National Bank of Cambodia shall act as the Guardian Authority of the Leasing Institutions (Article 33). Financial leasing operations may be implemented by banking and financial institutions who have received a banking license from the National Bank of Cambodia. Those operations may also be implemented by the financial leasing institutions established under the provisions of this Law and licensed by the National Bank of Cambodia. The financial leasing institutions will not be allowed to undertake banking operations other than the operation of the financial lease (Article 34).

#### **Securities market**

##### *Opening of CSX*

The Cambodia Securities Exchange (CSX) was incorporated on 23 February 2010. In accordance with the Joint-Venture Agreement, CSX has been capitalized by MEF (55%) and Korea Stock Exchange (KRX, 45%). CSX received approval license from SECC for the market operator, clearing and settlement facility and depository operator on 28 February 28 2011. The stock exchange market itself has been inaugurated on 11 July 2011 the actual stock trade began in April 2012 when "Phnom Penh Water Supply Authority" listed its shares.

According to the news report, two state-owned companies, namely "Telecom Cambodia" and "Port Authority of Sihanoukville", are preparing for Initial Public Offering (IPO) of their stocks and "Port Authority of Phnom Penh" also announced in July 2012 that it would aim to list its stock in CSX sometime between the end of 2013 and 2015. Besides the state companies, several private companies also have plans to list their stock sometime in 2013.

#### *REGULATORY FRAMEWORK FOR THE SECURITIES MARKET*

The Law on the Issuance and Trading of Non-Government Securities was promulgated on 19 October 2007, to regulate the securities exchange, clearing and settlement system, securities depositories and other operators in the securities markets who trade or provide financial services including public limited companies or registered legal entities that issue securities (Article 1).

The purposes of the law (Article 2):

- 1) develop and maintain the confidence of public investors in the Kingdom of Cambodia by protecting their lawful rights and ensuring that the offer, issue, purchase and sale of securities are carried out in a fair and orderly manner;
- 2) promote the effective regulation, efficiency and orderly development of the securities market in Cambodia;
- 3) encourage the mobilization of variety of saving tools through buying of securities and other financial instruments;
- 4) encourage foreign investment and participation in the securities market in the Kingdom of Cambodia; and
- 5) assist in facilitating the privatization of commercial enterprises currently owned and managed by the Government of the Kingdom of Cambodia.

The law shall cover non-government securities transactions in the Kingdom of Cambodia (Article 3).

#### *SECURITIES AND EXCHANGE COMMISSION OF CAMBODIA (SECC)*

Securities and Exchange Commission of Cambodia (SECC) shall be established under the Law consisting of a Chairperson and 8 members. SECC Members shall have mandate of five years (Article 5). The composition of

SECC members shall consist of the following (Article 6):

- 1) Representative from the Ministry of Economy and Finance: 1 person
- 2) Representative from the National Bank of Cambodia: 1 person
- 3) Representative from the Ministry of Commerce: 1 person
- 4) Representative from the Ministry of Justice: 1 person
- 5) Representative from the Cabinet of Council of Ministers: 1 person
- 6) Director General of SECC: 1 person
- 7) Experts in securities: 2 persons

SECC shall have the following functions (Article 7):

- 1) to regulate and supervise securities markets, both government and nongovernment;
- 2) to enforce policy with respect to securities market;
- 3) to formulate conditions for granting approvals to the operators of a securities market, clearance and settlement facility, and securities depository;
- 4) to formulate conditions for granting license to securities companies and securities company representatives;
- 5) to promote and encourage compliance with the requirements of this law;
- 6) to play a role as an institution to examine and solve complaints against licensed legal entities' decision affecting the benefits of participants or investors;
- 7) to consult with any qualified person to develop policies for the purpose of developing a securities market in Cambodia

Officers of SECC have legal capacity as judicial police and have functions as prescribed in penal procedure code in relation to the roles and functions of judicial police (Article 10).

#### *OFFER AND ISSUE OF SECURITIES*

No person can issue and make public offer of new securities unless the person is approved by SECC in relation to proposed public offer in accordance with law and any requirements provided by SECC (Article 12). SECC director general must examine every proposal submitted under Article 12 of this law and advise the person who submitted the proposal within 3 (three) months from the submission day on whether SECC considers the proposal to be in the interest of the public of Cambodia (Article 13). If the SECC approves a proposal submitted under Article 12 of this law, the person or persons who made the proposal may proceed to implement the making of a public offer of securities under the proposal in accordance with this law (Article 15).

A person must not make a public offer of securities in Cambodia unless:

- 1) the securities to which the offer relates would be or have been issued by a public limited company registered in Cambodia or a permitted entity that is prescribed in accordance with existing laws and regulation; and
- 2) except where the offer is an exempt offer as prescribed by sub-decree in accordance with this law, the terms of the offer and a disclosure document in relation to the offer which complies with the requirements of this law and any other requirements prescribed in accordance with this law shall have been approved in advance by director general of SECC and, in the case of the disclosure document, registered by SECC (Article 16).

During the life of the disclosure document, the issuer of the disclosure document or the issuer of the securities to which the disclosure document relates, as the case may be, must lodge a supplementary or replacement disclosure document with SECC for approval and registration, if the issuer of the disclosure document or the issuer of the securities to which the supplementary disclosure document relates becomes aware that there has been a significant change affecting a matter contained in the lodged disclosure document or a significant new matter has arisen which would have been required under this law, a requirement prescribed under the law had the matter arisen when the disclosure document was prepared or

the disclosure document contains a significant statement that is false or misleading or there is a significant omission from the disclosure document (Article 20).

#### *CONDUCT OF SECURITIES MARKET*

A person must not operate a securities market (including a securities exchange), a clearance and settlement facility or a securities depository unless the person has been approved by the director general of SECC to operate the market, facility or depository in accordance with this law or any other effective laws (Article 23).

An application to operate a securities market, clearance and settlement facility or security depository shall be processed as follows (Article 24):

- 1) A person may make an application for approval to operate a securities market, a clearance and settlement facility or a securities depository by lodging an application with SECC in the form prescribed and paying the fee prescribed by SECC.
- 2) The director general of SECC must give a copy of an application it receives under paragraph (1.) of this article to the Chairperson and members of SECC with advice about the application as soon as practicable after the lodgment of the application.
- 3) The director general of SECC may require an applicant to supply such further information as it considers necessary and may refuse to proceed with the application until such information is supplied.

A person shall not put into practice the operating rules and procedures of securities market, clearance and settlement facility, or securities depository unless they are approved by SECC. The operating rules and procedures of an approved securities market, clearance and settlement facility or securities depository must adequately address the matters prescribed in accordance with this law (Article 28).

#### *LICENSE OF SECURITIES FIRMS*

No person shall conduct a securities business or hold himself out as conducting a securities business in the form of a securities firm unless the person has been licensed by the director general of SECC. No person shall act or hold himself out as a representative of a permitted securities firm that is licensed under this law to conduct a securities business unless the person has been licensed by the director general of SECC as a representative of the securities firm (Article 31).

Application for license shall be processed as follows:

- 1) A person may make an application for a license to operate a securities business or act as a securities representative by lodging an application with the director general of SECC in the form prescribed and paying the prescribed fee determined by SECC.
- 2) The director general of SECC may require an applicant to supply such further information as it considers necessary and may refuse to proceed with the application until such information is supplied (Article 32).

Conditions of license and the grant of license to investment advisor, securities dealers and other participants in a securities market, clearing and settlement facilities or securities depository shall be imposed and made by SECC (Article 35).

#### *CORPORATE GOVERNANCE AND CONTROL OF ISSUER*

Public limited companies or other permitted entities that have issued or sold securities to the public members in the Kingdom of Cambodia shall strictly adhere to existing laws and regulations and any requirements with respect to the governance of a public limited company as prescribed by SECC for the interest of the conduct of the securities market and protection of the investing public (Article 38).

Corporate control requirements may be prescribed by SECC in order to



regulate:

- The acquisition of control over the voting shares in a public limited company or permitted entity that has issued voting shares to members of the public. The prescribed requirements ensure that the acquisition of control over the voting shares in the company or entity takes place in a fair and informed way, and
- The disclosure of the ownership of a substantial holding of voting shares of a public limited company or permitted entity that has issued voting shares to members of the public. The prescribed requirements ensure that the holders of the voting shares in a public limited company or permitted entity know the identity of owners of a substantial holding of voting shares in the company or permitted entity (Article 39).

#### *PROHIBITED BEHAVIOUR IN RELATION TO SECURITIES*

Insider dealing, false trading and market manipulation and false or misleading statements are also prohibited under Article 40, Article 41 and Article 42 respectively.

#### *TAX INCENTIVES IN SECURITIES SECTOR*

“Sub-Decree No. 70 ANKR BK on Tax Incentive in Securities Sector” was issued on 22 April 2011 to prescribe types, activities and other requirements which are subject to tax incentives in securities sector as prescribed in the Article 12 of the Law on Public Finance Management 2010 16 December 2009.

This Sub-Decree shall be applicable in the Kingdom of Cambodia to:

1. Equity and/or debt securities issuing companies granted approval from the Securities and Exchange Commission of Cambodia (thereafter is SECC) and listed on permitted Securities Market.
2. Public investors holding and/or buying-selling of government securities, equity and/or debt securities which are issued and listed on the permitted Securities Market. The public investors are also included both resident and nonresident investors (Article 3).

Equity and/or Debt Securities issuing companies approved by the SECC and listed on the permitted Securities Market shall fulfill the form and submit to the General Department of Taxation through SECC in order to grant tax incentives by reducing 10% of total amount of tax on profit to be paid for three (03) years. The three (03) years of tax incentives above shall be calculated from:

- a) The beginning of the taxable year of securities issuance within the first six (6) months of the taxable year.
- b) The beginning of the taxable year after the taxable year by which securities are issued within the last six (6) months of the taxable year. (Article 4)

Public investors shall gain fifty (50%) percent deduction of withholding tax on interest and/or dividend which derives from holding and/or buying-selling the government securities, equity securities and debt securities for the period of three (03) years counting from the opening of securities market (Article 5).

Companies shall not be granted tax Incentives on profit as prescribed in the Article 4 if those companies are qualified investment enterprises enjoying within their tax holidays period as prescribed in the Laws and regulations on Investment in the Kingdom of Cambodia (Article 6).

#### *OPERATING RULES OF SECURITIES MARKET*

“PRAKAS #006/11 SECC PrK on the Implementation of the Operating Rules of Securities Market” was issued on 3 May 2011 to set forth the implementation of the Operating Rules of Securities Market of the Cambodia Securities Exchange (CSX). Details of the operating rules are provided

in its Annex as follows.

Equity securities shall be permitted for trading at the CSX by complying with these Operating Rules. The securities transactions among the members shall be intermediated by the CSX (Article 3).

An order shall be valid from the time it is received by the CSX trading system to the time it is executed during the trading session of the same day (Article 4).

The trading hours shall be from 8:00 am to 11:30 am. Trade shall be executed 02 (two) times per day, at 9:00 am and 11:30 am (Article 6) and trading days shall be from Monday to Friday, except public holidays (Article 7). The order unit for equity securities shall be 01 (one) share.

The tick size shall be determined as the following (Article 10):

1. KHR 50: Issues with the price per share less than KHR 50,000;
2. KHR 250: Issues with the price per share equal to or higher than KHR 50,000, but less than KHR 500,000; and
3. KHR 500: Issues with the price per share equal to or higher than KHR 500,000.

The minimum trading unit for equity securities per transaction shall be 1 (one) share.

The daily price change limit shall be equal to the amount calculated by adding or subtracting 5% of the base price, and the amounts obtained less than the price unit of the base price shall be down. However, in cases where the base price is less than KHR 1,000, the daily price change limit shall be KHR 50 (Article 12). The method to determine the basic price is explained in Article 11.

The base price for the trading of initially listed issues shall be between 90 % and 150 % of the price determined in the disclosure documents registered at the SECC (IPO price) (Article 16).

The members shall pay securities transaction fee in relation to services provided pursuant to these rules. Calculation method for transaction fee, payers and time of payment are as follows (Article 24):

1. Rate: The fee for the equity securities trading service shall be levied on the amount of value of trade settled (the amount of fee obtained shall be rounded up to the first decimal place) at the rate of 25/10,000 (twenty five-ten thousandths) or 0.25%.
2. Payers: securities firms which are members of the CSX.
3. Time of Payment: 8:30 am on the settlement day.

#### *LISTING RULES*

“Prakas #004/11 SECC PrK on the Implementation of Listing Rules” was issued on 3 May 2011 to prescribe the necessary matters for listing of equity securities at the Cambodia Securities Exchange (CSX) pursuant to the Law on the Issuance and Trading of Non-Government Securities and relevant regulations (Article 1 of Annex).

The financial statements which shall be attached with the application for listing shall be prepared and audited pursuant to the Law on Corporate Accounts, Their Audit and Accounting Professions and relevant laws and regulations of the Kingdom of Cambodia (Article 3 of Annex).

A person applying for listing eligibility review shall submit the following documents to the CSX: (Article 6 of Annex)

1. General Information:
  - a. Name of the company in Khmer and Latin;
  - b. Address of the company;
  - c. Date of incorporation;
  - d. Corporate objectives;
  - e. Commercial registration certificate;
  - f. Business licenses from the related authorities.

1. Company's representative information: Identity of the representative;
2. Shareholder Information: Shareholders' identities;
3. Quantitative Information:
  - a. Total shareholders' equity at the application date;
  - b. Net profit for the last 03 (three) years;
  - c. Audited financial statements for the last 03 (three) years;
  - d. Type of securities issued and traded at the CSX.

A Person received the notification of eligibility for listing at the CSX shall fulfill procedures for official listing at the CSX within seven (7) working days after the securities have been allocated to the subscribers (Article 8 of Annex).

The eligible applicant can officially be listed at the CSX by satisfying the following requirements unless determined otherwise by the Director General of the SECC (Article 12 of Annex):

1. Number of shareholders holding less than 1% (one percent) voting shares: number of shareholders holding less than 1% voting shares, who hold 10 (ten) shares or more, shall be at least 200 (two hundred) as of the date of fulfilling the official listing procedures.
2. Number of shares held by shareholders holding less than 1% (one percent) voting shares: voting shares of shareholders holding less than 1% (one percent) voting shares shall be more than 200,000 (two hundred thousand) or 15% of the total voting shares, whichever is larger;

The eligible applicant can officially be listed at the CSX by fulfilling the following non-quantitative requirements (Article 13 of Annex):

1. Share ownership of the largest shareholders shall not be changed for the last 01 (one) year until the official listing;
2. All the issued securities shall be deposited at the Operator of Securities Depository approved by the SECC.

Applicant for initial listing shall attach the agreement in which states that shareholders with controlling interest in voting share shall not sell or transfer their shares for a period of at least one year, and shareholders owning at least 15% (fifteen percent) of total shares shall not sell or transfer their shares for a period of at least six months after the initial listing (Article 17 of Annex).

## **Insurance**

### *REGULATORY FRAMEWORK FOR THE INSURANCE*

"Insurance Law of Cambodia" was enacted on 20 June, 2000 with the purpose of regulating insurance, protecting the legitimate rights of the parties to insurance, strengthening supervision and control over the insurance business and contributing to the development of the insurance industry (Article 1). Only insurance company, agent and broker are eligible to carry out insurance business in Cambodia (Article 4).

### *INSURANCE CONTRACT*

An insurance contract is an agreement whereby the relation of rights and obligations of the insured and the insurer are enumerated (Article 9) and each party shall have the rights to cancel the insurance contract before due subject to an advance notice through the letter of recommendation or the letter of notification with duly acceptance (Article 11).

Only the insurance policy or cover note specifies the responsibilities between the insurance company and the insured. The insurance application is not valid for the coverage to both parties hereto. The proposal for the renewal, alteration or reattachment the suspended insurance policy shall be deemed approved if the insurance company has not refused this proposal within 15 days (Article 14).

After the insurance contract was concluded, the Insured shall pay the

insurance premium as agreed. The coverage shall enter into force from the date of payment of the insurance premium by the Insured as stated in the insurance policy (Article 17). Any failure to make payment of insurance premium when due, the validity of coverage cannot be suspended more than 30 days from the date the insurance policy is signed. The insurance company shall notify through a registered letter or a letter duly acknowledged by the Insured or person who is obligated to pay the premium to make payment at the agreed place within 20 days after the insurance contract is concluded. If the Insured still fails to pay the premium within a period of 10 days after notification, the insurance company shall have the right to cancel such insurance contract (Article 18).

In liability insurance, if the insured causes loss or damage to a third party, the insurance company will directly indemnify the victim (Article 23). In the case of reinsurance, the principal insurance company still bears liability before the Insured (Article 24).

### *PROPERTY INSURANCE*

Property insurance is a contract of indemnification when a risk occurs. The claim amount paid by the insurance company to the insured shall not be over the value of the subject matter insured as declared in the insurance contract, except otherwise agreed by both parties (Article 26). In the event of total loss of the subject matter insured caused by a risk which had not been written in the insurance policy, then the insurance shall be legally terminated and the insurance company shall refund the insured ninety percent (90%) of the insurance premium for the remaining period (Article 27).

### *LIFE AND PERSONAL ACCIDENT INSURANCE*

For individual insurance, the insured sum declared in the insurance policy is the maximum limit of the compensation amount payable under the policy. Individual insurance shall include life insurance, health insurance and physical injury insurance (Article 29).

### *COMPULSORY INSURANCE*

A natural person or legal entity owning and operating a commercial motor vehicle business on the road shall required to buy from an insurance company a third party liability insurance policy covering property loss or damage to third party arising out of the motor vehicle operation, including all type of trailers (Article 36).

A natural person or legal entity operating as building contractor shall be required to buy a liability insurance policy. At the commencement of project, the building contractor shall certify that he/she has purchased a liability insurance policy from an insurance company. The type of construction project subject to compulsory insurance shall be defined by Sub-Decree (Article 40).

A natural person or legal entity operating a passenger transport business using various means of transport shall be required to purchase liability insurance covering passengers being transported whether by road, sea, river, air or railroad (Article 42).

### *INSURANCE COMPANY*

Every insurance company shall be registered in the Commerce Register and be subject to the supervision and control of the Ministry of Economy and Finance (Article 43) and all insurance companies, whether state owned, private or mixed companies shall be allowed to operate in the Kingdom of Cambodia only under the form of a public liability company (Article 45).

Prior to receiving/obtaining license, applicants shall provide a letter or document certifying that it has fulfilled the following conditions (Article 48).

- (a) deposited the amount equivalent to 10% of the registered capital;
- (b) maintained the amount of solvency level/margin equivalent to 50%

of the registered capital.

First insurance license shall have validity for 5 years commencing from the date of issuing license; and such license may be requested for extension of 3 years only if the company has properly implemented in accordance with applicable laws and regulations. License fee shall be of 50 million Riel (Prakas # 098.MEF on Granting License to General or Life Insurance Companies).

#### *INSURANCE AGENTS AND INSURANCE BROKERS*

An insurance agent is a natural person or legal entity who receives insurance commission from insurance company and manages to handle the insurance business on behalf of the insurance company under clearly specified mandate. An insurance broker is a legal person who carries out insurance business for the benefit to the Insured, providing intermediary services between the insured and the insurance company to conclude an insurance contract and legally collect brokerage commission (Article 50).

#### *CURRENT SITUATION ON INSURANCE COMPANIES*

As the association of insurance companies, General Insurance Association of Cambodia: <http://www.giac.com.kh/>) was established in July 2005. Currently 5 member companies appear in their website in addition to one re-insurance company. The names of major insurance companies and re-insurance company are as follows.

- Cambodian Reinsurance Company (Cambodia Re): Established under Sub-Decree No. 07AN.KR.MK by the Royal Government of Cambodia on 24 the January 2002. Concluded a joint venture agreement with Asian Insurance International (AII) by selling 20 percent of the share of Cambodia Re on 16 the January 2004.
- Cambodia Insurance Company (CAMINCO): Incorporated in 1990 as the first Cambodian National Insurance Company. Started operations since June 1993. Restructured its status to be a Public Enterprise following Sub-Decree N°132 dated December 31st, 2001.
- Forte Insurance Company (Cambodia) Plc: Laid the foundation in 1996 by opening its insurance underwriting and brokerage wing in Phnom Penh and became one of the first insurance companies to be set up in Cambodia.
- Asia Insurance Company (Cambodia) Ltd.: Formed and registered in Phnom Penh in March 14, 1996 as an integral member of the Hong Kong based Asia Insurance Group of companies.
- Infinity General Insurance Plc.: Set up and launched a grand opening on 25 July 2007.
- CampuBank Lonpac Insurance: Incorporated in August 2007 as a joint-venture of Cambodian Public Bank and Public Bank Malaysia with LPI Capital through its wholly-owned subsidiary Lonpac Insurance.
- Cambodia-Vietnam Insurance Company Plc. (CVI): Established as a joint venture between IDCC (BIDV invested 80%), Kasimex and NH Holdings and engaged in general insurance, reinsurance, claims, risk management and investment.
- Cambodian Life Insurance Company PLC. (Cambodian Life): The joint venture company between Cambodia Government (MEF), PT Asuransi Central of Indonesia, Asia Insurance Company Limited of Hong Kong, Bangkok Life Assurance Public Company Limited of Thailand and Bangkok Insurance Public Company Limited of Thailand. It started operation in May 2012 and currently provides Term Life Insurance, Whole Life Insurance and Loan Insurance.
- Manulife (Cambodia) PLC: It opened its operation in June 2012 to engage in the life insurance.

#### **Law on Anti-Money Laundering and Combating the Financing Terrorism**

Law on Anti-Money Laundering and Combating the Financing Terrorism was promulgated on 24 June 2007. Under the Law, it is provided that banking or professional secrecy shall not inhibit the implementation of the present Law and may not be invoked as a ground for refusal to provide information to the Financial Intelligence Unit (FIU, a central body responsible for receiving, analyzing and disseminating reports on suspicious transactions, cash transactions and other information regarding money laundering or financing of terrorism) and supervisory authority, whether for domestic or for international cooperation purposes, or as required in connection with an investigation which relates to money laundering or financing of terrorism ordered by or carried out under the supervision of a judicial authority (Article 6).

The Law prohibits the Reporting Entities such as banks, non-bank financial institutions, securities brokerage firms, insurance companies, micro finance institutions, credit cooperatives, leasing companies, investment and pension funds, investment companies for managing investment funds, etc., to open or keep anonymous or numbered accounts, or accounts in obviously fictitious names and/or issue, keep or accept any other financial products unless the customer due diligence measures were taken (Article 7).

Reporting Entities shall take customer due diligence measures, including the identification of their customers and the verification of their customers' identity (Article 8) and are asked for special monitoring measures to be taken for certain transactions (Article 10)

The Law stipulates that the Reporting Entities shall also report to the FIU any cash transaction exceeding the amount of the threshold as defined by the supervisory authority, as well as such transactions, which involve several connected cash transactions whose total value exceeds the same amount (Article 12.1). If the FIU has reasonable grounds to suspect that a transaction or a proposed transaction may involve a money laundering offense or an offense of financing of terrorism, it may direct the reporting entity in writing or by telephone not to proceed with the carrying out of that transaction or proposed transaction or any other transaction in respect of the funds affected by that transaction or proposed transaction for a period as may be determined by the FIU, which may not exceed 48 hours, in order for the FIU to make necessary inquiries concerning the transaction and to inform and advise a law enforcement agency, if the FIU deems it appropriate (Article 12.5).

In case of a proceeding on the violation of money laundering or financing terrorism as stipulated in the existing Penal Code all relating or suspicious to be related property may be frozen or restrained from transferring until the court decision becomes definitive (Article 30).

#### **Currency**

Although it is legally prohibited by the Sub-Decree of 1992 to do business in foreign currency, the U.S. Dollar is widely and commonly used in Cambodia. The exchange rate of the U.S. Dollar has been stable at around 4,000 Riel since the 1998 devaluation.

Although the use of checks or credit cards is still limited for commercial purposes, the credit cards are gradually becoming to be accepted by some major hotels, shops or restaurants.

### **III-8 Foreign Exchange**

#### **Restriction on the foreign exchange**

The "Law on the Foreign Exchange" of September 1997 stipulates that "there shall be no restriction on foreign exchange operations" through authorized banks (Article 5) but the authorized banks shall report to the National Bank of Cambodia the amount of each transfer equaling or

exceeding 10,000 US dollars (Article 17). Residents are allowed to hold foreign currencies freely (Article 7).

The import or export of raw gold, uncut precious stones or other raw precious metals shall be free but subject to prior declaration to the National Bank of Cambodia, and the import or export of the means of payment equaling or exceeding 10,000 US dollars in foreign currencies or the equivalent amount in domestic currency by a traveler shall be declared to customs officers (Article 12 & 13).

Loans and borrowings, including trade credits, may be freely contracted between residents and nonresidents as long as the loans disbursement and repayments are made through authorized banks (Article 18).

### **Remittance**

Article 11 of the Amended Law on Investment of 2003 guarantees that the QIPs (Qualified Investment Projects) can freely remit abroad foreign currencies, bought through the authorized banks, for the discharge of financial obligations incurred in connection with their investment. These obligations include;

- Payment for imports and repayment of principal and interest on international loans;
- Payment of royalties and management fees;
- Remittance of profits; and
- Repatriation of invested capital in case of dissolution

## **III-9 Employment and Labor**

### **Regulatory framework for the labor relations**

Cambodian labor relations, employment and work terms and other labor-related matters are basically regulated by the Constitution and the 1997 Labor Law. The 1997 Labor Law, which was enacted in March 1997 and brought significant modification into the socialistic 1992 Labor Law, is quite liberal and protects the considerable rights of laborers and unions.

### **Provisions under the Constitution relating to employment in Cambodia**

Major provisions of the Constitution relating to the employment are as follows.

- Khmer citizens of either sex shall enjoy the right to choose any employment according their ability and to the needs of the society (Article 36).
- Khmer citizens of either sex shall receive equal pay for equal work (Article 36).
- Khmer citizens of either sex shall have the right to form and to be a member of trade unions (Article 36).
- The organization and conduct of trade unions shall be determined by law (Article 36).
- The right to strike and to non-violent demonstration shall be implemented in the framework of a law (Article 37).
- All forms of discrimination against women shall be abolished. The exploitation of women in employment shall be prohibited (Article 45).
- A woman shall not lose her job because of pregnancy. Woman shall have the right to take maternity leave with full pay and with no loss of seniority or other social benefits (Article 46).
- The state and society shall provide opportunities to women, especially to those living in rural areas without adequate social support, so they can get employment, medical care, send their children to school, and have decent living conditions (Article 46).

### **Major provisions under the Labor Law**

The 1997 Labor Law provides wide protection of laborers' rights and offers generous working conditions. The key regulations of the Law are as follows.

#### *GENERAL:*

- *Forced Labor:*  
Forced or compulsory labor is absolutely forbidden (Article 15).
- *Declaration of opening and closing of the enterprise*  
All employers to whom this Labor Law is applied, shall make a declaration to the Ministry in charge of Labor when opening an enterprise or establishment. This declaration must be made in writing (Article 17).
- *Declaration on Movement of Personnel:*  
Every employer must make the declaration to the Ministry (Ministry of Labor and Vocational Training: MLVT) each time it hires or dismisses a worker. This declaration must be made in writing within fifteen days of the date of hiring or dismissal (Article 21).
- *Internal Regulations:*  
Every employer who employs at least eight workers shall establish internal regulations for the enterprise (Article 22).
- *Child labor:*  
The allowable minimum age is set at fifteen years. The minimum allowable age for any kind of employment or work, which, by its nature, could be hazardous to the health, the safety, or the morality of an adolescent, is eighteen years (Article 177).
- *Hiring:*  
An employer can directly recruit workers for his enterprise, but he must meet the requirements mentioned in Article 21 of this law (Article 258).

#### *EMPLOYMENT CONTRACT:*

- *Employment Contract:*  
A labor contract is subject to ordinary law and can be made in a form that is agreed upon by the contracting parties. It can be written or verbal (Article 65).

A labor contract signed for a specific duration must contain a precise finishing date and cannot be for a period longer than two years. It can be renewed one or more times, as long as the renewal does not surpass the maximum duration of two years. Any violation of this rule leads to the contract's becoming a labor contract of undetermined duration (Article 67).

- *Termination of Labor Contract:*  
A labor contract of specific duration normally terminates at the specified ending date. It can, however, be terminated before the ending date if both parties are in agreement and such agreement is made in the form of writing in the presence of a Labor Inspector and signed by the two parties to the contract. If both parties do not agree, a contract of specified duration can be cancelled before its termination date only in the event of serious misconduct or acts of God. The premature termination of the contract by the will of the employer alone for reasons other than those mentioned in paragraphs 1 and 2 of this article entitles the worker to damages in an amount at least equal to the remuneration he would have received until the termination of the contract (Article 73).

A labor contract of unspecified duration can be terminated at will by one of the contracting parties (subject to various exceptions). This termination shall be subject to prior notice in writing by the party who intends to terminate the contract to the other party (Article 74). The termination of a labor contract at will on the part of the employer alone, without prior notice or without compliance with the prior notice periods, entails the obligation of the employer to compensate the worker the amount equal to the wages and all

kinds of benefits that the worker would have received during the official notice period (Article 77).

**WAGES:**

- **Guaranteed Minimum Wages:**

The wage must be at least equal to the guaranteed minimum wage; that is, it must ensure every worker a decent standard of living compatible with human dignity. (Article 104)

The guaranteed minimum wage is established without distinction among professions or jobs and set by a Ministerial Order of the Ministry in charge of Labor (Article 107).

**MOLVT Notification of July 9, 2010 on Minimum Wage**

a) The Minimum Wage for the workers in Textile, Garment and Shoe industries are set at USD 56 per month during the probationary period from 1 to 3 months. The regular workers are entitled to receive US\$61 per month.

b) Productivity-base wage of workers (piece-rate) will be provided based on actual performance. If the performance is over the minimum wage stipulated in a) above, the wages will be provided as per performance. In case the performance is below the minimum wage, the employers must add the wage to make it \$56 per month for probationary workers and \$61 for regular workers.

c) The new minimum wage shall be effective as of 01 October 2010 until 2014.

Note: Minimum wages are not generally determined so far, except for the workers employed in the Shoes, Textile and Garments factories.

**Prakas of Labor Advisory Committee of March 4, 2011 on Additional Incentive and Bonus for the Garment and Shoes workers**

- Workers who come regularly to work in working day determined in each month, have to be paid at least US\$7 as Monthly Attendance Incentive.
- Workers who are willing to work for overtime at employer’s request, have to be paid 2000 riel per day as overtime meal allowance, or provided meal treat one time per day.
- Seniority Bonus
  - Workers working in garment enterprise or another organization for over one year have to be paid Seniority Bonus according to table below:

Seniority (years)	1-	2-	3-	4-	5-	6-	7-	8-	9-	10-	11-
Monthly Bonus (USD)	0	2	3	4	5	6	7	8	9	10	11

  - Workers must be paid Seniority Bonus properly according to work duration stated in the table above, except any workers who have been working over 11 years, which have to be paid USD 11 per month as Seniority Bonus.
- Any benefit that has been stated in this Prakas will take effect as of March 1, 2011.

- **Payment of Wages:**

The wage must be paid directly to the worker concerned, unless the worker agrees to get paid by other methods. The wage shall be paid in coin or bank note (Article 113).

Laborers’ wages shall be paid at least two times per month, at a maximum of sixteen-day intervals and Employees’ wages must be paid at least once per month (Article 116).

**WORKING HOURS:**

- **Working Hours:**

The number of hours worked by workers of either sex cannot exceed eight hours per day, or 48 hours per week (Article 137).

- **Work Shift:**

When the work schedule consists of split shifts, the enterprise’s management can normally set up only two shifts, one in the morning and the other in the afternoon (Article 138).

- **Overtime:**

If workers are required to work overtime for exceptional and urgent jobs, the overtime hours shall be paid at a rate of 50% higher than normal hours.

If the overtime hours are worked at night the interval from 22:00 pm to 05:00 am or during weekly time off, the rate of increase shall be 100% (New Article 139\*).

- **Night Work:**

For the purpose of this law, the term “night” represents a period of at least eleven (11) consecutive hours that includes the interval between 22:00 and 05:00 hour. The night work shall be calculated from 22:00 pm to 05:00 am. Besides continuous work that is performed by rotating worker teams who sometimes work during the day and sometimes at night, the work at the enterprise can always include a portion of night work. The night work is paid at the rate of 130% of the wage of the daytime work (New Article 144\*).

**LEAVE:**

- **Weekly Time Off:**

It is prohibited from using the same worker for more than six days per week (Article 146).

Weekly time off shall last for a minimum of twenty-four consecutive hours and shall, in principle, be given on Sunday (Article 147).

- **Paid Leave:**

All workers are entitled to paid annual leave at the rate of one and a half work days per month of continuous service. As stated above, the length of paid leave increases according to the seniority of workers at the rate of one day per three years of service (Article 166).

- **Annual Leave:**

Annual leave is normally given for the Khmer New Year. In every case of the paid annual leave exceeding fifteen days, employers have the right to grant the remaining days-off at another time of the year (Article 170).

- **Special Leave:**

The employer has the right to grant his worker special leave during an event directly affecting the worker’s immediate family (up to a maximum of seven days during any event directly affecting the worker’s immediate family) (Article 169 & 171).

- **Maternity Leave:**

Women shall be entitled to a maternity leave of ninety days. After the maternity leave and during the first two months after returning to work, they are only expected to perform light work. During the maternity leave, women are entitled to half of their wage (Article 182 and 183).

## UNION:

- **Union:**

Workers and employers have, without distinction whatsoever or prior authorization, the right to form professional organizations of their own choice for the exclusive purpose of studying, promoting the interests, and protecting the rights, as well as the moral and material interests, both collectively and individually, of the persons covered by the organization's statutes. Professional organizations of workers are called "workers' unions". Professional organizations of employers are called "employers' associations". For the purposes of this law, trade unions or associations that include both employers and workers are forbidden (Article 266 and Ministerial Order 305).

- **Representation of Workers in the Enterprise:**

In every enterprise or establishment where at least eight workers are normally employed, the workers shall elect a shop steward to be the sole representative of all workers who are eligible to vote in the enterprise or establishment (Article 283).

- **Right to Strike:**

The right to strike and to lockout is guaranteed. It can be exercised by one of the parties to a dispute in the event of rejecting the arbitral decision (Article 319).

The right to strike can also be exercised when the Council of Arbitration has not rendered or informed of its arbitration decision within the prescribed time periods (The Labor Law). It can also be exercised when the union representing the workers deems that it has to exert this right to enforce compliance with a collective agreement or with the law. It can also be exercised, in a general manner, to defend the economic and socio-occupational interests of workers (Article 320).

- **Prior Notice for Strike:**

A strike must be preceded by prior notice of at least seven working days and be filed with the enterprise or establishment. The prior notice must also be sent to the Ministry in charge of Labor (Article 324).

- **Manner of Strike:**

A strike must be peaceful. Committing violent acts during a strike is considered serious misconduct that could be punished, including work suspension or disciplinary layoff (Article 330).

Freedom of work for non-strikers shall be protected against all form of coercion or threat (Article 331).

## Foreign employees

Regarding foreign employees, the 1997 Labor Law sets out the following regulations.

No foreigner can work unless he possesses a work permit and an employment card issued by the Ministry in charge of Labor. These foreigners must also meet the following conditions:

- a) Employers must beforehand have a legal work permit to work in the Kingdom of Cambodia;
- b) These foreigners must have legally entered the Kingdom of Cambodia;
- c) These foreigners must possess a valid passport;
- d) These foreigners must possess a valid residency permit;
- e) These foreigners must be fit for their job and have no contagious diseases. These conditions must be determined by a Prakas (Ministerial Order) from the Ministry of Health with the approval of the Ministry in charge of Labor.

The work permit is valid for one year and may be extended as long as the validity of extension does not exceed the fixed period in the residency permit of the person in question (Article 261). The Ministry in charge of Labor shall issue a Prakas (Ministerial Order) for the issuance of work permits and employment cards to foreign workers (Article 262).

The maximum percentage of foreigners who can be employed in each of the enterprises shall be determined by a Prakas of the Minister in charge of Labor based on each of the categories of personnel as follows (Article 264).

- a) Office personnel
- b) Specialized personnel
- c) Non-specialized personnel

### ***Inter-Ministerial Prakas # 1191 (MEF) on Fees for Work ID Cards, Work Books and Health Check Services of November 21, 2006***

- ▶ Calendar year fee for Work ID cards and Work Books for each foreigner, who comes to stay for specific period in order to carry on any business for a wage/salary, shall be of US\$ 100 per Work ID card and Work Book
- ▶ Calendar year fee for Work ID card and Work Book for each foreigner, who are over 18 years old and comes to reside permanently in Cambodia, shall be of US\$50 (fifty US Dollar) per Work ID card and Work Book.
- ▶ Foreigners, who already have their Work ID cards and Work Books, are obliged to apply for visa extension/authorization prior to the end of March every year.
- ▶ Health examination fee of US\$ 15 for each foreigner shall be to be paid by employers.

## Worker employment information

Major vocational training centers and employment agencies in Cambodia are as shown in Table III-9-1 and Table III-9-2.

Job opportunities are often announced through the website in Cambodia. Some of the major job announcement websites are as shown in Table III-9-2.

"Cambodia-Japan Cooperation Center (CJCC)", which was established in 2004 under the assistance and cooperation of Japan International Cooperation Agency (JICA), has been providing various Japanese language courses as well as management-related courses to Cambodian citizens. The Japanese language courses according to own request of investor can be arranged to provide.

## III-10 Social Security

### **Regulatory framework for the social security scheme**

"Law on Social Security Schemes for Persons Defined by the Provisions of the Labor Law" was promulgated on September 25, 2002 to establish a social security scheme composed of pension scheme, which is to provide old age benefit, invalidity benefit and survivors' benefit, and occupational risk insurance, which is to cover the employment injury and to provide occupational disease benefit.

### **Major provisions on social security schemes**

#### ***NATIONAL SOCIAL SECURITY FUND***

The Social Security Schemes shall be under the management of the National Social Security Fund (NSSF), which is the public establishment, formulated by Sub-decree in accordance with "Law on General Statute of Public Enterprise" promulgated on June 15, 1996 and "Royal Decree No. 1297/91 on Judicial Statute of Public Establishments" dated on December 31, 1997 (Article 3).

Table III-9-1: Major Vocational Training Centers in Cambodia

Institute	Telephone	E-mail	Website
Preah Kossamak Polytechnic Institute	023 882 126 012 655 644	ppi@camnet.com.kh	n.a
MLVT/ National Technical Training Institute (NTTI)	023 883 039	info@ntti.edu.kh/ sthy_yok@yahoo.com	www.ntti.edu.kh
MLVT/ National Polytechnic Institute of Cambodia (NPIC)	023 353 561 012 844 741	info@npc.edu.kh	http://www.npic.edu.kh

Note: MLVT: Ministry of Labor and Vocational Training  
Source: Japan Desk, CDC

Table III-9-2: Major Employment Agencies in Cambodia

Institute	Person in Charge	Telephone	E-mail	Website
National Employment Agency/National Training Institute	Dr. Hong Choeun, Head-ranking Director General	023 635 717 012 853 938	info@nea.gov.kh	www.nea.gov.kh
SCD Holdings (Cambodia) Co., Ltd.	Sem Sophy, Managing Director	023 969 709 099 799 799	semsophy@yahoo.com	n.a.
HR Inc. Cambodia Co. Ltd.	Sandra D'amico, Managig Director	023 211 437 012 766 748	Sandra.damico@hrinc.com.kh	www.hrinc.com.kh
Cambodia Federation of Employers and Business Associations (CAMFEBA)	Sandra D'amico, Vice President	023 222 186 012 766 748	camfeba@camfeba.com Sandra.damico@hrinc.com.kh	www.camfeba.com

Source: Japan Desk, CDC

Table III-9-3 Job Announcement Website

	Company	Contact Person	Telephone	E-mail	Website
1	Pelprek	Pen Dara	067 972 270	jobs@pelprek.com pelprel@gmail.com	www.pelprek.com
2	Camhr	Customer Service Center	023 969 088 023 969 089	jobs@camhr.com	www.camhr.com
3	Cambodia Job Page	Jean-Philippe Lepage	n.a.	contact@cambodiajobpage.com	www.cambodiajobpage.com
4	I Know	Seyma	023 226 226 086 333 168	job@iknow.com.kh	www.iknow.com.kh

Source: Japan Desk, CDC

#### PERSONS TO BE COVERED BY THE SOCIAL SECURITY SCHEMES

Persons covered by the Social Security Schemes in this law regardless of nationality, race, sex, belief religion, political opinion, national extraction, social origin, membership of trade union or act in trade union are as follows (Article 4).

- All workers defined by the provisions of the Labor Law, if those persons perform work in the territory of the Kingdom of Cambodia for the benefit of an employer or employers, regardless of nature, form and validity of the contract done or kind and amount of the wage received by the person thereof
- State workers, public workers and every personnel who is not governed by the Common Statute for Civil Servants or by the Diplomatic statute as well as officials who are temporarily appointed in the public service
- Trainee person who is attending for rehabilitation center and apprentice shall deem as workers providing in paragraph 1 of this article.
- Persons work in self-employed profession.
- Seasonal or occasional workers

Employers and workers covered by this law shall have a compulsory to pay contribution to NSSF. Terms and procedures of payment of the contribution and the entitlement of benefits shall be determined by Sub-decree on the

formulation of NSSF (Article 6).

#### PENSION SCHEME

The benefits of the pension scheme include old age pension and allowance, invalidity pension, survivors' pensions and allowance (Article 7).

Each NSSF member who is 55 years of age is entitles to old age pension provided that he or she has fulfilled the following conditions:

- a) To be registered in NSSF in a period of at least twenty years
- b) To pay in contribution at least for sixty qualifying months for Social Security Schemes during the period of least ten years up to the date of eligibility of the pension.

Each NSSF member who has fulfilled such conditions and reach a premature worn state, whether mental or physical, before the age of 55 that cause loss of earning capacity, may request to have an early pension. Each NSSF member who is 55 years of age has paid contribution less than 60 qualifying months for Social Security Schemes and has finished all wage-related works, but has not fulfilled other conditions in order to get old age pension is entitled to have old age allowance which shall be paid as a lump sum (Article 8).

NSSF member who becomes disabled before the age of 55 is entitled to have invalidity benefit provided that the person concerned has fulfilled

the following condition (Article 9).

- a) being registered in the NSSF at least for five years
- b) having fulfilled for six qualifying months for Social Security Schemes within the last 12 months up to the date of beginning of the incapacity leading to the validity

In case of the death of any holder of old age or invalidity or early pension, as well as in case of the death of any NSSF member who, at the date of his or her death, has fulfilled required conditions for enjoying old age or invalidity pension or has already proved for 180 qualifying months for Social Security Schemes, the beneficiaries shall be entitled to get survivors' pension (Article 10).

If any NSSF member who may be not entitled to an invalidity pension as well as has not yet justified for 180 qualifying months for Social Security Schemes up to the date that she/he died, husband or wife, whether disabled or not, and also orphanage of the person concerned shall be entitled to enjoy survivors' allowances that shall be provided as a lump sum in the amount of not less than monthly old age pension for the NSSF member hereof (Article 11).

#### *OCCUPATIONAL RISK*

An accident is considered to be employment injury. Regardless of the cause, if it happens to worker working or during the working hours, whether or not the worker was faulty, it is the accident inflicted on the body of the worker or an apprentice with or without wage, who is working in whatever capacity or whatever place for an employer or manager of an enterprise. Equally, accidents happening to the worker during the direct commute from his residence to the work place and home are also considered to be employment injury as long as the as the trip was not interrupted nor detour made for a personal or non-work-related reason (Article 12).

Occupational disease is also considered as occupational risk. The Minister in charge of the Social Security Schemes and the Minister of Health shall issue a Joint Prakas concerning identification of the occupational disease list vis-à-vis with list of employment regarding to physical work, exposure to toxic substance and other employment performs in insalubrious conditions or areas in which cause various diseases (Article 13).

Benefits for occupational risk are as follows (Article 15)

- a) Medical care services for occupational risk caused by employment injury or commuting accident or occupational diseases whether the accident interrupt the work or not
- b) Provide daily allowance for employment injury or commuting accident or occupational diseases causing temporary disability
- c) Provide disabled pension or allowance for employment injury or commuting accident or occupational diseases causing permanent disability
- d) Provide funeral benefits and survivors' pension

In case of temporary disability, with duly confirmation from doctor designated or recognized by the NSSF, the victim is entitled to have daily allowances. The daily allowances shall be given to the victim until the injury recovered or until the victim death resulting from the injury after treatment for a period of time. The daily wage of the worker for the first absent day is payable by the employer (Article 17).

A disability, which shall be duly certified by the doctor designated or recognized by the NSSF that it is a permanent disability the victim is entitled to the followings.

- a) The permanent disability pension when the degree of disability incurred at least equally to twenty percent "20%"
- b) The disability allowance that shall be provided as a lump sum if the degree of the disability incurred less than twenty percent "20%". The degree of permanent disability shall be determined by Prakas

of the Minister in charge of Social Security Schemes (Article 18).

When having the occupational risk and causing the victim died, the National Social Security Fund shall provide funeral benefits and pension for survivors of the victim (Article 19).

The method of participation of employer, worker registration, contribution payment, computing benefit and benefit service under the liability of employers and workers in the function of the Social Security Schemes shall be determined by Prakas (Article 23).

#### *FORMULATION OF NATIONAL SOCIAL SECURITY FUND*

National Social Security Fund (NSSF) was created by the Sub-Decree #16 (RGC) of March 2, 2007. NSSF shall be a public legal person under technical supervision of the MLVT and under financial administration of the MEF. It shall have a central office in Phnom Penh.

NSSF shall have the following duties:

- (1) to manage the social security regime in compliance with the Law on Social Security Regime for persons who are subject to the provisions of the Labor Law
- (2) to guarantee to appropriately provide benefits for members of the NSSF for the purpose of assisting difficulties in the case of old age, disability, death, labor risk or if they encounter illness, motherhood
- (3) to collect contribution from members of NSSF and employers, etc.

The NSSF shall source resources as follows:

- (1) Initial resources provided by the State for the establishment of NSSF
- (2) Transfer as provided in the State budget such as allowances for operation and capital
- (3) Contributions of NSSF members and employers which are kept for financing on each section of the social security regime, etc.

Registration will initially be implemented only in Phnom Penh, Kampong Speu and Kandal. All enterprises hiring eight or more employees must register for the NSSF within 45 days after the date of their openings. Following that, the NSSF will implement the regime of the occupational risks insurance schemes (Work Related Accidents) for enterprises, having upwards of 8 employees located in Preah Sihanouk, Siem Reap, Banteay Meanchey, Kampong Chhnaing and Svay Rieng provinces, from January 1, 2010. The establishments in those areas must register enterprises and workers before December 31, 2009 and commence to pay contribution from January 2010 onwards.

Injury component of the NSSF is currently the only part operational. As the NSSF scheme includes anyone deemed an employee under the Labor Law, both resident and non-resident employees, and local and expatriate staff are included in its scope.

Victims of work-related injuries must be sent to certain approved hospitals for treatment.

In Phnom Penh: Calmette Hospital, Russian Hospital, Lok Sang Hospital  
In Kandal and Kampong Speu provinces: Chey Chomnas Hospital (Kandal), Kampong Speu Referral Hospital (Kampong Speu), any of the three Phnom Penh Hospitals



#### The monthly contribution rates for the NSSF

- Contributions are calculated based on an employee's average monthly total wage (base wage) accordingly to the table provided in Prakas #108 KB/KrK.
- Monthly wages include remuneration, overtime, commissions, bonuses, rewards, profit sharing and gratuities.
- Contribution rate: 0.8% (Minimum: 1,600 Riels/month for the base wage of 200,000 Riels and maximum 8,000 Riels/month for the base wage of 1,00,000 Riels)
- For garment and shoe enterprises, the rate has been reduced to 0.5% under "Prakas #133 (MLVT) on Payment of the Occupational Risk Contribution by the Garment and Garment and Shoe Enterprises for 2009-2010" of June 29, 2009.
- "Notification #132 (MoLVT) on Employment Risk Contribution Payment for Garment and Footwear Industry for 2011" of December 6, 2010: The contribution rate borne by garment and shoe enterprises returned to be 0.8% from January 2011.

### III-11 Land

#### Regulatory framework for the land system in Cambodia

Land Law was first promulgated in 1992 and was amended in August 2001 (2001 Land Law). The 2001 Amendment to the Land Law especially aims to determine the regime of ownership for immovable properties in Cambodia for the purpose of guaranteeing the rights of ownership and other rights related to immovable properties. It also intends to establish a modern system of land registration that guarantees the rights of people to own land.

Land Law appointed the Ministry of Land Management, Urban Planning and Construction (MLMUPC) to be responsible for issuing titles related to the immovable properties and managing the cadastral administration of immovable properties belonging to the State.

During the civil war era, the Cambodian land system had been damaged severely and many of the land ownership titles and plots register had been lost. There are still many disputes over land ownership in Cambodia and, therefore, it is very vital for investors to verify the land ownership of landowner before they go into contract regarding land use, lease or sharing proportional interest of land ownership through Cambodian companies.

Many provisions of Land Law have been modified or deleted by Civil Code which came into effect on 20 December 2011 following the implementation of Law on the Implementation of Civil Code. It became very vital for the investors to refer the provisions of Civil Code regarding the sale, purchase, transfer of ownership, land lease right, and/or setting of mortgage on land.

#### Component of a land

Civil Code stipulates that things attached to land or comprising a part thereof, particularly buildings or structures immovably constructed on land, etc. are components of the land unless they are severed from the land, and may not, except as otherwise provided by law, be the subject of rights separate from those applicable to the land (Civil Code Article 122). However, as exceptional rule, it also stipulates that where the holder of a right [to occupy or use] a land of another has constructed buildings or structures, etc. on the land in the course of exercising such right, those constructed, etc. shall not become components of the land. The same shall apply to those things that are attached on the land for a purpose of temporary nature (Civil Code Article 123) and these buildings and other structures built on land by a right-holder, etc. shall be deemed components of the right [to occupy or use] the land of another (Civil Code Article 124).

#### Ownership

It is prohibited for any foreigner, either a natural person or legal entity, to own land. The Constitution stipulates that "All persons, individually or collectively, shall have the right to ownership. Only Khmer legal entities and citizens of Khmer nationality shall have the right to own land (Article 44)". The 2001 Land Law also says that only natural or legal entities of Khmer nationality have the right to ownership of land in Cambodia and a foreigner who falsifies national identity to become an owner of land in Cambodia shall be punished (Article 8). In this regard, the legal entities of Cambodian nationality mean the companies of which 51% or more of share are owned by Cambodians or Cambodian companies.

Furthermore, the 2001 Land Law states that "No person may be deprived of his ownership, unless it is in the public interest". An ownership deprivation shall be carried out in accordance with the forms and procedures provided by the law and regulations and after fair just compensation in advance" (Article 5).

The major provisions of 2001 Land Law regarding immovable properties ownership, which may be of the keen interest to prospective investors, are as follows:

- Any regime of ownership of immovable property prior to 1979 shall not be recognized (Article 7).
- Any entering into possession of properties in the public and private property of the State, through any means, that occurs after this Law comes into effect, is null and void (Article 18).
- Possession of immovable property, which was recognized since 1989, may constitute a right in rem over immovable property and may lead to the acquisition of ownership by the holder of the property (Article 29).
- Any person who, for no less than five (5) years prior to the promulgation of the Law, enjoyed peaceful, uncontested possession of immovable property that can lawfully be privately possessed, has the right to request a definitive title of ownership (Article 30).
- After the Law comes into force, any new occupant without title to an immovable property shall be considered as an illegal occupant (Article 34).
- In order to transform into ownership of immovable property, the possession shall be unambiguous, non-violent, notorious to the public, continuous and in good faith (Article 38).
- While waiting for the possession to be transformed into full ownership, possession in compliance with the Law constitutes a right in rem over the immovable property. The title is evidence of possession but is not in itself a title of ownership and is not indisputable. The titles of possession shall only constitute definitive and indisputable title of ownership of the property in the absence of any dispute as to the ownership of the property at the time of the land register is created. In case of a disputed claim, the determination of the lawful possessor of the property shall be based on the additional investigation of all relevant evidence. A title of possession to a property is one kind of evidence but is not in itself determinative (Article 40).

Civil Code stipulates the positive prescription of land ownership as follows (Civil Code Article 162).

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

It also introduced the concept of co-ownership. Co-ownership is defined as ownership of a single thing by multiple persons. Each owner's interest is limited to their own share (Civil Code Article 202). Indivisible joint

ownership occurs when there is a partition, such as a wall, moat or hedge distinguishing ownership of adjacent land or buildings and both parties jointly own the partition. While the joint owners have a shared duty, limited to their own share, to preserve, maintain and repair the jointly owned partition they also share a right of use (Civil Code Article 215 and 217). Various provisions relating to the possessory rights are also provided in Article 227 to Article 243.

#### **Acquisition of ownership over immovable properties**

Ownership over an immovable may be acquired not only via contract, inheritance or other causes set forth in this Section IV but also based on the provisions set forth in Clause 4, Chapter 2, Book Three of Civil Code, other provisions of Civil Code and other laws (Civil Code Article 160).

#### **Effect of Real Rights Existing Prior to the Date of Application of Civil Code**

A long-term lease, usufruct, right of use, right of residence, or easement arisen from an agreement based on Land Law 2001 before its amendment according to Article 80 (Amendments on certain provisions of Land Law 2001) of this law shall be deemed as perpetual lease, usufruct, right of use, right of residence, or easement based on the Civil Code from the Date of Application. In this case, duration of existence of these rights shall be calculated from the date that such rights were created based on the Land Law 2001 (Law on the Implementation of Civil Code Article 38-2).

#### **Land leases**

The term of a perpetual lease may not exceed 50 years. If a perpetual lease is established with a term exceeding 50 years, it shall be shortened to 50 years. A perpetual lease may be renewed; provided that the renewed term may not exceed 50 years counting from the date of renewal (Civil Code Article 247).

If the perpetual lessee fails to pay the stipulated rental for three years, the perpetual lessor may cancel the perpetual lease (Civil Code Article 250).

Perpetual leases may be assigned with or without consideration, or otherwise disposed. The perpetual lessee may sublease the subject of the perpetual lease and may be inherited (Civil Code Article 252).

Upon termination of a perpetual lease, the perpetual lessor cannot demand that the perpetual lessee restore the immovable to its original condition unless the perpetual lessee has destroyed the immovable or fundamentally changed its nature. Upon termination of a perpetual lease, the lessor shall acquire the ownership over any improvements and any structures installed on the immovable by the perpetual lessee without having to pay compensation to the perpetual lessee (Civil Code Article 254).

With regard to long-term lease created prior to the Date of Application relied upon the Land Law 2001, when the remaining period of such a lease exceeds 50 (fifty) years on the Date of Application of Civil Code, such right shall remain in existence during the stipulated period of the agreement although there is a provision of Article 247 (Term of perpetual lease) of the Civil Code. Nevertheless, a long-term lease with a remaining period of more than 99 (ninety nine) years, existence of such a right shall be deemed to remain at 99 (ninety nine) years from the Date of Application (Law on the Implementation of Civil Code Article 41).

If the right of use or right of residence, which is created based on Land Law 2001, is registered according to provision of paragraph 3 of Article 120 of Land Law 2001 such provision shall govern the registration with the reference to provision of Article 139 of the same law even though Article 277 (Requirements for perfection of rights of use and rights of residence) of the Civil Code stipulates that it cannot be held up against third parties unless the holder of a right of use or right of residence actually uses his/

her right, and even the holder of a right of use or right of residence does not use or profit as the matter of fact, this right can be asserted against third parties (Law on the Implementation of Civil Code Article 43).

#### **Mortgage**

Nature of hypothec: A hypothec shall have the right to receive the performance of his/her claim prior to other obligee out of the immovable properties that the obligor or a third party provided to secure the obligation without transferring possession. A perpetual lease or usufruct may also be made the object of a hypothec (Civil Code Article 843).

Asserting hypothec: A hypothec may not assert the hypothec against a third party who is not the hypothecator unless the instrument creating a hypothec is notarized and registered in the land registry (Civil Code Article 845).

Scope of effect of hypothec: [The effect of] a hypothec shall extend to all things that are attached to and form part of the land comprising the object of the hypothec when the hypothec is created, including buildings residing thereon. It also extends to things that attach to the land after the hypothec is created (Civil Code Article 846).

Effect of hypothec on land over building owned by third party: Where based on a perpetual lease, usufruct or leasehold a third party owns a building on the land comprising the object of the hypothec [when the hypothec is created], [the effect of] the hypothec does not extend to the building (Civil Code Article 847).

Order of priority of hypothecs: Where multiple hypothecs have been created on an immovable in order to secure multiple debts, the order of their priority shall be based on the order of their registration (Civil Code Article 851).

#### **Land concessions**

A land concession is a legal right established by a legal document issued under the discretion of the competent authority, given to any natural person or legal entity or group of persons to occupy a land and to exercise thereon the rights set forth by this law (Land Law Article 48).

In Cambodia, there three types of concessions: Social Concessions, Economic Concessions and Use, Development or Exploitation Concessions. In case of Social Concessions, beneficiaries can build residential constructions and/or cultivate State lands for their subsistence. In Economic Concessions, the beneficiaries can clear land for industrial or agricultural exploitation. Use, Development or Exploitation Concessions include mining concessions, port concessions, airport concessions, industrial development concessions, fishing concessions but they are not regulated by the 2001 Land Law (Land Law Article 49 and 50). For Use, Development or Exploitation Concessions, Law on Concession was promulgated on October 19, 2007.

Land concessions may only create rights for the time fixed by the concession contract (Land Law Article 52) and can never result from a de facto occupation of the land. The land concession must be based on a specific legal document, issued prior to the occupation of the land by such competent authority as the State or a public territorial collectives or a public institution that is the owner of the land on which the concession is being granted. The concession must be registered with the MLMUPC (Land Law Article 53).

Land concession is revocable through government decision when its legal requirements are not complied with (Land Law Article 55). Land concessions areas shall not be more than 10,000 hectares and the maximum duration is limited to 99 (Land Law Article 59 & 61).

The provisions of the Civil Code relating to perpetual leases shall apply mutatis mutandis to land rights created by concession, within the scope of the conditions applying to such concession, except where otherwise

provided by special law (Civil Code Article 307).

### **Economic Land Concession (ELC)**

#### *REGULATORY FRAMEWORK FOR ELC*

“Sub-Decree (RGC) No. 146 ANK/BK on Economic Land Concessions (SD-ELC)” was issued on December 27, 2005 to determine the criteria, procedures, mechanisms and institutional arrangements for initiating and granting new economic land concessions, for monitoring the performance of all economic land concession contracts, and for reviewing economic land concessions entered into prior to the effective date of this sub decree for compliance with the Land Law of 2001.

#### *PURPOSES FOR ELC*

Economic land concessions may be granted to achieve the following purposes (SD-ELC Article 3)

- To develop intensive agricultural and industrial-agricultural activities that requires a high rate and appropriate level of initial capital investment.
- To achieve a specific set of agreements from the investor for developing the land in an appropriate and perpetual manner based on a land use plan for the area.
- To increase employment in rural areas within a framework of intensification and diversification of livelihood opportunities and within a framework of natural resource management based on appropriate ecological system,
- To encourage small as well as large investments in economic land concession projects, and
- To generate state revenues or the provincial or communal revenues through economic land use fees, taxation and related services charges.

#### *CONDITIONS FOR GANTING ELC*

An economic land concession may be granted only on a land that meets all of the following five criteria (SD-ELC Article 4).

- 1) The land has been registered and classified as state private land in accordance with the Sub decree on State Land Management and the Sub decree on Procedures for Establishing Cadastral Maps and Land Register or the Sub decree on Sporadic Registration.
- 2) Land use plan for the land has been adopted by the Provincial-Municipal State Land Management Committee and the land use is consistent with the plan.
- 3) Environmental and social impact assessments have been completed with respect to the land use and development plan for economic land concession projects.
- 4) Land that has solutions for resettlement issues, in accordance with the existing legal framework and procedures. The Contracting Authority shall ensure that there will not be involuntary resettlement by lawful land holders and that access to private land shall be respected.
- 5) Land for which there have been public consultations, with regard to economic land concession projects or proposals, with territorial authorities and residents of the locality.

Evaluating Economic Land Concession proposals shall be based on the following criteria (SD-ELC Article 5):

- Increase in agricultural and industrial-agricultural production by using modern technology;
- Creation of increasing employment;
- Promotion of living standards of the people;
- Perpetual environmental protection and natural resources management;
- Avoidance or minimizing of adverse social impacts;
- Any linkages and mutual support between social land concessions and economic land concessions;
- Processing of raw agricultural materials, to be specified in the

concession contract.

#### *MECHANISM FOR ADMINISTRATION AND IMPLEMENTATION OF ELC*

The economic land concession mechanism shall be the following (SD-ELC Article 28).

- Contracting Authority
- Technical Secretariat
- Provincial/Municipal State Land Management Committee
- District/Khan State Land Working Group
- Commune-Sangkat Councils

The Minister of Agriculture, Forestry and Fisheries is authorized and responsible for granting economic land concessions with a total investment value of more than 10,000,000 (ten million) Riels or more; or a total concession land area of 1,000 (one thousand) hectares or more.

#### *MORTGAGE AND TRANSFER OF RIGHT OVER ELC*

“Sub-Decree #114 (RGC) ANKr.BK on the Mortgage and Transfer of the Rights over a Long -Term Lease or an Economic Land Concession” was issued on August 29, 2007 to determine principles and terms and conditions for granting rights to investors to put up as security and transfer of rights over a long-term lease or an economic land concession.

- Only immovable property registered in the Master Land Register can be subject of a concession (Sub-Decree #114 Article 5).
- The land concession shall be mentioned on the land title certificate at the MLMUPC and the MLMUPC shall issue a “Certificate of Economic Land Concession” (Sub-Decree #114 Article 6).
- The concessionaire shall have the right to mortgage or transfer his/her right over the land concession as well as the buildings and/or other immovable properties that he/she has constructed on the land except as otherwise specified in the economic land concession agreement or as restricted by law (Sub-Decree #114 Article 7)
- In all cases, the creditor cannot become owner and has no right to claim ownership of the immovable property rented by or conceded to his debtor who has used his right over the concession as security. The creditor shall not have the rights to claim the right to dispose of the immovable property possessed through a concession by his/her debtor (Sub-Decree #114 Article 9).
- The certificates of economic land concession shall clearly specify the category of immovable property, its size, location, the identity of the owner of the land, the identity of the concessionaire as well as the duration of the concession (Sub-Decree #114 Article 10).

#### **The Cadastral Committee**

The Cadastral Committee was established under 2001 Land Law in order to settle the dispute over unregistered land and to recognize officially the legal ownership.

Article 47 of the 2001 Land Law stipulates the Cadastral Committee shall make decisions on disputes over an immovable property between possessors so that the Committee’s decision shall be deemed final. Ownership of immovable property shall be guaranteed by the State and, for this purpose, the Cadastral Administration under the supervision of the MLMUPC shall have the competence to identify properties, establish cadastral index maps, issue ownership titles, register lands and inform all persons as to the status of a parcel of land in relation to its nature, size, owner and any relevant encumbrances over such parcel (Land Law Article 226).

#### **Limitations on land use**

“Law on Land Use Planning, Urbanization and Construction” of 1994 regulates land use nationwide in Cambodia. In reality, this Law and various land

use plans are very much general so that the investors must check carefully the actual zoning rules before they proceed with the investment projects.

### III-12 Secured Transactions and Insolvency

#### Secured transaction

##### *REGULATORY FRAMEWORK FOR THE SECURED TRANSACTION*

“Law on Secured Transactions” was enacted on May 24, 2007, to promote economic activity through a unified set of rules on securing obligations with collateral. This law shall be applied to:

- a. all transactions where the effect is to secure an obligation with collateral as described in Article 6 of this law, including pledge, transfer of title, consignment, and assignment;
- b. the sale of accounts and secured sales contracts; and
- c. the lease of goods for a period greater than one year. (Article 3)

##### *RELATION BETWEEN “LAW ON SECURED TRANSACTION” AND “CIVIL CODE”*

Transaction which is executed prior to the Date of Application of Civil Code in accordance with the provisions of “Law on Secured Transaction” shall continue its effect after the Date of Application (Law on the Implementation of Civil Code Article 73).

The transaction stated in Article 73 above (Effect of secured transaction executed prior to the Date of Application) fulfils the conditions stated in the Civil Code if the parties show their intention to change the transaction to the one that based on provisions of the Civil Code; then it is deemed that the parties executed the transaction on the Date of Application based on provision of the Civil Code. However, this change does not impact the interest of the third parties. In this case, parties of transaction which has been changed may not claim the effect transaction according to the Law on Secured Transaction (Law on the Implementation of Civil Code Article 74).

If any transaction executed based on the provision in Law on Secured Transaction relating to a subject matter and any transaction executed based on the provisions in the Civil Code relating to same subject matter are incompatible with the priority between those transactions, priority between those transactions is decided based on time that such transactions are enforced against the third parties (Law on the Implementation of Civil Code Article 76).

##### *SECURITY INTEREST AND SECURED OBLIGATION*

A security interest is a real right in collateral that secures performance of an obligation. Any person may give a security interest, and any person may take a security interest under this law, except as provided in paragraph 3 of this article (Article 4). A security interest may secure one or more obligations, which may be described specifically or in general terms and secured obligations may be monetary or non-monetary obligations. A security interest may secure future obligations, whether mandatory, conditional, or optional (Article 5).

##### *COLLATERAL*

Collateral may be goods or movable things of any nature, intangible property, including rights and claims and other intangible property, fixtures. Collateral may be in existence or may arise in the future, located anywhere, within or outside of Cambodia. Collateral includes accounts and secured sales contracts that have been sold, consigned goods, leased goods, and proceeds of collateral. (Article 6)

Unless otherwise agreed, if collateral is in the secured party’s possession:

- a. reasonable expenses shall be charged to the debtor and secured by

the collateral, including the cost of any insurance, and payment of taxes or fees associated with the collateral;

- b. the risk of accidental loss or damage is on the debtor to the extent of a deficiency in any insurance coverage;
- c. the secured party may hold as additional collateral any fruits, except money, received from the collateral and shall apply money to reduce the secured obligation, unless the money is remitted to the debtor. (Article 8)

##### *PERFECTION AND PRIORITY INTEREST*

A security interest is perfected when it has attached to the collateral and all of the applicable requirements of the law article are satisfied. A security interest is perfected continuously if it is first perfected in one manner and later perfected in another manner, without an intermediate period when it is not perfected (Article 11).

Security interests in the same collateral have priority according to time of filing or perfection. Priority is measured from the time of the first notice filed covering the collateral, or the time the security interest is first perfected, whichever is earlier. The first security interest to attach has priority among security interests for which there is neither filing nor perfection. (Article 12)

A person takes collateral free of a security interest if the person gives value for the collateral without knowledge of the security interest and before it is perfected. If the collateral is tangible, the person must also take delivery of the collateral without knowledge of the security interest and before it is perfected (Article 14-1).

A perfected purchase money security interest in equipment has priority over a conflicting security interest in the same equipment and also has priority in its proceeds, if the purchase money security interest is perfected when the debtor receives possession of the equipment or within five days thereafter (Article 18-1). The Law on Secured Transaction also stipulates the priority of purchase money security interest in inventory and livestock and the certain lien (Article 18). It also describes the nature, conditions and/or priority of the fixtures, crops, accessions, commingled goods and purchaser of secured sales contracts or an instrument (Article 19 – 24).

##### *FILING*

A secured transactions filing office is hereby established in the Ministry of Commerce (Article 29). The secured transactions filing office is the place to file a notice of a security interest in collateral subject to this law except collateral designated in article 44 of this law, and a notice of the interest of a lien holder (Article 30).

Information contained in notices filed by filing office is public records and indexes and other records created by the filing office with respect to the notices, in any form or medium, are public records. Any person, without discrimination, has a right to inspect and obtain copies of any records held by the filing office (Article 32).

A filed notice is effective for a period of five (5) years after the date of filing and the effectiveness of a filed notice lapses on the expiration of the five (5) years period unless, before the lapse, a continuation statement is filed (Article 36-1, -2). The effectiveness of a notice may be terminated by filing a termination statement (Article 39).

##### *ENFORCEMENT*

The parties to a security agreement are free to define default with respect to the agreement. Upon default, the secured party shall have:

- a. the right to possession or control of the collateral, as the secured party prefers, even if the security agreement is silent about possession or control;
- b. other rights and remedies provided in this law;

- c. other rights and remedies in the security agreement; and
- d. rights and remedies under other law (Article 46-1, -2)

After default, a secured party may sell, lease, license or otherwise dispose of any or all of the collateral. Disposal of the collateral may be made publicly or privately, and may be made in one or more contracts. (Article 49-1, -2)

Unless otherwise agreed in writing after default, the debtor or any other secured party may redeem the collateral by fulfilling all obligations secured by the collateral and expenses reasonably incurred by the secured party in retaking, holding and preparing the collateral for disposal, including reasonable attorneys' fees and legal expenses. (Article 52)

## Insolvency

### *REGULATORY FRAMEWORK FOR THE INSOLVENCY*

The Law on Insolvency, a comprehensive law governing the insolvency in Cambodia, has been passed by the National Assembly on October 16, 2007 and was promulgated on December 7, 2007, to provide collective, orderly and fair satisfaction of creditors' claims out of a debtor's properties and, where the parties in interest deem appropriate, the rehabilitation of the business of the debtor (Article 2). This Law shall be applied to all businessmen and legal entities that own assets in the Kingdom of Cambodia (Article 3).

### *PETITION TO OPEN INSOLVENCY PROCEEDINGS*

In case of a partnership or legal person formed under the laws of a foreign country or a natural person who is domiciled outside the Kingdom of Cambodia, insolvency proceedings shall apply only to the assets of such persons or partnerships which are situated in Cambodia and having its registered address in the Kingdom of Cambodia, in case such insolvency opening is against the persons or partnerships set out below (Article 6-2).

Insolvency proceedings shall not be opened against any debtor or creditor which is a covered entity under the Law on Banking and Financial Institutions, Law on Insurance and Law on Non-Government Securities (Article 6-3).

In the case of a petition by the debtor, a creditor or creditors, the failure of a debtor to meet one or more valid and mature obligations, other than obligations which give rise to claims of the kind mentioned in Article 36(3) to Article 36(9), to pay an aggregate amount in excess of Five Million Riels (Riels 5,000,000) shall be a ground for the opening of insolvency proceedings with respect to the debtor (Article 7-1).

A petition to open insolvency proceedings may be filed by a debtor, one or more creditors, the Director of Companies or the public prosecutor. The examination of petition, payment of court fee, secured petition shall comply with the provisions of the Code of Civil Procedure (Article 8). A debtor that has ceased to meet its mature and valid obligations to pay as mentioned in Article 7 shall, within thirty (30) days of such cessation, petition for the opening of insolvency proceedings against itself (Article 9). A creditor's petition, or a petition by director of companies or public prosecutor, shall be served on the debtor no later than seven (7) days after the petition has been filed with the court (Article 10).

From the time of the filing of a petition to the court's issuance of its ruling whether to open insolvency proceedings, the court shall, upon the written application of the debtor, any creditor, the director of companies or the public prosecutor, issue a ruling to appoint an administrator (Article 11-1).

### *DECISION ON THE PETITION TO OPEN INSOLVENCY PROCEEDINGS*

A petition by the debtor shall be heard by the court no later than fifteen (15) days after the petition is filed and a petition by the creditors no later than thirty (30) days after the petition has been served on the debtor (Article 12-1, -2).

If the court is satisfied, after the hearing of the petition, the court shall issue a written ruling:

- (a) opening insolvency proceedings against the debtor;
- (b) appointing an administrator under Article 11 of this law;
- (c) announcing a date for the opening creditors' meeting, which shall be on a day no earlier than thirty (30) days but no later than sixty (60) days after the opening of the insolvency proceedings; and
- (d) specifying the deadline for the filing of proofs of claims, which shall be seven (7) days before the date of the opening creditors' meeting (Article 13-1).

Insolvency proceedings shall not be opened and the petition shall be dismissed if the debtor's assets will likely be insufficient to cover the costs of the proceedings, unless a sufficient amount of money is advanced by a related person to cover such costs (Article 16-1).

### *EFFECTS OF THE OPENING OF INSOLVENCY PROCEEDINGS*

After the court ruling opening insolvency proceedings, and until the termination of the proceedings, no action, proceedings or execution process or any other action of any kind by or on behalf of a creditor shall be commenced or continued against the debtor or assets of the estate. The administrator may, however, whenever it is in the best interest of the estate, allow a secured creditor in writing to foreclose his mortgage, repossess and sell an encumbered asset (collateral), or in any other way avail himself of his security right and make himself paid by individual action (Article 19). The management and power over all debtors' assets shall vest in the administrator (Article 21).

No later than thirty (30) days after the opening of insolvency proceedings, the administrator shall determine in good faith the value of any security right held by a creditor in an encumbered asset of the estate. The administrator's valuation shall, unless challenged by the debtor or any creditor, be the valid determination of the amount of the secured portion of that creditor's claim (Article 26-1).

No later than fourteen (14) days after the opening of insolvency proceedings, the debtor shall file with the court and provide to the administrator a written statement setting out full details of the estate and all creditors known to the debtor, including the creditors' names, addresses and a brief description of the debt owed to each creditor (Article 29-1).

The court may, upon a complaint by the administrator and upon a hearing of the other party to a certain transaction, adjudicate by judgment the following transactions to be void and pronounce the appropriate effects of such declaration under Article 33:

- (1) a transaction entered into by the debtor with the intent to defraud creditors by placing the debtor's assets beyond the reach of creditors who may seek to recover claims owed by the debtor;
- (2) a transaction effected within 3 years prior to the opening of insolvency proceedings for which no consideration was received by the debtor in return, except for ordinary transactions in favor of the debtor's spouse or relatives of direct descent or ascent;
- (3) a transaction effected within 1 year prior to the opening of insolvency proceedings in which the value of the debtor's obligation considerably exceeded the value of the other party's obligation;
- (4) a transaction effected within 1 year prior to the opening of insolvency proceedings in which the debtor discharged a debt which was not due, or provided new or additional security for a debt, and in which the other party to the transaction is a related person;
- (5) a transaction effected within 6 months prior to the opening of insolvency proceedings in which the debtor discharged a debt which was not due, or provided new or additional security for a debt; and
- (6) a transaction effected within 1 year prior to the opening of insolvency proceedings in which the debtor discharged a debt which was not

due, or provided new security, or granted a security right, for a debt of the kind mentioned in Article 36 (5) (Article 32)

The estate shall be used to satisfy all admissible claims against the debtor and administrative claims. Administrative claims shall include the remuneration, fees and expenses of the administrator in the course of the proceedings (Article 35-1).

#### *PLANS OF COMPROMISE*

Any proposed plan of compromise shall be filed with the court no later than seven (7) days prior to the date of the relevant creditors' meeting. A proposed plan of compromise filed with the court shall be open for inspection by the public free of charge (Article 40). The plan of compromise shall be submitted for the consideration and approval of creditors at the opening creditors' meeting or at any subsequent creditors' meeting convened for that purpose (Article 44). No later than seven (7) days after a plan of compromise has been approved by the creditors as required under Article 45, the administrator shall make a written application to the court for court approval of the plan of compromise (Article 47-1). The court's approval of a plan of compromise shall have the effect of terminating the insolvency proceedings and beginning the period for the implementation of the plan of compromise which shall be determined by the plan but not exceed a maximum of two (2) years following court approval of the plan (Article 48-1).

#### *CREDITOR'S MEETING*

The opening creditors' meeting shall be convened and chaired by a judge with the assistance of the administrator (Article 51). At the opening creditors' meeting, the administrator shall report on the debtor's business situation and the causes thereof. The administrator shall indicate whether there is a chance to maintain the debtor's business in whole or in part, what chances exist for the approval and implementation of a plan of compromise and what effects would arise for the satisfaction of the creditors (Article 52).

#### *LIQUIDATION AND SATISFACTION OF CLAIMS*

Upon the commencement of liquidation, the administrator shall convert all non-cash assets of the estate into cash as soon as possible, in so far as it is required for the satisfaction of creditors' claims in the insolvency proceedings (Article 56-1).

The proceeds of the liquidation of the estate shall be used to satisfy claims in the following order:

- (a) employee wages, administrator's remuneration and fees, administrative fee, and the court's fees;
- (b) the secured claims, up to the higher of the value of the secured portion of the claim as determined under Article 26 or the relevant net proceeds from an effective sale of the encumbered asset (collateral);
- (c) state taxes whose notice is not filed;
- (d) all other admissible unsecured claims (Article 57-1)

#### *TERMINATION OF INSOLVENCY PROCEEDINGS*

The administrator shall submit to the court a written report on his activities. The report shall contain a final account of the distributions made and remaining unsatisfied claims. The report shall be submitted no later than thirty (30) days after the depletion of all saleable parts of the estate (Article 59). The court shall convene a final creditors' meeting within fourteen (14) days of its receipt of the administrator's report under Article 59. The creditors' meeting shall adopt the final account of the distributions made and remaining unsatisfied claims, and shall decide on the use of the parts of the estate that cannot be sold (Article 60).

In the case of a debtor which is a company, the debtor shall be deemed dissolved upon the issuance of the court ruling terminating the insolvency

proceedings upon liquidation, unless the termination of insolvency proceedings resulted from the satisfaction of all claims against the debtor in accordance with Article 57 (Article 63).

#### *COURTS*

While the commercial court has not been established in the Kingdom of Cambodia, the court of common jurisdiction of the Kingdom of Cambodia shall have jurisdiction over all insolvency cases stated in this law. When the commercial court is established in the Kingdom of Cambodia, the court of common jurisdiction shall transfer all jurisdictions in bankruptcy cases to the commercial court (Article 82).

### **III-13 Dispute Settlement**

#### **Regulatory framework for commercial arbitration**

The "Draft Law on Commercial Arbitration", about four-fifth of which was extracted from Model Law of United Nations Commission on International Trade Law (UNCITRAL), was adopted in 2003 and the draft became law in May 2006. The purpose of the Law is to facilitate the impartial and prompt resolution of economic disputes, to safeguard the legal rights and interests of the parties and to promote the sound development of the economy (Article 1).

The major provisions of the Law are as follows.

- Regarding the matters governed by this Law, no court shall intervene except as provided for by the Law (Article 5)
- The Arbitration Agreement shall be in writing (Article 7)
- A National Center for Arbitration shall be established under the Ministry of Commerce (Article 10)
- Cambodian or foreign natural persons who are arbitrators shall register in the National Center for Arbitration and it shall be responsible for determining the qualification of arbitrators (Article 11)
- The chamber of commerce or manufacturing may set up by themselves an arbitration panel as a form of conciliation, in case of any dispute arising from their members (Article 13)
- The parties shall be treated with equality and are free to determine the governing law, the number of arbitrators, the arbitral procedures to be followed by the arbitral panel, the place of arbitration, and the language to be used (Chapter IV)

The other chapters consist of the following:

- "Jurisdiction of the arbitral tribunal"
- "Conduct of arbitral proceedings"
- "Making of award and termination of proceedings"
- "Jurisdiction of Competence Courts"
- "Resources against awards"
- "Recognition and enforcement of awards"

#### **National Center of Commercial Arbitration (NCCA)**

"Sub-Decree #124 (RGC) on Organization and Functioning of National Center of Commercial Arbitration" was issued on August 12, 2009 to determine the organization and functioning of the NCCA.

The major provisions of the Sub-Decree are as follows:

- The NCCA shall be a non-profit organization with an office in Phnom Penh municipality.
- The roles and duties of the NCCA include;
  - to promote the commercial arbitration sector in Cambodia
  - to provide training to persons who are learning this profession and to persons who wish to act as arbitrators in order to ensure high quality commercial arbitration in Cambodia
  - to identify the qualities of those who wish to become members

- of the NCCA
- to provide services for commercial dispute settlement outside of the judicial system, etc.
- Any individual who wishes to be a member of the NCCA shall be required to register with the NCCA.
- A natural person, Cambodian or foreigner, may apply to be an arbitrator to the NCCA if such person has the following qualifications:
  - (i) Age of 30 years or over
  - (ii) With a specialized post-graduate degree a university either in Cambodia or abroad
  - (iii) Completed a training course on commercial arbitration with the NCCA or any training course from the international commercial arbitration center recognized by the NCCA.
- The Ministry of Commerce shall create a commission for organizing and selecting Primary Arbitrators not exceeding 12 members.

### **Regulatory framework and procedures for labor dispute arbitration**

Regarding the labor dispute, the Labor Law stipulates the following conciliation and arbitration procedures.

#### *INDIVIDUAL DISPUTE:*

Prior to any judicial action, at the initiative of one of the parties, an individual dispute can be referred for a preliminary conciliation to the Labor Inspector of his province or municipality (Article 300).

The Labor Inspector shall inquire from both parties the nature of the dispute and then shall attempt to conciliate the parties. To this effect, the Labor Inspector shall set a hearing that is to take place within three weeks at the latest upon receipt of the complaint. The results of the conciliation shall be contained in an official report written by the Labor Inspector, stating whether there was agreement or non-conciliation. The report shall be signed by the Labor Inspector and by the parties. An agreement made before the Labor Inspector is enforceable by law. In case of non-conciliation, the interested party can file a complaint in a court of competent jurisdiction within two months; otherwise the litigation will be lapsed (Article 301 and Ministerial Order 317).

#### *COLLECTIVE LABOR DISPUTES:*

##### *A. Conciliation*

If there is no planned settlement procedure in a collective agreement, the parties shall communicate the collective labor dispute to the Labor Inspector of their province or municipality (Article 303).

The Minister in charge of Labor shall designate a conciliator within forty-eight hours from the moment he is apprised or learns himself of the dispute (Article 304). Conciliation shall be carried out for fifteen days from the designation by the Minister in charge of Labor. It can be renewed only by joint request of the parties to the dispute (Article 305 and Ministerial Order 317).

During the period of conciliation, the parties to the dispute must abstain from taking any measure of conflict. They must attend all meetings and unjustified absence from any such meeting is punishable by a fine (Article 306).

A conciliatory agreement, signed by the parties and visaed by the conciliator, has the same force and effect of a collective agreement. However, when the party representing workers is not a trade union, the agreement is neither binding on such union nor on the workers it represents (Article 307).

In the absence of an agreement, the conciliator shall record and indicate the key points where the conciliation failed and shall prepare a report

on the dispute. The conciliator shall send such record and report to the Minister in charge of Labor within forty-eight hours at the latest after the conclusion of conciliation (Article 308).

##### *B. Arbitration*

If conciliation fails, the labor dispute shall be referred to settle:

- a) by any arbitration procedure set out in the collective agreement, if there is such a procedure; or
- b) by any other procedure agreed on by all the parties to the dispute; or
- c) by the arbitration procedure provided for in this Section (Article 309)

In case of arbitration, the Minister in charge of Labor shall refer the case to the Council of Arbitration within three days following the receipt of the report from the conciliator as specified in Article 308. The Council of Arbitration must meet within three days following the receipt of the case (Article 310).

The Council of Arbitration legally decides on disputes concerning the interpretation and enforcement of laws or regulations or of a collective agreement. The Council's decisions are in equity for all other disputes. All sessions of the Council of Arbitration shall be held behind closed doors (Article 312).

Within fifteen days starting from the date of its receipt of the case, the Council of Arbitration shall communicate its decision to the Minister in charge of Labor. The Minister shall immediately notify the parties. The latter have the right to appeal this arbitral decision by informing the Minister by registered mail or by any other reliable method within eight calendar days from the date of receiving the notification (Article 313).

The final arbitral decision that was not appealed by either party shall be implemented immediately. The arbitral decision which was already implemented shall be filed and registered the same way that a collective agreement is (Article 314).

The procedure for conciliation and arbitration shall be carried out free of charge (Article 316).

### **Regulatory framework for the dispute settlement of Qualified Investment Project (QIP)**

The Law on Investment of 2003 stipulates the dispute settlement procedures in Article 20 as follows.

Except for land-related disputes, any dispute relating to a QIP concerning its right and obligations set forth in the law shall be settled amicably as far as possible through consultation between the Council for the Development of Cambodia, the investors and any other party involved in the dispute.

If the parties fail to reach an amicable settlement within two months from the date of the first written request to enter such consultations, the dispute shall be brought by either party for:

- Conciliation before the Council which shall provide its opinion, or
- Arbitration in or outside of Cambodia as agreed by both parties, or
- Trial by the tribunals of the Kingdom of Cambodia.

## **III-14 Environment Protection**

### **Basic policy for the protection of the environment**

As a basic policy of environmental protection, Article 59 of the Constitution stipulates that the State shall protect the environment and balance of abundant natural resources and establish a precise plan of management of land, water, air, wind, geology, ecological system, mines, energy, petrol and gas, rocks and sand, gems, forests and forestry products, wildlife, fish and aquatic resources.

### Regulatory framework for the environmental protection

In 1996, the “Law on Environment Protection and Natural Resource Management (LEPNRM)” was enacted, followed by “Sub-Decree on Management of Solid Waste” (1999), “Sub-Decree on the Water Pollution Control” (1999) and “Sub-Decree on the Control of Air Pollution and Noise Disturbance” (2000). Numerical standard for environmental quality are set in each Sub-Decree but they are said to be very strict compared with neighboring countries.

A “Sub-Decree on the Implementation of the Environmental Impact Assessment (EIA) Process” was also proclaimed in 1999. The Sub-Decree stipulates the precise nature and formats of assessment and the kind of projects required to do such assessment by their nature, size, activity, etc (Chapter 1, Article 1). The Project’s Owner must pay the service fee for the EIA examination and monitoring the project implementation. The service fee must be defined by the MEF and transfer to the National budget according to the proposal of the Ministry of Environment (Chapter 3, Article 11).

#### *Practice of EIA*

Despite the above provision of the EIA implementation, in most of the cases, the EIA are out-sourced to the private sector consultant who is hired by the project’s owner due to the lack of resources in the Ministry of Environment. The Ministry will approve the assessment result subject to the payment of service fee to the Ministry.

### III-15 Standards

#### Regulatory framework for the Standards

“Law on Standards of Cambodia” was promulgated on June 24, 2007 with the following purposes (Article 2).

- a) to improve the quality of products, services and management;
- b) to raise and rationalize production efficiency;
- c) to ensure fair and simplified trade;
- d) to rationalize product use; and
- e) to enhance consumer protection and public welfare.

The scope of this Law shall cover all the activities related to standardization, quality assurance and related activities within the whole territory of Cambodia (Article 1).

Major provisions on the Standards

#### *ESTABLISHMENT OF THE INSTITUTE OF STANDARDS OF CAMBODIA*

There shall be established an institute namely the Institute of Standards of Cambodia within the ministry in charge of industry (Article 4). The main functions and duties of the Institute of Standards of Cambodia consist of the following (Article 5).

- a) to develop national standards for products, commodities, materials, services, practices and operations, and promote general adoption of such standards;
- b) to operate conformity assessment scheme in accordance with the provisions set out in this law;
- c) to establish and maintain laboratories, libraries, facilities and other equipments for the purpose of furthering standardization and quality;
- d) to certify the conformity of products, commodities, substances, materials and equipments for local consumption or export according to the applicant’s request;
- e) to certify the conformity to a safety standard for products, commodities,

substances, materials and equipment for local consumption or export according to the applicant’s request;

- f) to certify the conformity to the management system standards for production and service according to the applicant’s request;
- g) to suspend, withdraw and cancel license of product standards mark or certificate of conformity or certificate of registration or management system, or certificate of registration or accreditation;

#### *NATIONAL STANDARDS COUNCIL*

There shall be established a Council to be known as the National Standards Council having the Institute of Standards of Cambodia as secretariat (Article 10).

The National Standards Council shall compose of a representative of the Ministry of Industry, Mines and Energy as Chairman, President of the Institute of Standards of Cambodia as permanent Vice-Chairman, a representative of the Ministry of Commerce as Vice-Chairman, a representative of the Ministry of Agriculture, Forestry and Fisheries as Vice-Chairman, a representative of the Ministry of Health as Vice-Chairman and other 16 members (Article 11).

The National Standards Council shall have the following duties:

- a) to approve, amend and cancel any national standards;
- b) to approve, amend and cancel any standard marks ;
- c) to determine voluntary or mandatory standards or standards mark;
- d) to advise the Minister in respect of standardization priority and policy, programs, planning, projects and activities to ensure a maximum effectiveness; and others

#### *CAMBODIAN STANDARDS*

The Minister shall, by notifying in the Royal Gazette, declare any standard that has been approved by the Council to be a Cambodian standard for the purpose of this Law. The Minister may determine the effective date of a standard, amend and withdraw a standard by following the recommendation of the Council (Article 15).

For the purpose of ensuring safety to prevent harmful effect which may affect the public or industry or national economy, any kind of products or systems shall conform to any specific standards, and the said standards shall be determined as mandatory standard following the proposal of the relevant ministries/institutions and Council’s approval. The determination of a mandatory standard shall be made by a ministerial technical regulation and the effective date shall not be less than 60 days from the date signed on the above regulation (Article 16).

Prior to the issuance of ministerial regulation under Article 15 and 16 of this Law, the Institute shall publish, at least in one daily newspaper in Khmer language for a period of not less than seven days, an announcement stating the intention of the declaration and a summary content of any standard. Any person wishing to protest shall submit his/her written protest to the Institute within thirty days from the date of publication (Article 17).

#### *CAMBODIAN STANDARD MARK*

Referring to the Article 22 of this Law and based on the approval of the Council, the Institute shall notify at least in one daily newspaper in Khmer language for a period of not less than seven days stating any standard marks which have been approved by the Council in respect of Cambodian standards for product or commodity or for the production, process, processing or treatment of any product or commodity or service, or for those systems. A notification under paragraph 1 shall contain information on the relevant standard in which the conformity shall be certified by any standard mark. Any person wishing to protest shall submit his/her written protest to the Institute within thirty days from the date of such notification (Article 20).



No any standard mark, which is identical with any trademark registered in respect of any product or commodity under the Law concerning Marks, Trade Names and Acts of Unfair Competition, or which so nearly resembles to any such trademark as to be likely to mislead for it, may be declared as a standard mark prescribed under Article 20 of this Law (Article 22).

#### *PRODUCT LICENSE*

Every application for a license shall be made in written letter to the Institute. No license shall be issued, unless the following conditions have been fulfilled (Article 24):

- Inspection and sampling of product for testing are found to conform to the relevant standard;
- The applicant agrees to accept the general conditions attached to the license;
- The applicant paid the license fee to the Institute as determined by joint ministerial regulation of the ministry in charge of industry and the ministry in charge of finance.

A license is valid for a period of 3 years and may be renewed for another three-year period if the terms and conditions of the license are properly followed (Article 24).

In case of an application for a license is refused, the Institute shall inform in written letter concerning the refusal to the applicant for not more than seven days from the date of conformity assessment end (Article 24)

Any person, who manufactures or processes a product complied with an authorized standard which has already been into effect, may display the standard mark on product after having received a license from the Institute (Article 25).

The Institute has the power to suspend a license for a period not more than three months one time when it is found that the licensee violates to the provisions of this Law or the ministerial regulations issued under this Law or the conditions prescribed by the Institute, or that product did not comply with the specified standard (Article 31).

The Institute has the power to revoke a license when it is found that the licensee:

- has committed a serious mistake in connection with the requirements of the terms and conditions for granting and using license; or
- failed to fulfill the required terms and conditions within the suspension period; or
- has committed a similar mistake within the past three years; or
- failed to pay an annual license fee (Article 32)

#### *SYSTEM CERTIFICATE*

Any organization desiring to obtain a system certificate shall apply to the Institute. The applicant shall pay a certification fee to the Institute as prescribed by a joint ministerial regulation of the ministry in charge of industry and the ministry in charge of finance. After following the procedures successively, the Institute shall assess the conformity of the applicant's management system to the requirements of the relevant standard. After the approval of the Institute, the organization shall be issued with the relevant system certificate subject to such terms and conditions as prescribed by the Institute. A system certificate shall be valid for a period of 3 years but so long as the terms and conditions of the certificate are followed, such system certificate may be renewed for another three year period (Article 38).

#### *OTHER PROVISIONS*

No person or organizations shall advertise the obtaining of any system certificate even though they have been certified by any local or foreign certification body unless they have been registered and received a visa from the Institute (Article 48).

The following activities shall be prohibited (Article 49):

- doing business for which it is formed under a name containing the word “**Cambodian Standard**” or an abbreviation “**ISC**”;
- registering any trademark containing the word “**Cambodian Standard**” under the Law concerning Marks, Trade names and Acts of an Unfair Competition ;
- printing or copying Cambodian standard documents without authorization from the Institute

#### *THE INSTITUTE OF STANDARDS OF CAMBODIA (ISC)*

The ISC is a subscriber of the International Organization for Standardization (ISO), an affiliate member of the International Electrotechnical Commission (IEC) and also a member of the ASEAN Consultative Committee on Standards and Quality (ACCSQ). With the accession of Cambodia to the World Trade Organization (WTO) in October 2004, ISC operates a WTO/TBT (Technical Barriers to Trade) enquiry point and acts as a notification authority.

The ISC ‘Product Certification’ scheme is based on the ISO/IEC Guide 28 which provides rules for a third party certification system of determining conformity with product standards through testing and assessment of the factory quality management system.

ISC offers 2 types of licensing as follows:

- License for products related to health and safety conforming to mandatory standards
- License for products conforming to voluntary standards

Currently there are 55 Cambodian Standards, mainly in the fields of foods, electrical appliances and tools. (Source: <http://www.isc.gov.kh/>)

### **III-16 Intellectual Property Rights (IPR)**

#### **Regulatory framework for the protection of IPR**

At the time of Cambodia's accession to the World Intellectual Property Organization (WIPO) in 1995 and the Paris Convention in 1998, the regulatory framework to protect IPR was weak. Since the turn of the century, the Cambodian Government has been passing series of the laws and the regulatory framework to protect IPRs in Cambodia made a considerable progress and became soundly complied with WTO obligations. The laws which have been enacted so far include the following:

- Law on Marks, Trade Names and Acts of Unfair Competition (2002)
- Law on the Copyright and Related Rights (2003)
- Law on the Patents, Utility Model Certificates and Industrial Design (2003)
- Law on Breeder Rights and Plant Variety Protection (2008)
- The following laws are currently under the consideration for enactment.
- Law on the Protection of Undisclosed Information and Trade Secret
- Law on the Protection of Layout Design of IC
- Law on the Protection of Geographical Indications

#### **Trade marks and names**

“Law on Marks, Trade Names and Acts of Unfair Competition (Trade Mark Law)” of 2002 was the first law in Cambodia to protect the IPR. The Law stipulates that the exclusive right to trade marks shall be acquired by registration (Article 3) and the right of priority in the mark registration shall be granted if the applicant attaches to the application the declaration claiming the priority of an earlier national or regional application filed by the applicant or his predecessor in any member country of the Paris Convention (Article 6). The Law also defines the registration procedures, invalidation and removal, collective marks, licensing of marks, trade names, infringement and remedies, border measures, assignment or change

in ownership, etc.

It should be noticed that Cambodian Trade Mark Law acknowledges only national exhaustion and, therefore, the exclusive right on distribution and importation is always secured by right-holder and can be assigned to any exclusive distributor through power of attorney or agreement on distributorship.

### Copyright

The “Law on the Copyright and Related Rights” of 2003 was enacted to provide authors and performers with rights with respect to their works to protect the works of literature, cultural performance, performers and phonogram producers and broadcasts by broadcasting organizations in order to secure a just and legitimate exploitation of those cultural products (Article 1).

The type of works to be protected under this Law is as follows (Article 3):

- Works of authors who are Cambodian nationals or who have habitual residence in Cambodia
- Works first publishing in Cambodia, including works first published abroad which were brought to publish in Cambodia within 30 days of the first communication to the public
- Audiovisual works of producers with their headquarters or habitual residence in Cambodia
- Works of architecture erected in Cambodia and other artistic works incorporated in a building or other structures located in Cambodia
- Works for which Cambodia has an obligation to grant protection under international treaties

The following subjects are being protected under the Law (Article 7).

- All kinds of reading books or other literary, artistic, scientific and educational documents
- Lectures, speeches, sermons, oral or written pleadings and other works of the same characteristics
- Dramatic works or musical dramas
- Musical composition, with or without words
- Audio-visual works
- Works of painting, engraving, sculpture or works of collages
- Photographic works and architectural works
- Computer programs and design encyclopedia documents relevant to those programs, etc.

The author of a work shall enjoy an exclusive right to that work, which shall be enforceable against all persons and the right include moral right and economic right (Article 18). The moral right of the author is perpetual and inalienable and may not be distrainable or subject to prescription (Article 19).

The economic right of the author is the exclusive right to exploit his/her own work through the authorization of reproduction, communication to the public and creation of derivative work (Article 21). The protection of the economic right starts from the date of the creation of a work and lasts until the fiftieth year after the death of the author (Article 30).

To facilitate the enforcement of law and serve as an evidence of ownership in case of having dispute on economic rights, the authors or right-holders may deposit their works at the Ministry of Culture and Fine Arts or the registration may be voluntarily done at the same Ministry. The Ministry shall issue the Certificate of Registration for the registered works (Article 38, 39 and 40).

The authors of work and related-right holders can establish the collective management organization to protect and manage their rights upon the recognition of the Ministry of Culture and Fine Arts (Article 56).

### Patents, utility model certificates and industrial design

The “Law on the Patents, Utility Model Certificates and Industrial Design” was promulgated on January 22, 2003 and provides the protection for granted patents, utility model certificates and registered industrial designs in Cambodia (Article 1).

The objectives of the Law are as follows (Article 2):

- to encourage innovation and scientific and technological research and development
- to stimulate and promote increased internal and external commerce and investment
- to promote the transfer of technology to Cambodia in order to facilitate the industrial activity and the development of the economy
- to provide protection for industrial property rights and to combat the infringement thereof, as well as illegal business practices

#### PATENT:

“Patent” means the title to be granted to protect an invention and “Invention” means an idea of an inventor that permits in practice the solution to a specific problem in the field of technology. An invention may be, or may relate to, a product or a process (Article 4). An invention is patentable if it is new, involves an inventive step and is industrially applicable (Article 5).

The right to a patent shall belong to the inventor (Article 10) and the application for a patent shall be filed with the Ministry in charge of industry (MIME), which shall be subject to the payment of the application fee (Article 16).

When the registrar grants a patent, he shall:

- publish a reference to the grant of the patent
- issue to the applicant a certificate of the grant of the patent and a copy of the patent
- record the patent
- Make available copies of the patent to the public (Article 39)

A patent shall expire 20 years after the filing date of the application for the patent and, in order to maintain the patent or patent application, an annual fee shall be paid in advance to the Registrar for each year (Article 45 and 46).

#### UTILITY MODEL CERTIFICATES:

A utility model certificate is granted for the protection of a utility model, which is new and industrially applicable and may be, or may relate to, a product or process (Article 69). When the inventive step is not included in the invention, the utility model certificates may be sought (Article 71).

Utility model certificate shall expire, without any possibility of renewal, at the end of the 7th year after the date of the filing of the application (Article 73).

At any time before the grant or refusal of a patent, an applicant for a patent may convert his application into an application for a utility model certificate or the other way around, and such application conversion cannot be made more than once (Article 75 and 76).

#### INDUSTRIAL DESIGN:

Under this Law, any combination of lines or colors or any three-dimensional form, or any material, which gives a special appearance to a product of industry or handicraft and can serve as a pattern for a product of industry or handicraft, is deemed to be an industrial design (Article 89). An industrial design can be registered if it is new (Article 91).

It shall be considered new if it has not been disclosed to the public, anywhere in the world, within 12 months prior to the filing date or the priority date of the application for registration (Article 92).

The application for registration of an industrial design shall be filed with the MIME and be subject to the payment of the application fee (Article 95). The making, selling or importing of articles with a registered industrial design in Cambodia by persons other than the registered owner shall require the agreement of the latter (Article 105 and 106). The registration of an industrial design shall be for a period of 5 years from the filing date of the application for registration. Such registration may be renewed for two further consecutive periods of five years (Article 109).

### III-17 Law on Anti-Corruption

The Law on Anti-Corruption was promulgated on April 17 2010 with the aim to combat corruption through taking measures of education, prevention, and law enforcement to suppress offences of corruption with public participation and support and international cooperation (Article 2).

The Anti Corruption Institution is composed of the “National Council against Corruption” and the “Anti Corruption Unit” (Article 5). The National Council against Corruption shall be created to provide guidance or consultation and recommendations on anti-corruption work. The National Council against Corruption is composed of 11 members including the officers appointed by the King, Senate, National Assembly, the RGC, National Audit Authority, National Assembly-Senate Relations and Inspection, Council of Jurists, etc. who meet the requirements such as the Khmer nationality from birth, possessing the highest moral conduct and good reputation, holding a higher education degree and so on (Article 6).

The Anti-corruption Unit is led by one chairperson with the rank equivalent to senior minister, and a number of vice-chairpersons with the rank equivalent to minister as his assistants, who will be appointed by the Royal decree at the request of the Prime Minister (Article 11). The Anti-corruption Unit shall perform the duties to:

- Implement law, orders and regulations (which are in force) related to corruption
- Develop anti-corruption action plan in accordance with the strategies and policy of the National Council against Corruption
- Direct the work of preventing and combating corruption
- Monitor, investigate, check, and do research as well as propose measures related to corrupt practices in ministries, institutions, public and private units, in conformity with the procedures in force
- Receive and review all complaints on corruption and take action accordingly
- Search, review and compile the documents and information related to corruption, and so on (Article 13).

Upon taking and leaving offices, the following persons shall declare their assets and liabilities, regardless of whether those assets are inside or outside the country, and shall submit to Anti-corruption Unit (Article 17).

- 1) Members of Senate, National Assembly and the Royal Government;
- 2) Appointed public officials with a specific mandate;
- 3) Members of the National Council Against corruption, chairperson, vice-chairpersons and all officials of the Anti-corruption Unit;
- 4) Civil servants, police, military personnel and other public servants appointed by Royal Decrees or Sub-decrees;
- 5) Other officials appointed by Prakas and decided by Anti-corruption Unit’s list of declaration on assets and liabilities, after the consultation with National Council Against corruption
- 6) Trial judges, prosecutors, notary public, court clerks and bailiff;
- 7) Leaders of civil society

The Chairman and deputy chairpersons of Anti-corruption Unit are legally entitled to a status as judicial police officials in order to perform their duties and the officials of Anti-Corruption Unit may be entitled to

status as judicial police officials in accordance with the provisions in the penal procedure code (Article 23). Officials of Anti-corruption Unit, who are appointed as judicial police, take charge of investigating corruption offences. Contrary to the provisions of Criminal Procedure Code, the Chairman of Anti-corruption Unit or officially assigned representative has the duty to lead, coordinate and control the mission of those officials instead of the role of prosecutor to the point of arresting a suspect. After the arrest, prosecutor exercises his power as stated in the provisions of the criminal procedure code (Article 25).

In addition to the offenses stipulated in the Law, Article 32 stipulates that some of offenses provided in the Criminal Code are corruption offenses to be implemented as part of this law. Such offenses in Criminal Code include Article 278 (bribe taking by employees), Article 279 (bribe offered to employees), Article 280 (bribe taking by governor), Article 283 (Criminal responsibility by legal entity), Article 387 (improper bidding), Article 517 (bribe taking by judges), Article 518 (bribe offered to judges), Article 547 (bribe taking by witnesses for false testimony), Article 548 (bribe offered to witnesses), Article 553 (bribe taking by interpreter), Article 554 (bribe offered to interpreter), Article 555 (bribe taking by experts), Article 556 (bribe offered to experts), Article 595 (definition of passive business influence), Article 601 (intentional destruction and dishonest embezzlement), Article 605 (bribe offering) , Article 606 (active business influence) , Article 607 (extortion) , article 608 (destruction and embezzlement), Article 637 (bribe offered to person who has competence to issue false certificate) (Article 32).

Special Note: Article 605 of New Criminal Code dated 30 November 2009, which came into force on 1 August 2011, stipulates that any person who, without being entitled to, directly or indirectly provides a donation or gift, makes a promise or provides any benefit to a public official or a citizen entrusted with a public mandate through election, in order that such public official or elected public official performs any acts of his/her functions or facilitates any acts by using his/her functions or refrains from performing his/her duties or facilitating any acts by using his/her function, shall be penalized from 5 to 10-year imprisonment<sup>4</sup>.

Note 3 : Cambodia Client Alert, 15 August 2011, DFDL